Standards for Recounts of Virginia Elections

State Board of Elections
Commonwealth of Virginia

Promulgated by the Board, August 20, 2001
Revised by the Board, May 14, 2002 - Revisions Effective July 1, 2002
Revised by the Board, November 28, 2005 - Revisions Effective Immediately
Revised by the Board, June 26, 2007 – Revisions Effective July 1, 2007

Chapters 639 and 641 of the 2001 Acts of Assembly required that:

> **§ 24.2-802 (A). "On or before September 1, 2001, the State Board of Elections shall promulgate standards for (i) the proper handling and security of voting and counting devices, ballots, and other materials required for a recount, (ii) accurate determination of votes based upon objective evidence and taking into account the counting device and form of ballots approved for use in the Commonwealth, and (iii) any other matters that will promote a timely and accurate resolution of the recount. The chief judge of the circuit court or the full recount court may, consistent with State Board of Elections standards, resolve disputes over the application of the standards and direct all other appropriate measures to ensure the proper conduct of the recount."**

The State Board of Elections hereby promulgates the following standards for any recounts requested under Chapter 8 of Title 24.2 of the Code of Virginia for elections held after the date these standards are adopted by the Board. These standards may hereafter be revised by the Board, as necessary, including revisions necessary because of the use of new types of equipment or ballots, or changes in the laws of the Commonwealth or the United States.

Effective July 1, 2002, these standards are hereby revised by the State Board of Elections to reflect the revisions to the Code made at the 2002 Session of the Virginia General Assembly by Chapters 601 (Senate Bill 112) and 647 (House Bill 985).

Effective November 28, 2005, these standards are hereby revised by the State Board of Elections to facilitate the conduct of any recount for a federal or statewide office or statewide ballot issue.

Effective July 1, 2007, these standards are hereby revised by the State Board of Elections to reflect the revisions to the Code made at the 2007 Session of the Virginia General Assembly by Chapters 285 (House Bill 2354), 939 (House Bill 2707) and 943 (Senate Bill 840).

The State Board of Elections also directs that in the interest of uniformity whenever paper or paper-based ballots must be counted manually for whatever reason (outside of a recount), the local election officials shall use the accompanying "Ballot Examples for Handcounting Paper or Paper-based Ballots for Virginia Elections or Recounts" as guidance for such handcounts.

STANDARDS FOR RECOUNTS

1. The Instructions for Recount Officials and Recount Coordinators previously issued by the State Board of Elections, as enumerated in Appendix C of these standards, are officially adopted by the Board except to the extent that any part of these Instructions is in conflict with any part of these standards or current law.

The Instructions may be revised and new versions submitted to the Board for approval as the Secretary may direct. If a new or revised set of instructions is required because of a pending or expected recount, and it is not possible for the Board to meet, the Secretary may approve such new or revised instructions pending the Board's approval at its next meeting.

Upon notification by the Court, or any other person, that a recount request has been filed pursuant to § 24.2-801, the State Board of Elections shall promptly transmit to the appropriate Court and Electoral Board or Boards copies of the Instructions corresponding with the types of ballots and equipment used in each county or city involved in the recount. If the notification was from a person other than the Court, the State Board shall verify that the recount request has been filed with the Court before transmitting the instructions to the Court.

The State Board shall, at the request of the Court, provide any other assistance requested.

In preparation for the recount, the clerks of the circuit courts shall (a) secure all paper ballots and other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and his staff; (c) cause such vault or room to be securely locked except when access is necessary for the clerk and his staff; and (d) certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.(§ 24.2-802(A))

2. After a recount has been requested pursuant to § 24.2-801 of the Code of Virginia, and prior to the preliminary hearing specified in § 24.2-802 (B), the Electoral Board of each county or city in which the recount is to be held shall provide the Court with the recommendations and information, as listed in (a) through (f) below, for its locality. The recommendations made in items (a) through (c) below shall be based on the number sufficient to conduct the recount within a reasonable period of time. To facilitate the conduct of any pending or expected recount for a federal or statewide office or statewide ballot issue, the Secretary of the State Board may coordinate the gathering of recommendations and information from the Electoral Boards and provide such recommendations and information to the Court prior to the preliminary hearing specified in § 24.2-802 (B) on behalf of the Electoral Boards. The Electoral Board of each county or city in which the recount is to be held shall provide the requested information to the Secretary of the State Board.

(a) The recommended location and number of recount teams needed to recount paper ballots and to redetermine the vote cast on direct recording electronic devices of the type that prints returns for the election district at large in which the recount is being held.

(b) The recommended location and number of recount teams needed to insert the ballots read by an electronic counting device into one or more counting devices which have been programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount. Such machines shall also be programmed to reject all undervoted and overvoted ballots, as required by § 24.2-802 (D). The examination of undervoted and overvoted ballots may take place at the same location before the votes are totaled for that precinct, if so directed by the Court pursuant to item 5(f) below. If a different team of officers would be used to examine the undervoted and overvoted ballots, such teams shall be included in the total number recommended for this item.

(c) A complete list of all officers of election who served at the election to be recounted, with the political party they represented at that election listed beside their names, the precinct where each officer served, each officer's address and phone number(s), and an indication of which officers served as chief or assistant chief officers. Such list shall note recommended recount officials who the Court may appoint if the officials and alternates recommended by the parties to the recount are not of sufficient number to conduct the recount within a reasonable period. Such list shall be provided by the local Electoral Boards to both parties to the recount, or by the Secretary of the State Board in the case of a recount for federal or statewide office or a statewide ballot issue, no later than immediately following the preliminary hearing to assist them in preparing their selections of officers to be recount officials or alternates.

(d) A list of the members of the Electoral Board and the political parties they represent. Such list shall be provided by the local Electoral Boards to both parties to the recount, or by the Secretary of the State Board in the case of a recount for federal or statewide office or a statewide ballot issue.

3. The procedures issued by the State Board, and any other procedures directed by Court, shall be as uniform as possible throughout the entire district in which the recount is being conducted, given the differences in types of equipment and ballots used in the election. (This item has been codified in § 24.2-802 (A), effective July 1, 2002.)

4. Section § 24.2-802 (B) of the Code of Virginia (as effective July 1, 2004) provides in part:

> **"The determination of the votes in a recount shall be based on votes cast in the election and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced with a new ballot."**
>
> **"The eligibility of any voter to have voted shall not be an issue in a recount."**

Section § 24.2-802 (D) of the Code of Virginia provides in part:

"The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and officials."

Only the ballots actually cast in the election shall be delivered to the court and shall be the subject of the recount.[i] Pursuant to § 24.2-802 (D) of the Code of Virginia, the redetermination of the vote in a recount shall be conducted as follows:

"1. For paper ballots, the recount officials shall hand count the ballots using the standards promulgated by the State Board pursuant to subsection A [of § 24.2-802 -- i.e., these standards]."

"2. For direct recording electronic machines (DREs), the recount officials shall open the envelopes with the printouts and read the results from the printouts. If the printout is not clear, or on the request of the court, the recount officials shall rerun the printout from the machine or examine the counters as appropriate."

"3. For optical scan tabulators, the recount officials shall first examine the printout to redetermine the vote. Only if the printout is not clear, or on the request of the court, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted using the standards promulgated by the State Board pursuant to subsection A[of § 24.2-802 -- i.e., these standards]."

"There shall be only one redetermination of the vote in each precinct."

"At the conclusion of the recount of each precinct, the recount officials shall write down the number of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates or for and against the question. They shall submit the ballots or the statement of results used, as to the validity of which questions exist, to the court. The written statement of any one recount official challenging a ballot shall be sufficient to require its submission to the court. If, on all direct electronic voting devices, the number of persons voting in the election, or the number of votes cast for the office or on the question, totals more than the number of names on the pollbooks of persons voting on the devices, the figures recorded by the devices shall be accepted as correct."

"At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and votes. After determining all matters pertaining to the recount and redetermination of the vote as raised by the parties, the court shall certify to the State Board and the electoral board or boards (a) the vote for each party to the recount and declare the person who received the higher

number of votes to be nominated or elected, as appropriate, or (b) the votes for and against the question and declare the outcome of the referendum."

§ 24.2-802 (I) provides:

"I. For the purposes of this section [§ 24.2-802]:"

""Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or positions than the number for which he was lawfully entitled to vote and no vote shall be counted with respect to that office or issue."

""Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or positions than the number for which he was lawfully entitled to vote."

5. In recounting the ballots, the following standards, shall be observed.

(a) Regarding paper ballots, § 24.2-665 (B) states:

"Only an official ballot prepared as provided for in this title shall be counted. If any unofficial ballot is found among the official ballots, the unofficial ballot shall be put aside, not counted and appropriately noted on the statement of results."

However, if the precinct has had to use emergency paper ballots § 24.2-642 (C) specifies that:

"The voted ballot copies shall be deemed official ballots for the purpose of § 24.2-665 and preserved and returned with the statement of results and with a certificate setting forth how and why the same were voted."

The State Board of Elections directs that this standard be applied to the counting and recounting of all types of ballots which are individual ballots that can be recounted, whether paper ballots or machine-read ballots. Only official ballots as used in that precinct, including emergency paper ballots properly documented according to § 24.2-642 (C), may be counted during a recount.

(b) In recounting the ballots, unless Chapter 8 of Title 24.2 specifically directs otherwise, and to the degree possible, the ballots shall be counted in accordance with the same laws that apply when they are counted at the polls, including as appropriate:

a. **"After the votes on all voting and counting equipment have been determined and recorded, the officers of election shall proceed to examine and count the paper ballots to ascertain if any double ballots have been cast, and whether the number of ballots corresponds with the number of names on the pollbooks of persons who voted on paper ballots. If two or more separate ballots are found so folded together as to represent the appearance of a single ballot they shall be laid aside until the count of the ballots is completed. If, upon a comparison of the count and the number of names of such qualified**

voters on the pollbooks, it appears that the two or more ballots thus folded together were cast by the same qualified voter, they shall be set aside and not counted." § 24.2-661

b. **"If the ballots in the box exceed the number of names on the pollbooks of persons who voted on paper ballots, all ballots shall be replaced in the ballot box. Then, after the box is well shaken, an officer of election, being blindfolded, shall withdraw a sufficient number of ballots to reduce the number of ballots left in the box to the number of such names on the pollbooks. The drawn ballots shall be set aside and not counted."** § 24.2-662

c. **"If a ballot is found to have been voted for a greater number of names for any one office than the number of persons required to fill the office, or if the title of the office is erased, the ballot shall be considered void as to all the names designated to fill such office, but no further. No ballot shall be void for having been voted for fewer names than authorized. If any person votes, either in person or absentee, more than one time in an election, all ballots received from such person shall be void and, if possible, not counted. If one such ballot has already been cast, any additional ballots received from such person shall be void and not counted."** § 24.2-663

d. **"No write-in vote shall be counted unless the name is entered on the ballot in conformance with this section** [§ 24.2-644]. **No write-in vote shall be counted when it is apparent to the officers of election that a voter has voted for the same person for the same office more than one time. No write-in vote shall be counted for an office for any person whose name appears on the ballot as a candidate for that office. If two or more persons are to be elected to the same office, a voter may vote for one or more persons whose names do appear on the ballot and one or more persons whose names do not appear on the ballot, provided that the total number of votes cast by him for that office does not exceed the number of persons to be elected to that office."** § 24.2-644 (D)

e. **"The qualified voter shall take the official paper ballot and enter the voting booth. After entering the voting booth, the qualified voter shall mark immediately preceding the name of each candidate for whom he wishes to vote a check (√) or a cross (X or +) or a line (-) in the square provided for such purpose, leaving unmarked the square preceding the name of each candidate for whom he does not wish to vote. Any ballot marked so that the intent of the voter is clear shall be counted."** § 24.2-644 (A)

f. **"The qualified voter at a presidential election shall mark the square preceding the names and party designation for his choice of candidates for President and Vice-President. His ballot so marked shall be counted as if he had marked squares preceding the names of the individual electors affiliated with his choice for President and Vice-President. The qualified voter at a**

presidential election may cast a write-in vote for President and Vice-President as provided in subsections C and D of this section." § 24.2-644 (B)

(c) For any other ballot which is to be counted manually, and can be counted manually the following guidelines shall be used in determining the voter's intent.

1) As used below, the "target area" of the official ballot is the square next to the candidate's name on the paper ballot, the oval next to the candidate's name on the Accu-Vote ballot, or the incomplete arrow next to the candidate's name on the Optech ballot. The "candidate area" is the area between the lines separating candidate names, if the ballot includes such lines, or the area that is clearly closer to one candidate's name than another. The "candidate area" includes the candidate's name and party affiliation if listed, or "I" for any independent using that designation. These instructions only deal with marks that are under the office being recounted, except as provided in items 10 and 11.

2) These instructions assume that the recount is for a single-seat office. That is, the voter was only permitted to vote for one candidate for the office. For multi-seat offices, the ballot shall be counted pursuant to the guidelines below so long as the voter has not voted for more candidates for that office than he is allowed to vote (in which case no votes are to be counted for the office).

3) Any ballot which is properly marked (as specified for the type of ballot) in the target area for one candidate only for the office, shall be designated as a vote for that candidate.

4) If a write-in candidate is a party to the recount, a vote shall be counted for the write-in candidate if his name is written on the ballot under that office, even if the write-in square, oval or arrow is not marked, and provided that no other candidate is marked for that office. A write-in vote for a candidate whose name appears on the ballot for the same office may not be counted. A write-in vote in addition to a vote for another candidate for the office is an overvote and no vote shall be counted.

5) Any ballot which is marked for more than one candidate for the office shall be deemed an overvote and no vote shall be counted except as provided in this section. However, if more than two candidates had their names printed on the ballot for the office, and the names of all but one candidate are stricken through, that ballot shall be counted for the one candidate whose name was not stricken through. If there are identical marks for two or more candidates, clarified by an additional mark or marks that appear to indicate support, the ballot shall be counted as a vote for the candidate with the additional, clarifying marks.

6) Any ballot which has any other mark or marks in the target area or candidate area for one candidate only, including circling the target area and/or the candidate's name or making a mark through the target area or candidate's name, provided no other

candidate for that office is similarly marked, shall be counted as a vote for that candidate unless the mark is a clearly negative or extraneous comment or a substantial part of the candidates name is crossed through or stricken out.

7) Any ballot which has a mark or marks in the target area or candidate area for one candidate, which extend partially into one or more other target areas or candidate areas, shall be counted as a vote for the candidate so marked only if it is readily apparent that at least 3/4ths of the mark is in that candidate's area or target area, and no other candidate is similarly marked. Other such marks, extending across more than one candidate areas, may be counted if the lines of the "x" or the bottom point of the check mark (√) clearly lie inside the box or on top of the name or party affiliation or candidate area of one candidate, and no other candidate is similarly marked.

8) Any ballot which has any mark, as above, in the target area or candidate area for one candidate, and on which other marks in the target areas or candidate areas for any other candidates have been partially erased, scratched out, or otherwise obliterated, shall be counted as a vote for the candidate for which the mark was not erased, scratched out or otherwise obliterated, provided no other candidate is similarly marked.

9) Any ballot which has a mark that is clearly next to (either before or after) a candidate's name, or across the name, shall be recognized as a mark under items 1-6 above. Similarly, a mark between or over the "timing marks" of the ballot, that are clearly opposite or next to one candidate's name and not near another candidate's name, shall be recognized as a mark. (The "timing marks" are the small lines or boxes running down the right and/or left sides of certain electronically read or scanned ballots, which line up the ballot in the reader.) A mark that is between or across more than one candidates' names, candidate areas or target areas shall not be recognized as a mark except under items 5 and 6 above.

10) Any other writing or remark on the ballot (other than a write-in unless a write-in candidate is a party to the recount) which clearly indicates the voter's support for one and only one candidate for the office that is the subject of the recount, and which cannot be interpreted as a remark in favor of any other candidate in that election, shall be counted as a vote for that candidate. Writings or remarks which appear to be ranking the candidates (letters, numbers, +/-, etc.) shall not be considered valid marks unless only one candidate is marked and no other candidate is similarly marked.

11) Any other writing or remark on the ballot which indicates the voter's opposition to one or more candidates, provided the ballot is not so marked as to indicate which candidate the voter supports, shall not be counted as a vote for any candidate.

12) Any ballot on which there is no mark under the office, or any other remark indicating support for a candidate for the office, shall not be counted as a vote for any candidate.

The "Ballot Examples Based on the Standards for Recounts of Virginia Elections" are hereby reissued with the following modifications: The document shall be re-titled "Ballot Examples for Handcounting Paper or Paper-based Ballots for Virginia Elections or Recounts," and previous references to item 5(i) of these Standards now refer to item 5(c).

(d) Pursuant to § 24.2-802 (B), **"The court shall call for the advice and cooperation of the State Board or any local electoral board, as appropriate, and such boards shall have the duty and authority to assist the court."** The State Board and the appropriate local Electoral Boards shall provide any other assistance requested by the Court.

Revisions adopted by the State Board of Elections
the 26th day of June 2007.

Jean Cunningham, Chair

Harold Pyon, Vice Chair

[Vacant], Secretary

---

[i] The following language was included in the August 20, 2001 version of the Standards. It has been deleted from the body of the current standards because the General Assembly has enacted legislation specifying that only ballots cast at the election (not ballots ruled invalid) may be the subject of a recount, and clarifying eligibility for conditional ballots (now called provisional ballots).

Section § 24.2-445 if the Code of Virginia provides:

> **"In the event of a conflict as to whether a person is registered to vote, the registration and voting records in the possession of the general registrar shall be controlling."**

Chapter 7 of Title 24.2 of the Code of Virginia lists the qualifications and procedures for requesting and voting an absentee ballot. In particular, § 24.2-707 lists the requirements for how a ballot shall be marked and returned by mail, and instructs:

> **"Failure to follow the procedures set forth above shall render the applicant's ballot void."**

It is the finding of the State Board that the eligibility of a voter to vote, in the election which is the subject of a recount, should not be raised as an issue in a recount if that voter's ballot was counted in the election and included in the results as originally certified. Such voter eligibility issues should also not be used during the recount to question the validity of any ballot cast in the election. A particular voter's ballot cannot be distinguished from all other ballots cast, even if that voter later attests to how he voted. Such issues may be grounds for a contest, but not a recount.

Reconsideration of the qualifications and eligibility of voters whose absentee or conditional ballots were not opened and counted is properly the duty of the recount Court. However, the Court may delegate this duty to the recount coordinators and officials

pursuant to § 24.2-802 (D). If the officials cannot agree on the eligibility of the voter to cast the uncounted absentee or conditional ballot, the ballot shall be challenged and presented to the Court for its decision. The Court shall request, and the appropriate Electoral Boards and General Registrars shall provide, all the information the Court may require in its consideration of the eligibility of these voters to vote in the election that is the subject of the recount.

The Constitution of Virginia, Article II, Section 1, specifies:

> **"The residence requirements shall be that each voter shall be a resident of the Commonwealth and of the precinct where he votes."**

A conditional ballot may not be counted unless the voter, whose name could not be found on the rolls, is found to be a registered voter in the precinct in which he cast his conditional ballot. If the voter is found to be registered in another precinct, his conditional ballot cannot be counted.

No conditional or absentee ballot may be counted based on the voter having completed a registration application after the books closed for the election being recounted, or on or after the date of the election, except as provided for certain military, overseas and related voters in § 24.2-419 or § 24.2-420.1.