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Annual Survey of Virginia Law: Campaign and Election Law

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CAMPAIGN AND ELECTION LAW*

*Claudia T. Salomon***

I. INTRODUCTION

This is the first year the *University of Richmond Law Review* has surveyed recent developments in Virginia's campaign and election laws. Thus, this article provides a general overview of the laws governing state and local candidates concerning (1) qualifications for candidacy, (2) campaign finance, and (3) campaign and election misconduct.

These days political campaigns are big business, and anyone involved in politics should be aware of a full panoply of laws ranging from liquor licenses to taxes. This article, however, addresses only those laws specific to campaigns and elections and does not address the laws and rules governing political committees (commonly referred to as PACs) and political parties.¹

II. QUALIFICATIONS FOR CANDIDACY

Only a person fulfilling all the qualifications and filing requirements of a candidate will have his or her name printed on the ballot.² This section sets forth the qualifications and filing requirements for candidacy for federal, state, and local office. In Virginia, missing a filing deadline, even if inadvertent, can shorten a candidate's political career.³

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1. All forms which must be filed pursuant to the campaign and election laws are available from the State Board of Elections ("State Board").

2. VA. CODE ANN. § 24.2-504 (Repl. Vol. 1993).

3. *El-Amin v. State Bd. of Elections*, 717 F. Supp. 1138 (E.D. Va. 1989) (holding

A. *General Qualifications*

1. Federal Office

The U.S. Constitution sets forth the exclusive qualifications for congressional candidacy.⁴ To become a U.S. Senator, a candidate must be an inhabitant of the Commonwealth when elected, a citizen of the United States for nine years, and thirty years old.⁵ To become a member of the U.S. House of Representatives, a candidate must be an inhabitant of the Commonwealth when elected, a citizen of the United States for seven years, and twenty-five years old.⁶ Congressional candidates are *not* required to live in the district in which they seek to represent.⁷

2. State and Local Office

The Virginia Constitution sets forth the qualifications for state and local candidates. A candidate for Governor or Lieutenant Governor must be at least thirty years old by the time of taking office, and have been a resident and a registered voter in the Commonwealth for at least five years immediately before the election.⁸ A candidate for Attorney General must be at least thirty years old by the time of taking office, a registered voter in the Commonwealth for at least five years immediately before the election, and must have been admitted to the bar of the Commonwealth at least five years prior to election.⁹

that Virginia's legitimate nondiscriminatory requirement that a candidate comply with a fixed deadline for filing financial disclosure statements that it publicizes to all candidates falls well within the bounds of those legitimate administrative regulations that states must impose if elections are to be conducted fairly and efficiently).

4. U.S. CONST. art. I, § 2, cl. 2, § 3, cl. 3; *see, e.g.*, *U.S. Term Limits v. Thornton*, 115 S. Ct. 1842 (1995) (striking down state laws that limit the terms of Congress members as unconstitutional).

5. U.S. CONST. art. I, § 3, cl. 3.

6. U.S. CONST. art. I, § 2, cl. 2.

7. *See Buckley v. Valeo*, 424 U.S. 1 (1976); *Powell v. McCormack*, 395 U.S. 486 (1969); 1986-1987 Va. Att'y Gen. Rep. 202 (1986).

8. VA. CONST. art. V, § 3.

9. VA. CONST. art. V, § 15; art. VI, § 7.

Anyone may be elected to the Virginia General Assembly, House of Delegates or Senate, who at the time of the election, is twenty-one years old, a resident of the senatorial district which he or she seeks to represent, a resident of the Commonwealth for one year immediately before the election, and a registered voter.¹⁰

Local offices in Virginia include county board of supervisors, city and town council, school board, and five constitutional offices: treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue.¹¹ To be a local candidate, one must be a resident of the Commonwealth for one year, a resident of the district the candidate seeks to represent, and a registered voter.¹² A candidate for Commonwealth Attorney must in fact be a lawyer.¹³ If no practicing attorneys reside in the locality, the Commonwealth Attorney may reside outside of the district.¹⁴

B. *Additional Qualifications*

All state and local candidates must be qualified registered voters. To qualify to vote in Virginia, one must be a citizen of the United States, at least eighteen years of age,¹⁵ and a resident of both the Commonwealth and of the precinct in which he or she votes.¹⁶

10. VA. CONST. art. II, § 5; art. IV, § 4.

11. VA. CONST. art. VII, § 4.

12. VA. CONST. art. II, § 5; VA. CODE ANN. § 15.1-51 (Cum. Supp. 1995).

13. 1975-1976 Va. Att'y Gen. Ann. Rep. 54 (1975) (opining that because a majority of the duties of the Commonwealth's Attorney require the rendition of legal advice or appearances in court, the Constitution of Virginia implicitly requires that the Commonwealth's Attorney be a lawyer).

14. VA. CODE ANN. § 15.1-51(A) (Cum. Supp. 1995).

15. VA. CONST. art. II, § 1 (stating that any person who will be eighteen at the next general election is permitted to register in advance and also to vote in any intervening primary or special election).

16. Residency is a continuing qualification for holding state and local office. Thus, a person becomes disqualified when he or she moves out of the district he or she represents. VA. CONST. art. IV, § 4; VA. CODE ANN. § 15.1-52 (Repl. Vol. 1989); see *Griffin v. Cunningham*, 61 Va. (19 Gratt.) 31, 43 (1870); 1979 Va. Att'y Gen. Ann. Rep. 69 (1989) (holding that an official's actions in office are valid under the "de facto officer" doctrine until the official has notice of his or her inability to serve. A de facto officer is one who assumes office by the power of an election or appointment, but in consequence of some informality, or want of qualification, or by reason of the

"Residence" for all purposes of qualification to vote and to hold office requires both domicile and a place of abode,¹⁷ though certain exceptions are allowed for absentee registration or people who have recently moved.¹⁸ "Place of abode" means dwelling place.¹⁹ Thus, although a person may own two homes, i.e., have more than one "place of abode," a person may have only one legal "residence." Hence, one's domicile determines one's residence when a person owns more than one home. It is well-established that one's *intention* to establish a domicile controls one's residence for voting purposes.²⁰ While one's intent determines one's domicile, one's subjective intent may be tested by various objective factors. Section 24.2-101 sets forth:

In determining domicile, consideration may be given to a person's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the person, motor vehicle and other personal property registration, and other factors reasonably necessary to determine the qualification of a person to register or vote.²¹

For over sixty years, however, the law has been clear in Virginia: one can establish a domicile different from one's spouse.²²

expiration of term of service, cannot maintain his or her position when called upon by the government to show by what title he or she holds office).

17. VA. CONST. art. II § 1; VA. CODE ANN. § 24.2-101 (Repl. Vol. 1993).

18. VA. CONST. art. II § 1; VA. CODE ANN. § 24.2-101 (Repl. Vol. 1993). A 1976 amendment to the Virginia Constitution eliminated all durational residency requirements for voter qualification.

19. 1992 Va. Att'y Gen. Ann. Rep. 108, 110 (1992).

20. See *Williams v. Commonwealth*, 116 Va. 272, 277, 81 S.E. 61, 63, (1914). ("Where a man has two places of living, which is his legal residence is to be determined largely, where the right to vote or hold office is involved, by his intention."). See also 1992 Va. Att'y Gen. Ann. Rep. 108, 110 (1992) ("[W]hen members of a family reside in a house that is physically situated in two jurisdictions, their intention to establish a domicile controls their residence for voting purposes.").

21. VA. CODE ANN. § 24.2-101 (Repl. Vol. 1993).

22. See *Commonwealth v. Rutherford*, 160 Va. 524, 169 S.E. 909 (1933) (holding that a wife could establish a domicile somewhere other than her husband's while still amicably married to him, overturning the common-law fiction that the entity of a wife is merged into that of her husband).

Virginia also prohibits anyone who has been convicted of a felony to vote unless his or her civil rights have been restored by the Governor or other appropriate authority.²³ Similarly, no person adjudicated to be mentally incompetent is qualified to vote until his or her competency has been reestablished.²⁴

Employees of the federal government are prohibited from candidacy in partisan elections by the Hatch Act.²⁵ Most employees of the legislative branch, however, are exempt from this restriction, though they may be affected by other rules. Some state and local government employees are prohibited from candidacy under the Hatch Act if their employment is funded in whole or in part by loans or grants made by the United States or a federal agency.²⁶ Federally funded state and local employees specifically *not* barred from candidacy are those individuals employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the Commonwealth or its political subdivision, or by a recognized religious, philanthropic, or cultural organization.²⁷ State and local employees also may be limited by the rules of the agency or ordinances of the government for which one works.²⁸

Unless two or more local government units exercise functions jointly, no person can hold more than one constitutional office, office of councilman, or county supervisor at the same time.²⁹ This restriction does not bar a member of a local governing body from serving in either house of the General Assembly during his or her continuance in the local office.³⁰

23. VA. CONST. art. II, § 1; *see also* *Young v. Commonwealth*, 155 Va. 1152, 156 S.E. 565 (1931) (holding that a conviction charging a statutory misdemeanor where the indictment contained the word "feloniously" did not deprive the accused of his elective franchise rights under the Constitution).

24. VA. CONST. art. II, § 1.

25. 5 U.S.C. § 1502(9)(3) (1975). Partisan political office means any office for which any candidate is nominated or elected as representing a political party.

26. 5 U.S.C. §§ 1501-1508 (1977); *see, e.g.*, 1975 Va. Att'y Gen. Ann. Rep. 155 (1975) (special investigator in Commonwealth Attorney's office barred from candidacy because salary was financed by federal grants).

27. 5 U.S.C. § 1501 (1977).

28. *See, e.g.*, 1973 Va. Att'y Gen. Ann. Rep. 165 (1973) (stating that there is no prohibition against a member of the Newport News Fire Department running for city council because no fire department regulations prohibit such, so long as running for office does not interfere with the performance of regular duties).

29. VA. CONST. art. VII, § 6; VA. CODE ANN. § 2.1-37.01 (Repl. Vol. 1995).

30. 1992 Va. Att'y Gen. Ann. Rep. 1103 (1992); 1986-1987 Va. Att'y Gen. Ann.

A candidate for Governor, Lieutenant Governor, Attorney General, or the General Assembly must also have filed all campaign finance disclosure reports³¹ for any election in which he or she participated as a candidate and which was held within five years preceding the date of the election in which he or she seeks to be a candidate.³²

C. *Initial Filing for All Candidates*

Every candidate must file a Certificate of Candidate Qualification.³³ A person must file a written statement under oath, on a form available from the State Board, that he or she is qualified to vote for and hold the office sought.³⁴ Except for constitutional or local offices, candidates must file the form with the State Board.³⁵ Candidates for constitutional or local office must file the form with the general registrar of the county or city where he or she resides.³⁶

Every candidate for state or local office must file a written Statement of Economic Interests.³⁷ However, a candidate for reelection to the same office who has met the requirement of annually filing a Statement of Economic Interests does not need to file this form.³⁸ A candidate for Governor, Lieutenant Governor, or Attorney General files with the Secretary of the Commonwealth; a candidate for state Senate or House of Delegates files with the clerk of the appropriate house; a candidate for a constitutional office files with the general registrar for the county or city; and a candidate for a member of the governing body or elected school board of any county, city or town with a population in excess of 3,500 persons files with the general registrar for the county or city.³⁹ The form is available at the

Rep. 67 (1987).

31. See *infra* section III.C.

32. VA. CODE ANN. § 24.2-503.1 (Repl. Vol. 1993).

33. *Id.* § 24.2-501.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* § 24.2-502.

38. *Id.*

39. *Id.*

location at which the candidate must file.⁴⁰

The deadlines for filing the Certificate of Qualification and the Statement of Economic Interests are as follows: primary candidates must file no later than the filing deadline for the primary; all other candidates for city and town offices must file by 7:00 p.m. on the first Tuesday in March; candidates in special elections must file by the time of qualifying as a candidate; all other candidates must file by 7:00 p.m. on the second Tuesday in June.⁴¹

The Certificate of Qualification and the Statement of Economic Interests are timely filed if they are mailed postage prepaid to the appropriate office by registered or certified mail.⁴² The official receipt must also show that the forms were mailed within the prescribed time limits.⁴³ The State Board may grant an extension of the filing deadline and will notify all candidates who have not filed the Certificate of the extension.⁴⁴ Any extension will be granted for ten days from the date of the mailing of the notice of the extension.⁴⁵

The Ethics in Government Act⁴⁶ requires all candidates for Congress to file a Financial Disclosure Statement-Form B (U.S. House of Representatives) or a Public Financial Disclosure Report (U.S. Senate) with the Clerk of the appropriate house within thirty days of becoming a candidate, or on or before May 15th of the calendar year in which he or she becomes a candidate, whichever is later, but not later than thirty days before the primary or general election.⁴⁷ For these purposes, a "candidate" is one who has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000 for the purpose of the primary, party nomination, or election.⁴⁸ A postmark is accepted as the filing date.⁴⁹

40. VA. CODE ANN. § 2.1-639.40 (Repl. Vol. 1995).

41. VA. CODE ANN. § 24.2-503 (Repl. Vol. 1993).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. 5 U.S.C.A. app. 4 § 101(c) (1995).

47. *Id.*

48. *Id.*

49. 2 U.S.C. § 434(a)(5) (1985).

D. Candidates Seeking Party Nomination

A recognized political party is an organization or affiliation of citizens of the Commonwealth that (1) at the last statewide general election polled at least ten percent of the total vote for an office filled by the voters of the state at large and (2) for the six months preceding the filing of a party nominee has had a state central committee and duly elected chair that have been in existence and holding office continually.⁵⁰ At present, Virginia has only two political parties—the Democrats and the Republicans.

Except as noted below, a political party may choose to hold a primary or select a candidate by convention or some other method. The state political party determines the method by which a party nomination for a member of the U.S. Senate or for any statewide office will be made.⁵¹ The authorities of the political party for the district, county, city, or town, in which any other office is to be filled, determine the method by which a party nomination for that office will be made.⁵² If a nonprimary method of nomination is selected, one of the alternate methods of nomination provided by the party plan must be used.⁵³ The party chair must notify the State Board of a direct primary not more than 110 days and not less than ninety days before the date set for the primary.⁵⁴ A candidate seeking a party nomination needs to consult with the local and/or state political party for the party's requirements.

If an incumbent in the General Assembly seeks reelection, however, the incumbent can designate the method of his or her party nomination.⁵⁵ Absent any designation by the incumbent, the party can determine the method of nomination.⁵⁶ For all

50. VA. CODE ANN. § 24.2-101 (Repl. Vol. 1993).

51. *Id.* § 24.2-509.

52. *Id.*

53. 1987-1988 Va. Att'y Gen. Ann. Rep. 355 (1987).

54. *Id.* at 357.

55. VA. CODE ANN. § 24.2-509(B) (Repl. Vol. 1993). At the time of publication, the Attorney General of Virginia has been asked to opine regarding the constitutionality of § 24.2-509 and has sought public comment on this issue, but no opinion has been issued.

56. *Id.*; see 1986-1987 Va. Att'y Gen. Ann. Rep. 204 (1986) (noting that this provi-

offices other than the General Assembly, a party whose candidate in the immediately preceding election was (1) nominated by a primary or filed for a primary but was not opposed, and (2) elected at the general election, must nominate a candidate for the next election for that office by a primary, unless all incumbents of that party for that office consent to a different method.⁵⁷ If no incumbent seeks reelection, the method of nomination shall be determined by the political party.⁵⁸

1. Primary

If only one person declares his or her candidacy from a political party for the nomination for any office, the person filing the declaration is declared the nominee of the party for the office for which he or she has announced candidacy, and the primary will not be held.⁵⁹ If no one declares candidacy in a political party for the nomination for any office, the appropriate committee of the party may provide for an alternative method of nominating a candidate.⁶⁰

The chair of the political party must furnish the name of any candidate for nomination to the State Board and to the electoral boards charged with the duty of preparing and printing the primary ballots not less than fifty-five days before the primary.⁶¹ In addition to the filing requirements of all candidates,⁶² the following filing requirements apply to all candidates seeking to have their name on the primary ballot: (1) filing fee and receipt,⁶³ (2) declaration of candidacy,⁶⁴ and (3) petition of quali-

sion assures that elected public officials who had achieved their nominations by popular vote could not be deprived of the same opportunity for successful nomination should they choose to run for reelection. These provisions also assure voters who had previously supported a candidate that their majority voice could not be bypassed in succeeding elections by means of intra-party maneuvering without the consent of the person they had elected). One restriction to the above general rule applies: if, because of redistricting, there is more than one incumbent of that party for the General Assembly, the party must nominate its candidate by primary, unless all the incumbents consent to a different method of nomination.

57. VA. CODE ANN. § 24.2-509(B) (Repl. Vol. 1993).

58. *Id.*

59. *Id.*

60. *Id.* § 24.2-526.

61. *Id.* § 24.2-527.

62. *See supra* section II.B.

63. VA. CODE ANN. § 24.2-523 (Repl. Vol. 1993).

fied voters.⁶⁵ These documents must be filed no earlier than noon of the seventy-seventh day before the primary and no later than 5:00 p.m. of the sixtieth day before the primary.⁶⁶

a. Filing Fee

Every primary candidate for nomination for any office must pay a fee equal to two percent of that year's minimum salary attached to the office for which he or she is a candidate.⁶⁷ For an office for which compensation is paid in whole or in part by fees, the amount to be paid by a candidate as contribution for the payment of the expenses of the primary must be determined by the proper committee of the respective parties.⁶⁸ If there is no salary or fee attached to the office, the primary filing fee is five dollars.⁶⁹ In the event the prospective candidate does not become a candidate, becomes a candidate and is not opposed, or must refile for any reason, the fees are refunded.⁷⁰

Candidates for Congress, Governor, Lieutenant Governor, and Attorney General must pay the primary fee to the Treasurer of the Commonwealth.⁷¹ All other candidates must pay the fee to the treasurer or director of finance, if there is no treasurer of the city or county in which they reside.⁷² A receipt for the payment of the fee must be attached to the declaration of candidacy.⁷³

64. *Id.* § 24.2-520.

65. *Id.* § 24.2-521.

66. *Id.* § 24.2-522(A).

67. *Id.* § 24.2-523.

68. *Id.*

69. *Id.*

70. Refunds may be made only to those who fit into one of the categories of persons expressly listed as qualifying for a refund. For example, the voluntary withdrawal of a primary candidate to become an independent candidate in the general election does not warrant a refund. 1985-1986 Va. Att'y Gen. Ann. Rep. 167 (1985).

71. VA. CODE ANN. § 24.2-524(A) (Repl. Vol. 1993).

72. *Id.* § 24.2-524(B).

73. *Id.* § 24.2-524(C).

b. Declaration of Candidacy

A candidate for nomination by primary must file a written Declaration of Candidacy on a form available from the State Board.⁷⁴ The declaration must include the name of the political party of which the candidate is a member, a designation of the office for which he or she is a candidate, and a statement that, if defeated in the primary, his or her name is not to be printed on the ballots for that office in the succeeding general election.⁷⁵ The declaration must be made before a notary public, or attested by two witnesses who are qualified voters for that election.⁷⁶

c. Petition of Qualified Voters

Along with the Declaration of Candidacy, candidates for nomination by primary for any office must file a petition signed by the number of qualified voters, specified below, after January 1 of the year in which the election is held or before or after said date in the case of a March primary.⁷⁷ The person circulating the petition must be a qualified voter for the office for which he or she is circulating the petition, and in the case of a statewide office, must be a resident of the same congressional district as the voter whose signature is witnessed.⁷⁸ A candidate may circulate his or her own petitions but is not required to do so.⁷⁹

The person circulating the petition must swear under oath, that he or she witnessed the affixing of the signatures on the petition.⁸⁰ An affidavit to that effect must be on each page of the petition.⁸¹ Because no person can witness his or her own signature, the person circulating a petition for a candidate may

74. *Id.* § 24.2-520.

75. *Id.*

76. *Id.*

77. *Id.* § 24.2-521.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

not also sign as a qualified voter the petition that he or she is circulating.⁸²

Each voter signing the petition should provide on the petition his or her address and social security number, if any.⁸³ However, noncompliance with this requirement does not invalidate the voter's signature on the petition.⁸⁴

The following are the minimum number of signatures of qualified voters required for candidates' petitions:

(1) U.S. Senate, Governor, Lieutenant Governor, or Attorney General

A number equal to one-half of one percent of the number of voters registered in the Commonwealth as of January 1 of the year in which the petition must be filed and including at least 200 qualified voters from each congressional district in the Commonwealth.⁸⁵

(2) House of Representatives

A number equal to one-half of one percent of the number of voters registered in the congressional district as of January 1 of the year in which the petition must be filed.

(3) Senate of Virginia

250 signatures

(4) House of Delegates or any constitutional officer

125 signatures

(5) Governing Body or elected school board of any county or city for which the election district not at large contains greater than 1,000 voters

125 signatures

(6) Governing Body or elected school board of any county or city for which the election district not at large contains 1,000 or fewer voters

50 signatures

(7) Governing body or elected school board of any town which has more than 1,500 registered voters

125 signatures

(8) Governing body or elected school board of any town which has more than 1,500 registered voters, for a ward or other district not at large

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* § 24.2-522. The circulator of each petition page must be a qualified voter of the same congressional district as the signers.

25 signatures

(9) Governing body or elected school board of any town which has 1,500 or fewer registered voters

No petition is required.

(10) Any other candidate

50 signatures.⁸⁶

Any candidate for nomination for U.S. Senate, Governor, Lieutenant Governor, or Attorney General must seal the petitions in an envelope and attach a written statement by the candidate giving his or her name and the number of signatures on the petitions contained in the envelopes.⁸⁷ Candidates for U.S. Senate, Governor, Lieutenant Governor, or Attorney General must file their declarations, petitions, statement of number of petition signatures, and receipt with the State Board.⁸⁸ All other candidates must file their declarations, petitions, and receipt with the chairman or chairmen of the committees of their respective parties.⁸⁹

2. Method Other than a Primary (Convention)

A party selecting a nominee for any office by any method other than by direct primary may do so only within the thirty-two days immediately preceding the regular primary date.⁹⁰ This limitation, however, does not affect nominations for special elections or upon the death, withdrawal, or disqualification of a party nominee.⁹¹

86. *Id.* § 24.2-521(1)-(8).

87. *Id.* § 24.2-522(C).

88. *Id.*

89. *Id.* § 24.2-522(B).

90. *Id.* § 24.2-510. This limitation places all party nominees in the same relative position before elections, whether nominated by primary, convention, endorsement, or other means. This ensures that candidates nominated by methods other than by primary cannot gain an advantage by obtaining the nomination well ahead of the primary date. Note, however, that this limitation applies only to the actual selection of a nominee and does not prohibit preliminary procedures outside the thirty-two day period.

91. *Id.* (referencing VA. CODE ANN. § 24.2-539 (Repl. Vol. 1993)).

The following are the final deadlines by which a party must nominate a candidate by method other than a primary:

a. General Election in November

The deadline is 7:00 p.m. on the second Tuesday in June.

b. General Election in May

The deadline is 7:00 p.m. on the first Tuesday in March.

c. Special Election held at the same time as a November General Election

The deadline is either (1) at least seventy-four days before the election or (2) if the special election is being held at the second November election after the vacancy occurred, by 7:00 p.m. on the second Tuesday in June before that November election.

d. Special Election held at the same time as a General Election in May

The deadline is 7:00 p.m. on the first Tuesday in March.

e. Special Election held at a time other than a General Election

The deadline is either (1) at least thirty days before the election, or (2) within five days of any writ of election or order calling a special election to be held less than thirty-five days after the issuance of the writ or order.⁹²

3. Certification from Party Chair

The state, district, or other appropriate party chair must file a certification of the name of any candidate who has been nominated by his or her party by a method other than a primary.⁹³

If the party chair does not notify the State Board of the certified nominee, the State Board will declare that the candidate is the nominee of the particular party and direct that his or her name be treated as if certified by the party chair.⁹⁴ The certification must be received, not postmarked, by the appropriate office by the deadline.⁹⁵

92. *Id.* § 24.2-510.

93. *Id.* § 24.2-511(B).

94. *Id.* § 24.2-511(B). This statute protects the candidate by assuring that the party chair cannot thwart the nomination by failing to notify the State Board of the nominee.

95. *Id.*

For any statewide office, Congress, General Assembly, or political subdivisions jointly electing a shared constitutional officer, the appropriate party chair must file the certification with the State Board not later than five days after the deadline for nominations to be made.⁹⁶ For any other office, the appropriate party chair must file the certification to the State Board *and* to the secretary or secretaries of the electoral boards of the cities and counties in which the name of the candidate will appear on the ballot not later than five days for nominations to be made.⁹⁷

E. *Independent Candidates*

In addition to the requirements common to all candidates, the following filing requirements apply to all independent candidates: (1) Declaration of Candidacy and (2) petition of voters. The deadline for filing the declaration and petitions are the same deadlines as when a party must nominate a candidate.⁹⁸

An independent candidate for state or local office may request notification of any problems with the filing in the declaration or petitions which can be corrected prior to the filing deadline.⁹⁹ The letter must accompany the declaration of candidacy and petitions. In order to receive notice, the State Board suggests that the documents be filed at least ten working days before the filing deadline.¹⁰⁰

1. Declaration of Candidacy

All independent candidates must file a Declaration of Candidacy on a form prescribed by the State Board.¹⁰¹ The written declaration must be signed before a notary public or two witnesses who are qualified voters for the election.¹⁰² An independent candidate for election as governor, lieutenant governor,

96. *Id.* § 24.2-511(A).

97. *Id.* § 24.2-511(B).

98. *See supra* note 94 and accompanying text.

99. VA. CODE ANN. § 24.2-505(D) (Repl. Vol. 1993).

100. *Id.* § 24.2-505(D).

101. *Id.* § 24.2-505.

102. *Id.*

attorney general, or United States Congress must file a Declaration of Candidacy with the State Board.¹⁰³ An independent candidate for election to the General Assembly must file the Declaration of Candidacy with the Clerk of the Circuit Court of the county or city when the independent candidate resides.¹⁰⁴ An independent candidate for every other office must file the Declaration of Candidacy with the general registrar of the county or city where the independent candidate resides.¹⁰⁵

2. Petitions of Qualified Voters

Along with the Declaration of Candidacy, independent candidates must also file a petition. The petition requirements for an independent candidate are the same as for primary candidates.¹⁰⁶

F. *The Ballot*

1. Nicknames

A candidate can have his or her nickname on the ballot if the State Board or electoral board is satisfied that the nickname is in fact the name by which the candidate is generally known, and that there is no possibility of confusion of the nickname of the candidate with the name of some other person well known in the community.¹⁰⁷

103. *Id.*

104. *Id.* § 24.2-505(B).

105. *Id.* § 24.2-505(C).

106. *See supra* notes 77-89 and accompanying text.

107. 1974 Va. Att'y Gen. Ann. Rep. 145 (1973).

2. Order of Names

In general elections, the candidates of political parties appear first on the ballot in the order determined by a drawing conducted by the State Board.¹⁰⁸ Nonpartisan or independent candidates appear in alphabetical order following the candidates of political parties.¹⁰⁹ In primary elections, candidates appear on the ballot in the order in which they file.¹¹⁰ If two or more candidates file at the same time, the order in which they appear will be determined by a drawing conducted by the State Board.¹¹¹

G. *The Successful Candidate*

Winning the election does not alone qualify a candidate for office. Not fulfilling the following requirements will bar a candidate from assuming office: (1) any successful candidate for state and local office must file a second Statement of Economic Interests Form;¹¹² (2) all candidates must file preelection¹¹³ and post-election¹¹⁴ reports of campaign contributions and expenditures; and (3) the successful candidate in a general election is required to take the oath of office on or before the date and term of office begins.¹¹⁵

108. VA. CODE ANN. § 24.2-613 (Repl. Vol. 1993).

109. *Id.*

110. *Id.* § 24.2-529.

111. *Id.*

112. VA. CODE ANN. § 2.1-639.40(A) (Repl. Vol. 1995).

113. VA. CODE ANN. § 24.2-919 (Repl. Vol. 1993 & Supp. 1995).

114. VA. CODE ANN. § 24.2-918(B)(3) (Repl. Vol. 1993).

115. VA. CODE ANN. § 49-1 (Repl. Vol. 1994).

III. CAMPAIGN FINANCE

This section sets forth the requirements of the Campaign Finance Disclosure Act.¹¹⁶ These requirements apply to all state and local candidates, except candidates seeking any town office in towns with a population less than 25,000, or the office of director of soil and water conservation districts.¹¹⁷ Pursuant to the Federal Election Campaign Act, congressional candidates must file with the State Board certified copies of all reports they file with the Federal Election Commission.¹¹⁸ The Campaign Finance Disclosure Act also covers the reporting requirements for political committees, commonly referred to as PACs,¹¹⁹ but this survey excludes these requirements.

Virginia has no limit on the amount a state or local candidate may receive from any source.¹²⁰ The reporting requirements, therefore, are purely informational. Candidates for state or local office may accept contributions from political committees, parties, individuals, corporations and labor unions established under state law.¹²¹

116. VA. CODE ANN. § 24.2-900 to -928 (Repl. Vol. 1993 & Cum. Supp. 1995).

117. VA. CODE ANN. § 24.2-900 (Repl. Vol. 1993).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* § 24.2-909. Although not prohibited by state law, the Federal Election Campaign Act prohibits corporations, national banks, or labor organizations organized under federal law from contributing to any election campaign. 2 U.S.C. § 441b(a) (1994). The term "any election" has been interpreted to include elections for state as well as federal office. *United States v. Clifford*, 409 F. Supp. 1070 (E.D.N.Y. 1976). Thus, candidates for state or local elective office may receive contributions from corporations or labor organizations, only if the corporation or labor union is established under state law. National banks may not contribute to federal, state, or local candidates. 1981-1982 Va. Att'y Gen. Ann. Rep. 156 (1982).

A. General Reporting Requirements

A candidate must report every contribution and expenditure.¹²² It is unlawful to convert any campaign monies to personal use.¹²³

1. Where to File

Except for Large Contribution Reports,¹²⁴ which must be filed with the State Board and the electoral board of the locality where the candidate resides, candidates for Governor, Lieutenant Governor and Attorney General must file all forms with the State Board only.¹²⁵ Candidates for General Assembly must file all reports with the electoral board of the county or city in which he or she resides *and* the State Board.¹²⁶ Candidates for local office must file with the electoral board of the county or city in which he or she resides.¹²⁷

122. VA. CODE ANN. § 24.2-907 (Repl. Vol. 1993). A "contribution" is defined as money and services of any amount, and any other thing of value over \$100, given, advanced, promised, loaned, or in any other way provided to a candidate, campaign committee, political committee, inaugural committee, or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General.

VA. CODE ANN. § 24.2-901 (Repl. Vol. 1993 & Cum. Supp. 1995).

"Expenditure" includes

money and services of any amount, and any other thing of value over \$100, paid, promised, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, inaugural committee, or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General.

Id.

123. VA. CODE ANN. § 24.2-922 (Repl. Vol. 1993 & Cum. Supp. 1995).

124. *See infra* section III.A.2.E.

125. VA. CODE ANN. § 24.2-915 (Repl. Vol. 1993).

126. *Id.*

127. *Id.*

2. Deadline

Except for Large Contribution Reports, which must be in the office by the deadline, all reports filed with the State Board may be postmarked by the date they are due.¹²⁸ Reports filed with a local electoral board must be in that office by the deadline for filing the report.¹²⁹

B. Appointment of Campaign Treasurer Form

1. Treasurer

The treasurer must keep detailed and accurate accounts of all contributions and expenditures.¹³⁰ The campaign treasurer must keep all books and records for one year after the filing of a final report or three years after the December 31st immediately following the election, whichever is later.¹³¹

To appoint a treasurer, the candidate must file an appointment of campaign treasurer form.¹³² The candidate may appoint someone to serve as treasurer, or the candidate may serve as the treasurer.¹³³ Until the form is filed, only the candidate may serve as treasurer.¹³⁴ The treasurer must be a qualified voter of the Commonwealth, and the same person may serve as a campaign treasurer for more than one candidate.¹³⁵

In the event of the death, resignation, removal, or change of the treasurer, the candidate can designate a successor by filing the name and address of the successor within ten days of the change with the State Board and/or local electoral board.¹³⁶

128. *Id.*

129. *Id.*

130. *Id.* § 24.2-906.

131. *Id.*

132. *Id.* § 24.2-904(A).

133. *Id.* § 24.2-906(C).

134. *Id.*

135. *Id.* § 24.2-906(A).

136. *Id.* § 24.2-906(B).

2. Campaign Account

A candidate may have only one campaign account, which must be in a financial institution within the Commonwealth.¹³⁷ The treasurer must assure that all contributions be deposited into the campaign account.¹³⁸ All payments must be made on campaign account checks, except petty cash which may be used for making payments of less than twenty-five dollars as long as complete records are kept and all payments reported.¹³⁹

3. Campaign Committee

A candidate must designate a campaign committee to receive all contributions and make all expenditures for the candidate or on the candidate's behalf in connection with his or her nomination or election.¹⁴⁰

C. Campaign Finance Reports

Pursuant to Virginia Code section 24.2-914(A), the State Board has prescribed the forms on which all contributions and expenditures must be reported.¹⁴¹ This section sets forth the information which must be included on each form.

137. *Id.* § 24.2-90.

138. *Id.*

139. *Id.*

140. *Id.* § 24.2-904(A).

141. *Id.* § 24.2-914(A).

1. Schedule A—Contributions

For each contributor who has contributed in the aggregate more than one hundred dollars,¹⁴² the candidate must report the name and address of the contributor, listed alphabetically, occupation and principal place of business, date and amount of the contribution, and aggregate contributions from that contributor.¹⁴³

2. Schedule B—In-Kind Contributions

A candidate must report all in-kind contributions in the same manner as monetary contributions. The form also requires the candidate to report the basis for arriving at the value of the in-kind contribution.¹⁴⁴ Personal services performed by a volunteer for which no compensation is asked or given does not constitute an in-kind contribution.¹⁴⁵

3. Schedule C—Rebates, Refunds or Interest Received

The candidate must report the full name and address of the payor, the reason for and the type of payment, the date received, and the payment amount.¹⁴⁶

142. *Id.* § 24.2-914(B). "In the aggregate" references the entire campaign. Thus, for example, if a contributor gives \$50, a candidate does not need to report this contribution on a Schedule A. Rather, the candidate only reports in the summary form that the \$50 is received. If the same contributor gives \$75 in the next reporting period, that contributor has given a total of \$125 to the campaign, and the contribution must be reported on a Schedule A. Thus, the candidate should record all contributions, regardless of the amount, with the same specificity, in case the contributor gives additional monies to the campaign at a later date.

143. *Id.* § 24.2-914(B)(2).

144. *Id.* § 24.2-902.

145. *Id.*

146. *Id.* § 24.2-907.

4. Schedule D—Expenditures Except Principal Loan Payments

The candidate must report each payment, regardless of the amount, the date of payment, the name and address of the person paid, a brief description of the item or service purchased, and the name of the person who authorized the purchase.¹⁴⁷

5. Schedule E—Loans

For each loan received, the candidate must report the date of the loan, the name and address of the lender, the amount of the loan this reporting period, the aggregate loan to date, and any co-borrowers, guarantors, or endorsers.¹⁴⁸ The candidate must report any personal money spent by the candidate if he or she expects repayment from contributions received.¹⁴⁹

For each payment made to reduce the principal amount on a loan, the candidate must report the name and address of the lender and the amount and date of the payment.¹⁵⁰ For each loan on which payments were also made in a previous reporting period, the candidate must report the aggregate amount repaid to the reporting date.¹⁵¹

6. Schedule F—Debts Remaining Unpaid

For all debts remaining unpaid, the candidate must report all contracts, credit purchases, and loans payable, the name and address of each creditor, the purpose of the obligation, the date the debt was incurred, and the amount remaining unpaid.¹⁵²

147. *Id.* § 24.2-914(C)(1)-(5).

148. *Id.* § 24.2-914(E)(1)-(3).

149. *Id.*

150. *Id.* § 24.2-914(E)(U)-(S).

151. *Id.* § 24.2-914(E).

152. *Id.* § 24.2-914(E)(1)-(5).

7. Schedule G—Statement of Funds

In the statement of funds, the candidate must report the number of contributors who each gave one hundred dollars or less and the total dollar amount of all such contributions.¹⁵³ The candidate must also provide a reconciliation of loan account.¹⁵⁴

8. Schedule H—Summary of Receipts and Disbursements

Schedule H is a summary of all receipts and disbursements. The candidate also must provide the name and account number of the campaign account.¹⁵⁵

D. Reporting Schedule

1. General Filing Schedule for Candidates

All candidates, other than for local offices filled at a May general election or certain special elections, must file their reports by the certain deadlines. In a nonelection year, reports must be filed on July 15, for the period January 1-June 30, and on January 15 of the following year, for the period July 1-December 31.

In an election year reports must be filed on April 15, for the period January 1-March 31; the eighth day before a primary, complete for the year through the thirteenth day before the primary date; July 15, complete for the year through June 30; September 15, complete for the year through August 31; October 15, complete for the year through September 30; the eighth day before the November election date, complete for the year through the thirteenth day before the election day; the thirtieth day before the November election date, complete for the year through the twenty-third day after the election date; and on

153. *Id.* § 24.2-914(B)(1)-(5).

154. *Id.* § 24.2-914(E).

155. *Id.* § 24.2-914(D).

January 15, following the election year, a complete report for the year.¹⁵⁶

2. Filing Schedule for Candidates for Offices Filled at May General Elections

Candidates for election to a local office to be filled at a May general election must file according to a different schedule.

Municipal primary candidates must file no later than eight days before the first Tuesday in March for the period ending eleven days before that Tuesday.¹⁵⁷

Candidates for the general election must file by the eighth day before the election complete through the eleventh day before the election date; June 15 of the election year complete through June 10; July 15 of the election year complete through July 10; and thereafter, each January 15, complete through December 31, until a final report is filed.¹⁵⁸

3. Special Elections

A. Candidates for nomination or election to an office to be filled by a special election held on a regular election date shall file the prescribed reports of contributions and expenditures which apply to regularly scheduled elections for that office.¹⁵⁹ In the case of a special election held on a date other than a regularly scheduled general election, the candidate shall file no later than the eighth day before the special election date complete through the eleventh day before that date; a post-election report no later than the thirtieth day after the election and prior to taking office; and a post-election report no later than January 15 and July 15 each year until a final report is filed.¹⁶⁰

156. VA. CODE ANN. § 24.2-916(1)-(10) (Repl. Vol. 1993 & Cum. Supp. 1995).

157. VA. CODE ANN. § 24.2-917(1) (Repl. Vol. 1993 & Cum. Supp. 1995).

158. *Id.*

159. VA. CODE ANN. § 24.2-918 (Repl. Vol. 1993).

160. *Id.* § 24.2-918(B)(1)-(4).

E. Large Contributions Reports

In addition to the above reports, a candidate must file a Large Contributions Report.¹⁶¹ Any contribution greater than \$1,000 for a statewide candidate or greater than \$500 for any other candidate, received between the thirteenth day preceding a June primary or November general election and the primary or election date, must be reported to the State Board within seventy-two hours of receipt.¹⁶² Any large contribution received within the seventy-hours prior to the election day must be reported no later than the day prior to the election.¹⁶³

F. Report of No Activity

If a candidate neither receives any contributions or makes any expenditures during a reporting period, the candidate must file a Report of No Activity.

G. Final Report

Reporting requirements continue in effect until the filing of a final report, which sets forth the following: (1) all previously unreported receipts and disbursements, (2) an accounting of the retirement of all debts, (3) the disposition of any surplus funds, and (4) the termination statement provided on the reporting form signed by the candidate.¹⁶⁴

H. Surplus Funds

Any funds remaining after the payment of all campaign debts must be spent in one or more of the following ways: (1) a transfer of the extra funds to a campaign account for a future election; (2) a transfer of the extra funds to reduce the deficit in a preceding election; (3) a return of the excess to one or more contributors in amounts not greater than the contributor's origi-

161. VA. CODE ANN. § 24.2-919 (Repl. Vol. 1993 & Cum. Supp. 1995).

162. *Id.*

163. *Id.*

164. VA. CODE ANN. § 24.2-920 (Repl. Vol. 1993).

nal contribution; (4) a donation of the excess to a charitable organization; (5) a donation of the excess to one or more candidates; (6) a donation of the excess to any committee on file with the State Board of Elections; (7) a donation of the excess to any political party committee; or (8) a defraying of any ordinary, non-reimbursed expense related to one's elective office.¹⁶⁵

I. Penalties

If any candidate, other than for statewide office, files a campaign finance disclosure report that is incomplete or inaccurate, the Secretary of the State Board will notify the candidate or committee, in writing, of any errors or omissions in the report.¹⁶⁶ Then, the candidate or political committee has seven days from the date the written notice was mailed, and an additional two weeks, if requested, and good cause is shown to correct the report.¹⁶⁷ If all the information is correctly filed within that time, no penalty will be assessed.¹⁶⁸ However, if the report is not filed correctly, the candidate or committee will receive a fine not to exceed \$50.¹⁶⁹ For reports due within the 120 days before or the thirty-five days after a November general election, the fine shall not exceed \$300.¹⁷⁰

There is a rebuttable presumption that a violation of the chapter is willful if the violation is based upon a person's failure to file a report that continues for more than sixty days following the candidate's actual receipt of written notice of his or her failure to file.¹⁷¹ A willful violation of the reporting requirements is a Class 1 misdemeanor.¹⁷²

Any willfully false material statement or entry in any statement, form, or report shall constitute election fraud and be punishable as a Class 5 felony.¹⁷³

165. *Id.* § 24.2-921.

166. *Id.* § 24.2-930(B).

167. *Id.* § 24.2-930(C).

168. *Id.* § 24.2-930(B).

169. VA. CODE ANN. § 24.2-929(A) (Repl. Vol. 1993 & Cum. Supp. 1995).

170. *Id.*

171. *Id.*

172. *Id.*

173. VA. CODE ANN. § 24.2-1016 (Repl. Vol. 1993).

Candidates for Governor, Lieutenant Governor, or Attorney General may receive additional penalties.¹⁷⁴ The Secretary of the State Board must notify the statewide candidates of any errors in their reports, and they have seven days to make any corrections, with an additional two weeks, if requested, for good cause.¹⁷⁵ After that period, if the report is not filed correctly, the statewide candidate may receive a \$100 fine for each day that the violation continues.¹⁷⁶

Failure to file a Large Contribution Report or a late or incomplete filing is a Class 1 misdemeanor.¹⁷⁷ Unlike regular reports, the grace period for correcting mistakes is not applicable to the Large Contribution Report.¹⁷⁸

*J. Inaugural Fund Committees for Statewide Offices*¹⁷⁹

Any person, association, organization, group of individuals, or other committee that expects to receive contributions or make expenditures from other than publicly appropriated funds, for the inauguration of the Governor, Lieutenant Governor, or Attorney General and related activities, must comply with certain reporting requirements.¹⁸⁰

The inaugural fund committee must report all contributions and expenditures in the same manner as a candidate.¹⁸¹ All reports must be filed with the State Board of Elections.¹⁸² A Statement of Organization must be filed within ten days of organization. Reports of Contributions and Expenditures must be filed by March 15 of the inaugural year for the period ending March 1, July 15 of the inaugural year for the period end-

174. VA. CODE ANN. § 24.2-929(A) (Repl. Vol. 1993 & Cum. Supp. 1995).

175. VA. CODE ANN. § 24.2-930(C) (Repl. Vol. 1993).

176. *Id.* § 24.2-930.

177. VA. CODE ANN. § 24.2-929(A) (Repl. Vol. 1993 & Cum. Supp. 1995).

178. VA. CODE ANN. § 24.2-929 (Repl. Vol. 1993 & Cum. Supp. 1995).

179. VA. CODE ANN. § 24.2-924 (Repl. Vol. 1993).

180. A candidate's committee cannot serve as an inaugural fund committee. *Id.* § 24.2-913.

181. VA. CODE ANN. § 24.2-923 (Repl. Vol. 1993 & Cum. Supp. 1995). This requirement was added in 1993, but as permitted by the law at the time, Governor Wilder maintained secrecy about the inaugural funds. Although not required, Governor Baliles provided full disclosure of the inaugural funds.

182. *Id.*

ing June 30, and January 15 following the inaugural year for the period ending December 31 of the preceding year and annually thereafter.¹⁸³ Reporting requirements continue in effect until a final report is filed.¹⁸⁴ The same provisions governing the disposition of surplus funds for a campaign,¹⁸⁵ apply to inaugural committee surplus funds.¹⁸⁶

IV. CAMPAIGN AND ELECTION MISCONDUCT

This section details the laws which require sponsorship identification of campaign materials, voting, registration, and election day regulations, and general election prohibitions.¹⁸⁷

A. Sponsorship Identification

Virginia currently requires all writing which "concerns" a candidate identify the person responsible for the writing.¹⁸⁸ Where the writing is authorized by the candidate or campaign committee, the material must include a line which states, "Authorized by [name of candidate]."¹⁸⁹ This term, the U.S. Supreme Court in *McIntyre v. Ohio Elections Commission*,¹⁹⁰ struck down as unconstitutional a very similar Ohio Law. The Attorney General of Virginia opined that after *McIntyre*, the statutory provision requiring the disclosure of the identify of those responsible for writings concerning candidate elections would survive constitutional review.¹⁹¹ However, in *Virginia*

183. VA. CODE ANN. § 24.2-924 (Repl. Vol. 1993).

184. VA. CODE ANN. § 24.2-923 (Repl. Vol. 1993 & Cum. Supp. 1995).

185. See *supra* section III.H.

186. VA. CODE ANN. § 24.2-925 (Repl. Vol. 1993 & Cum. Supp. 1995).

187. See generally VA. CODE ANN. 24.2-1000 to -1019 § (Repl. Vol. 1993). State statutes apply to all candidates, primaries, and elections, whether local, state, or federal. Federal statutes apply to any election which affects the election of a federal candidate. Thus, for example, intimidating voters in an election for a member of the General Assembly can be federally prosecuted if a federal candidate is on the ballot at the time the corrupt election practices occurred because the corrupt behavior exposes the federal election to potential harm, whether or not the harm materialized. See, e.g., *In re Coy*, 127 U.S. 731 (1888). This survey, however, does not address federal statutes.

188. VA. CODE ANN. § 24.2-1014 (Repl. Vol. 1993).

189. *Id.*

190. 115 S. Ct. 1511 (1995).

191. Op. to M. Bruce Meadows, Secretary, State Board of Elections (July 13, 1995)

Society for Human Life, Inc. v. Caldwell,¹⁹² Judge Wilson held that this statute is indistinguishable from the statute struck down in *McIntyre* and cannot, in its entirety, survive exacting scrutiny. The court held that it will enjoin enforcement of the statute as to any person.¹⁹³

A "writing" includes any written, printed, or otherwise reproduced statement or advertisement of any description, including all campaign advertisements, sample ballots, brochures, posters, billboards, letterhead, bumper stickers, and other campaign writings.¹⁹⁴ The breadth of the statute, however, is in the language, which requires sponsorship identification on any writing "concerning" the candidate.¹⁹⁵ The requirement is much more expansive than campaign literature advocating the candidate's election. Every invitation to a fundraiser, for example, must include sponsorship identification.¹⁹⁶

The sponsorship identification requirement does not apply to an editorial comment or news coverage which is sponsored and financed by the news medium publishing or broadcasting it; nor does it apply to "novelties" including, but not limited to, pens, pencils, and buttons to be attached to wearing apparel.¹⁹⁷ Generally, a "novelty" is construed as an item on which the authorization cannot be printed because the item is too small.¹⁹⁸

It is unlawful for any person to use a fictitious name or address on any writing.¹⁹⁹ Violators of this regulation are subject to a \$50 civil penalty, or if it is a willful violation, violators are

(on file with the *University of Richmond Law Review*). In contrast, the Attorney General opined that the portion of § 24.2-1014 which requires the disclosure of the identity of those responsible for writings concerning *ballot issues* would not survive constitutional challenge. *Id.*

192. No. 95-1042-R, slip op. (W.D. Va. Oct. 21, 1995).

193. *Id.* slip op. at 13.

194. VA. CODE ANN. § 24.2-1014(A) (Repl. Vol. 1993).

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.* § 24.2-1014(C).

subject to a Class 1 misdemeanor.²⁰⁰ The violation of this requirement does not void any election.²⁰¹

B. *Sample Ballot*

In addition to the authorization statement, any sample of a paper or voting machine ballot also must contain the words "SAMPLE BALLOT" in not less than 24 print type.²⁰² The sample ballot must be printed on paper of a color other than white.²⁰³

C. *Published Advertisements*

In addition to the authorization statement, any paid advertisement published in any newspaper, magazine, or periodical must print at the beginning, in a conspicuous place, and in black face roman capitals, the words, "PAID ADVERTISEMENT."²⁰⁴

D. *Registration and Voting*

1. *Campaigning at Registration*

It is a Class 3 misdemeanor for "[a]ny person who gives or tenders any campaign materials to, or solicits or attempts to influence the vote of, any person while he [or she] is at any registration location, knowing that such person is there for the purpose of registration."²⁰⁵ No law, however, prohibits the distribution of campaign materials outside any building in which registration activity is being conducted.

200. *Id.* § 24.2-1014(E).

201. *Id.*

202. *Id.* § 24.2-623(i)-(iii).

203. *Id.* § 24.2-623(i).

204. *Id.* § 24.2-1013(A). It is unlawful for any owner, editor, or employee of a publication published in Virginia to accept any money for such publication to advocate the support or defeat of a candidate. However, nothing prohibits paid advertisements, if designated as such. The Federal Communications Commission statutes and regulations govern television and radio advertisements. *Id.*

205. *Id.* § 24.2-1003.

2. Interference with Registration

Similarly it is a Class 1 misdemeanor for "[a]ny person who, by threats or force, interferes with or attempts to interfere with (i) any registrar in the discharge of duty, (ii) any person applying to register, or (iii) any person going to or leaving a registration location."²⁰⁶

3. Providing False Information

Any willfully false material statement or entry made by any person in any statement, form, or report required by the election laws constitutes the crime of election fraud and is punishable as a Class 5 felony.²⁰⁷

4. Unqualified Voting

It is unlawful for any person to vote "knowing that he [or she] is not qualified to vote where and when the vote is to be given."²⁰⁸ A violation is classified a Class 1 misdemeanor.²⁰⁹

5. Assisting Unqualified Person Who Votes

Any person who procures, assists, or induces another to vote, knowing that such person is not qualified to vote where and when the vote is to be given shall be guilty of a Class 1 misdemeanor.²¹⁰

6. Absentee Votes

It is a Class 5 felony to "knowingly aid[] or abet[] or attempt[] to aid or abet a violation of the absentee voting procedures."²¹¹ Whereas, "[a]ny person attempting to vote by fraud-

206. *Id.* § 24.2-1002.

207. *Id.* § 24.2-1016.

208. *Id.* § 24.2-1004.

209. *Id.*

210. *Id.*

211. *Id.* § 24.2-1012.

ulently signing the name of a qualified voter shall be guilty of forgery," which is a Class 4 felony.²¹² In addition, "[a]ny public official who knowingly violates any of the provisions of the law concerning absent voters and thereby aids in any way the illegal casting, or attempting to cast a vote, or who connives to nullify any provisions of this chapter in order that fraud may be perpetrated, shall forever be disqualified from holding office in the Commonwealth and shall forever be disqualified from exercising the right of franchise."²¹³

7. Accepting Bribe to Influence Vote

It is a Class 1 misdemeanor to "solicit or accept directly or indirectly any money or any thing of value to influence his [or her] or another's vote in any election."²¹⁴

E. *Election Day Regulations*

The polls are open at each polling place from 6:00 a.m. to 7:00 p.m. on election day.²¹⁵ An announcement that the polls will close must be made fifteen minutes prior to closure.²¹⁶ In addition, all qualified voters in line before the polling place at 7:00 p.m. are permitted to vote after 7:00 p.m.²¹⁷

1. Loitering Near Polling Place

During the times the polls are open and ballots are counted, it is unlawful for any person,²¹⁸ except poll watchers, (1) to loiter or congregate within forty feet of any entrance of any polling place,²¹⁹ or (2) within such distance, to give, tender, or

212. *Id.*

213. *Id.*

214. *Id.* § 24.2-1007.

215. *Id.* § 24.2-603.

216. *Id.*

217. *Id.*

218. This includes members of the press. 1973 Va. Att'y Gen. Ann. Rep. 163 (1973).

219. The prohibited area should be measured from the entrance to the building in which the polling place is located, *not* from the entrance door to the room where the Officers of Election and the voting machines are located. 1974 Va. Att'y Gen. Ann.

exhibit any ballot, ticket, or other campaign material to any person, or to solicit or in any manner attempt to influence any person in casting his or her vote.²²⁰ Violation of this statute constitutes a Class 1 misdemeanor.²²¹

2. Exception for Poll Watchers

An "authorized representative of each political party or independent candidate" can remain in the room in which the election is being conducted.²²² However, no authorized representative is permitted "to (i) hinder or delay a qualified voter; (ii) give, tender, or exhibit any ballot, ticket, or other campaign material to any person; (iii) solicit or in any manner attempt to influence any person in casting his [or her] vote; (iv) hinder or delay any officer of election; (v) or otherwise impede the orderly conduct of the election."²²³ Violation of this statute constitutes a Class 1 misdemeanor.²²⁴

A poll watcher may observe the conduct of an election at a polling place and make known in an orderly fashion any objection he or she may have to a person voting.²²⁵ It is, however, in the discretion of the officers of election to decide whether the poll watcher's actions violate the above-stated provisions, and the officers of election may take such steps as may be necessary to have the poll watcher removed.²²⁶

Rep. 159 (1974).

220. VA. CODE ANN. § 24.2-604(A) (Repl. Vol. 1993).

221. *Id.* § 24.2-604(E).

222. *Id.*

223. *Id.* § 24.2-604(C). "If the precinct registered voter list is divided into sections, the officers shall permit one such representative for each section, but no more than three representatives of any political party or independent candidate shall be permitted in the room at any one time." *Id.*

224. *Id.* § 24.2-604(D). A poll watcher is not permitted to direct or comment upon the work of election officials. A condition of the representative's presence in the room is that he or she "does not hinder or delay any officer of election or otherwise impede the orderly conduct of the election. 1983-84 Va. Att'y Gen. Ann. Rep. 148 (1984).

225. 1983-84 Va. Att'y Gen. Ann. Rep. 149 (1984).

226. *Id.*

3. Hinder a Voter or Election Officer at Polling Place

It is unlawful for any person "to hinder or delay a qualified voter in entering or leaving a polling place,"²²⁷ or "to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot."²²⁸ Similarly, it is unlawful "to hinder or delay any officer of election, or otherwise impede the orderly conduct of the election."²²⁹ Violation of these sections constitutes a Class 1 misdemeanor.²³⁰

4. Loudspeakers at Polls

"[N]o loudspeaker [may] be used within 300 feet of a polling place on an election day, except for school purposes or in an emergency."²³¹ Violation of this statute constitutes a Class 4 misdemeanor.²³²

5. Noisy Conduct at Polls

"No person shall conduct himself in a noisy or riotous manner at or about the polls so as to disturb the election or insult or abuse an officer of election."²³³ Violation may result in commitment in the county or city jail, for a period not exceeding twenty-four hours.²³⁴ The person must be permitted to vote, if so entitled.²³⁵

6. Assisting in Casting Ballot Within Polling Place

"[N]o person shall directly or indirectly advise or assist any voter as to how he [or she] shall cast his [or her] ballot after

227. VA. CODE ANN. § 24.2-604(A) (Repl. Vol. 1993).

228. *Id.* § 24.2-607(A).

229. *Id.* § 24.2-604(D).

230. *Id.* § 24.2-604(E), 607.

231. *Id.* § 24.2-605.

232. *Id.*

233. *Id.* § 24.2-607(B).

234. *Id.*

235. *Id.*

the voter has entered the prohibited area at the polls."²³⁶ The prohibited area is within forty feet of the polling place.²³⁷ Any person violating these provisions is guilty of a Class 1 misdemeanor.²³⁸

7. Ballot Not to be Carried Away

It is a Class 1 misdemeanor to remove the official ballot from the voting booth.²³⁹ If the voter "after receiving the ballot, conclude[s] not to vote, he [or she] shall immediately return the ballot to the officers."²⁴⁰

8. Stealing or Tampering with Ballots

Any person who (i) steals or willfully, fraudulently, and wrongfully tampers with any part of any ballot box, voting or registration equipment, records, or documents, which are used in any way within the registration or election process, (ii) fraudulently makes any entry, deletion, or alteration to any item listed in (i), or (iii) aids, abets, or permits any other person to violate the provisions of clause (i) or (ii), shall be guilty of a Class 5 felony.²⁴¹

9. Unauthorized Possession of Voting Equipment Key

"Any unauthorized person found in possession of any voting equipment key shall be guilty of a Class 1 misdemeanor."²⁴²

F. *General Election Offenses*

It is a Class 5 felony to "by bribery, intimidation, or other means . . . , willfully hinder[] or prevent[], . . . the officers of

236. *Id.* § 24.2-1006.

237. *Id.*

238. *Id.*

239. *Id.* § 24.2-1010.

240. *Id.*

241. *Id.* § 24.2-1009. The phrase "tampers with" includes any act which would alter any election records or equipment thus raising a question of its reliability. *Id.*

242. *Id.* § 24.2-1010.

election at any precinct from holding an election."²⁴³ Similarly one cannot use "threats, bribery, or other means" to influence a voter, deter a voter, deceive a voter as to a ballots contents or change a ballot of a person to prevent the person from voting as he or she desired.²⁴⁴ The penalty for doing such a Class I misdemeanor.²⁴⁵

It is a Class 5 felony to counterfeit an official ballot or sell or give away an official ballot or copy or a facsimile of or device or plate used to reproduce such ballot.²⁴⁶

It is unlawful to conspire "to injure, oppress, threaten, intimidate, prevent, or hinder any citizen of this Commonwealth in the free exercise or enjoyment of any right or privilege secured to him [or her] by the [election laws], or because of his [or her] having so exercised such right."²⁴⁷

Penalties are also prescribed for officers of election who willfully neglect their duty²⁴⁸ or are guilty of any corrupt conduct in the execution of their duties.²⁴⁹

V. CONCLUSION

Without a doubt, many of Virginia's campaign and election laws are ambiguous. Similarly, recent decisions of the United States Supreme Court have called some of the election law disclosure requirements into question. However, the political cost for a violation may be far more costly than the fine imposed. Those seriously considering running for office or getting involved in politics should familiarize themselves with Virginia's election laws. One's political career can easily be derailed by relying on someone ignorant of the rules or who simply ignores them.

243. *Id.* § 24.2-1000.

244. *Id.* § 24.2-1005.

245. *Id.*

246. *Id.* § 24.2-1008.

247. *Id.* § 24.2-1015.

248. *Id.* § 24.2-1001.

249. *Id.*

