

**Reed v. Va. Dept. of Elections**  
**Exhibits to Plaintiffs' Motion for Declaratory Judgement and Injunctive Relieve and**  
**Memorandum in Support**

Exhibit A: State Board of Elections August 4, 2020 Meeting Minutes (as approved at the Board's September 18, 2020 Meeting)

Exhibit B: Memorandum Regarding Regulatory Action Related to Processing Absentee Ballots with Missing or No Postmark dated August 4, 2020

Exhibit C: Official ELECT Advisory Regarding New Regulations Adopted by State Board of Elections dated August 13, 2020

# Exhibit A

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2           The State Board of Elections (“the Board”) meeting was held by electronic  
3 communication on Tuesday, August 4, 2020. Robert Brink, Chairman, John  
4 O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State  
5 Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner and  
6 Jessica Bowman, Deputy Commissioner, represented the Department of Elections  
7 (“ELECT”). Carol Lewis and Heather Hays Lockerman represented the Office of the  
8 Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:01  
9 P.M.

10           Chairman Brink informed the Board that due to circumstances of the  
11 weather, the August 4, 2020 Board meeting was converted to electronic only.  
12 Chairman Brink informed the Board that on March 12, 2020, Governor Ralph S.  
13 Northam declared that a state of emergency exists in the Commonwealth as the  
14 result of the potential spread of COVID-19, a communicable disease presenting a  
15 threat to public health. On March 30, 2020, the Governor issued an executive  
16 order requiring all individuals in Virginia to remain at their place of residence,  
17 with certain enumerated exceptions.

18           This meeting was conducted consistent with the requirements for  
19 electronic meetings by public bodies set forth in Items 4-0.01 of House Bills 29  
20 and 30, as passed by the General Assembly (“GA”) and signed by the Governor in  
21 April of this year. The purpose of the meeting is to transact the statutorily  
22 required business of the Board. Chairman Brink stated that the Board would  
23 receive public comments on agenda items prior to its action on that item, and an  
24 open public comment period would be offered prior to adjournment.

25           The first item of business was the approval of the minutes presented by  
26 Secretary LeCruise. Secretary LeCruise moved *that the Board approve the minutes*  
27 *from the July 7, 2020 Board meeting.* Vice Chair O’Bannon seconded the motion,  
28 and the motion passed unanimously. A roll call vote was taken:

29           Chairman Brink – Aye

30           Vice Chair O’Bannon – Aye

31           Secretary LeCruise – Aye

32           The next item of business was the Commissioner’s Report presented by  
33 Commissioner Piper. Commissioner Piper informed the Board of the timeline of  
34 absentee balloting. The Commissioner stated that the deadline for independent

35 candidates to qualify to appear on the ballot for President of the United States is  
36 August 21, 2020. The Commissioner stated that once the candidate names have  
37 been approved, the localities would draft their ballot proofs and send each to  
38 ELECT for review. Commissioner Piper informed the Board that the deadline for  
39 mailing absentee ballots in response to applications already submitted and  
40 approved is September 18th or September 19th, depending on the locality.

41 Commissioner Piper stated that Virginia is focused on voter education, and  
42 that ELECT has provided many voting options for voters to cast their ballots.

43 Commissioner Piper explained that voters can vote on Election Day, vote  
44 absentee in-person during the 45 days before the election, or vote by an  
45 absentee ballot returned by mail. The Commissioner informed the Board that  
46 Virginia anticipates an increased percentage of absentee ballots will be requested  
47 for the November 2020 election.

48 Commissioner Piper advised the Board that ELECT has set aside CARES Act  
49 funds for Personal Protective Equipment and provided a portion to localities to  
50 prepare for the elections due to COVID-19. The Commissioner informed the  
51 Board that many localities are utilizing the funds to increase staffing, open

52 additional satellite offices, and purchase additional mail processing equipment.  
53 Commissioner Piper stated the highest percentage of voters in the  
54 Commonwealth voting absentee by-mail was in November 2016, when 6% of the  
55 4 million Virginians who voted did so by absentee returned by mail. The  
56 Commissioner added that voting absentee would be a new experience for many  
57 voters, due to COVID-19.

58 Commissioner Piper informed the Board that ELECT is preparing to provide  
59 voter education on how to apply for, complete, and return absentee ballots, and  
60 encouraging the early submission of ballots. The Commissioner informed the  
61 Board that they would be receiving information on regulatory action today and  
62 introduced a new employee Dreana Gilliam, Elections Administrator. Chairman  
63 Brink asked Commissioner Piper if ELECT would assist localities in conducting  
64 local voter education. Commissioner Piper informed the Board that ELECT will  
65 help any locality wanting assistance with their voter education.

66 The next item of business was the Party Abbreviations, presented by Paul  
67 Saunders, Elections Administration Supervisor. *This report is in the Working*  
68 *Papers for the August 4, 2020 meeting.* Secretary LeCruise moved *that the Board*

69 *approve the party abbreviations as presented by staff for general and special*  
70 *elections being held through April 30, 2021. Vice Chair O'Bannon* seconded the  
71 motion, and the motion passed unanimously. A roll call vote was taken:

72 Chairman Brink – Aye

73 Vice Chair O'Bannon – Aye

74 Secretary LeCruise – Aye

75 The next item of business was the Regulatory Actions: Voter Registration  
76 Repeal of 1VAC20-40-90 presented by Samantha Buckley, Policy Analyst. *This*  
77 *report is in the Working Papers for the August 4, 2020 meeting.* Secretary LeCruise  
78 moved *that the Board repeal 1VAC20-40-90.* Vice Chair O'Bannon seconded the  
79 motion, and the motion passed unanimously. A roll call vote was taken:

80 Chairman Brink – Aye

81 Vice Chair O'Bannon – Aye

82 Secretary LeCruise – Aye

83 The next item of business was the Regulatory Action: Voter Registration  
84 amendments to 1VAC20-40-10 presented by Samantha Buckley, Policy Analyst.  
85 *This report is in the Working Papers for the August 4, 2020 meeting.* Secretary

86 LeCruise moved *that the Board approve the amendments to 1VAC20-40-10*. Vice  
87 Chair O'Bannon seconded the motion, and the motion passed unanimously. A roll  
88 call vote was taken:

89 Chairman Brink – Aye

90 Vice Chair O'Bannon – Aye

91 Secretary LeCruise – Aye

92 The next item of business was the Regulatory Actions: Intelligent Mail  
93 Barcodes (IMBs) on Absentee Return Envelopes presented by Danny Davenport,  
94 Policy Analyst. *This report is in the Working Papers for the August 4, 2020 meeting.*  
95 Chairman Brink asked how many localities provide the IMB on the envelope. Mr.  
96 Davenport stated that all localities have the IMB on the outside of the envelope,  
97 but as of now, 48 localities have provided the IMB on the return envelope.

98 Secretary LeCruise moved *that the Board approve the Department's proposal for*  
99 *regulatory action requiring intelligent mail barcodes on absentee ballot envelopes*  
100 *and absentee ballot return envelopes*. Vice Chair O'Bannon seconded the motion,  
101 and the motion passed unanimously. A roll call vote was taken:

102 Chairman Brink – Aye



103 Vice Chairman –Aye

104 Secretary LeCruise – Aye

105 The next item of business was the Regulatory Actions: Processing

106 Absentee Ballots with Missing or no Postmark, presented by Danny Davenport,

107 Policy Analyst. *This report is in the Working Papers for the August 4, 2020 meeting.*

108 Chairman Brink stated that the window to put a ballot in the mail on a

109 Wednesday and received by Friday at Noon is narrow. Commissioner Piper

110 informed the Board that the Voting Education campaign clearly states that the

111 deadline to mail and return absentee ballot is postmarked by Tuesday, Election

112 Day.

113 Chairman Brink opened the floor to public comment. Clara Bell Wheeler, a

114 former member of the State Board of Elections, and Renee Andrews, Secretary of

115 the City of Falls Church Electoral Board, addressed the Board. Secretary LeCruise

116 moved *that the Board approve the Department's proposal for regulatory action*

117 *related to processing absentee ballots with missing or no postmark.* Chairman Brink

118 seconded the motion, and the motion passed 2-1. A Roll call vote was taken:

119 Chairman Brink – Aye

120 Vice Chair O'Bannon – Nay

121 Secretary LeCruise – Aye

122 The next item of business was the Regulatory Actions: Mandatory Logic and  
123 Accuracy Testing for Electronic Pollbooks, presented by Danny Davenport, Policy  
124 Analyst. *This report is in the Working Papers for the August 4, 2020 meeting.* Vice  
125 Chair O'Bannon moved *that the Board approve the Department's proposal for*  
126 *regulatory action to require mandatory logic and accuracy testing for electronic*  
127 *pollbooks.* Secretary LeCruise seconded the motion, and the motion passed  
128 unanimously. A roll call vote was taken:

129 Chairman Brink – Aye

130 Vice Chairman O'Bannon – Aye

131 Secretary LeCruise – Aye

132 The next item of business was the Regulatory Action: (Amendments)  
133 Overfull Optical Scan Ballot Container. *This report is in the Working Papers for the*  
134 *August 4, 2020 meeting.* Chairman Brink opened the floor for public comment.  
135 Jean Thoensen, of the public, and Walt Latham, of York County, and Clara Bell  
136 Wheeler, former member of the State Board of Elections, addressed the Board.

137 Vice Chair O'Bannon moved *that the Board approve the Department's proposal for*  
138 *regulatory action related to 1VAC20-60-50, Overfull Optical Scan Ballot*  
139 *Containers*. Secretary LeCruise seconded the motion, and the motion passed  
140 unanimously. A roll call vote was taken:

141 Chairman Brink – Aye

142 Vice Chairman – Aye

143 Secretary LeCruise – Aye

144 Chairman Brink opened the floor to public comment.

145 The Chairman stated that in February of 2020, the Chairman of Spotsylvania  
146 County Republican Committee contacted him in regards to a member of the  
147 Electoral Board. Chairman Brink announced that the Board would go into Closed  
148 Session. At 2:04 P.M., Secretary LeCruise moved *that the Board go into closed*  
149 *session for the purpose of consultation with legal counsel and briefings by staff*  
150 *members or consultants for the purpose of receiving legal advice concerning the*  
151 *request to remove a member of the Spotsylvania Electoral Board, as authorized by*  
152 *Section 2.2-3711(A)(8) of the Code of Virginia. In accordance with Virginia Code*  
153 *Section 2.2-3712(F), Carol Lewis and Heather Hays Lockerman from the Office of*

154 *the Attorney General, as well as Christopher Piper, Commissioner of Elections,*  
155 *Jessica Bowman, Deputy Commissioner, Daniel Persico, Chief Information Officer,*  
156 *and Arielle A. Schneider, Policy Analyst will attend the closed session because their*  
157 *presence will reasonably aid the Board in its consideration of the subject of the*  
158 *meeting. Vice Chair O'Bannon seconded the motion, and the motion passed*  
159 *unanimously. A roll call vote was taken:*

160 Secretary LeCruise – Aye

161 Vice Chair O'Bannon – Aye

162 Chairman Brink – Aye

163 At 2:35 P.M., Vice Chair O'Bannon moved *to reconvene in open session, and*  
164 *take a roll call vote certifying that to the best of each member's knowledge (i) only*  
165 *such public business matters lawfully exempted from open meeting requirements*  
166 *under this chapter and (ii) only such public business matters as were identified in*  
167 *the motion by which the closed meeting was concerned were heard, discussed, or*  
168 *considered. A roll call vote was taken:*

169 Chairman Brink – Aye

170 Vice Chair O'Bannon – Aye

171 Secretary LeCruise – Aye

172 Vice Chair O’Bannon moved to adjourn the meeting. Secretary LeCruise

173 seconded the motion, and the motion passed unanimously. The meeting

174 adjourned at approximately 2:40 P.M.

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176 Chairman

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179 Vice Chairman

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182 Secretary

# Exhibit B



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**Memorandum**

To: Chairman Brink, Vice Chair O'Bannon, and Secretary LeCruise  
From: Daniel Davenport, Policy Analyst  
Date: August 4, 2020  
Re: Regulatory Action Related to Processing Absentee Ballots with Missing or No Postmark

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**Suggested motion for a Board member to make:**

"I move that the Board approve the Department's proposal for regulatory action related to processing absentee ballots with missing or no postmark"

**Applicable Code Section:** § 24.2-709

**Attachments:**

- Proposed regulation 1VAC20-70-xx

**Background:**

The purpose of this regulation is to provide further guidance regarding a recent legal change to § 24.2-709 of the Code of Virginia. Prior to July 1, 2020, absentee ballots had to be received by the general registrar's office before the close of polls on Election Day, in order to count toward that election's result. Now, "[A]ny absentee ballot (i) returned to the general registrar after the closing of the polls on election day but before noon on the third day after the election and postmarked on or before the date of the election shall be counted [pursuant to the election code] if the voter is found entitled to vote."

This regulation clarifies what happens in the event that an absentee ballot is received before noon on the third day after an election with a missing postmark or no postmark. The regulatory action treats the absence of a postmark on an absentee ballot as an immaterial omission. This means that a ballot with a missing postmark that is received by the general registrar's office by noon on the third day after the election will still count toward the election's result.



**Agency:** State Board of Elections

**Virginia Administrative Code (VAC) citation(s):** Amendment to existing regulatory action 1VAC20-70-20.

**Regulation title(s):** Material Omissions from Absentee Ballots.

**Date before State Board of Elections:** August 4, 2020

**Brief Summary:** The purpose of this regulatory action is to provide further guidance regarding what to do when a returned absentee ballot is missing a postmark or the postmark is illegible. This guidance is especially important in light of recent legal changes to § 24.2-709 of the Code of Virginia. Prior to July 1, 2020, absentee ballots had to be received by the general registrar's office before the close of polls on Election Day, in order to count toward that election's result. Now, "[A]ny absentee ballot (i) returned to the general registrar after the closing of the polls on election day but before noon on the third day after the election and postmarked on or before the date of the election shall be counted [pursuant to the election code] if the voter is found entitled to vote."

This regulation adds subsection (C) (11) to this regulatory action. The new subsection clarifies that a missing postmark is an immaterial omission, and that a ballot received by noon on the third day after an election with no postmark will still count toward that election's result. Pursuant to § 24.2-709 of the Code of Virginia, ballots postmarked after Election Day will not count toward the election's result.

**Regulation Text:**

1VAC20-70-20. Material Omissions from Absentee Ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;





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4. The voter did not provide his house number and street name or his rural route address;

5. The voter did not provide either his city or zip code;

6. The voter did not sign Envelope B; or

7. The voter's witness did not sign Envelope B.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";

2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;

3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");

4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;

5. The voter did not provide his residential street identifier (Street, Drive, etc.);

6. The voter did not provide a zip code, so long as the voter provided his city;

7. The voter did not provide his city, so long as the voter provided his zip code;

8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or

9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.

10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

11. The ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia but does not have a postmark, or the postmark is missing or illegible.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.



E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

**Statutory Authority**

§ 24.2-103 of the Code of Virginia.

# Exhibit C



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## Official ELECT Advisory

**Date:** August 13, 2020

**Subject:** New Regulations Adopted by State Board of Elections

**Issues:** The State Board of Elections considered and adopted amendments to current regulations and new regulations at its meeting held August 4, 2020.

### How This Affects You:

Regulations related to voter registration:

1. 1VAC20-40-90 – Voter Photo Identification Cards: The State Board’s action on this regulation repeals the regulation in its entirety. Because ELECT is no longer authorized by law to provide photo ID cards, this regulation is no longer relevant.
2. 1VAC20-40-10 – Definitions: The State Board’s action on this regulation amends the definition of “valid” for the purposes of a voter’s ID. The definition was changed to match changes to law that went into effect on July 1, 2020.

Regulations related to absentee voting:

3. NEW Regulation – Mandatory Intelligent Mail Barcodes on Absentee Ballot Envelopes: The State Board’s action creates an entirely new regulation. It requires that outer mailing and return envelopes for absentee ballots include an Intelligent Mail barcode (IMb) that is unique to the voter. The Intelligent Mail (IMb) barcode is a 65-bar Postal Service barcode used to sort and track letters. When General Registrars choose the option to print three absentee labels in VERIS, the IMb unique to each voter is printed. The new regulation also requires the same absentee envelopes to include the Special Insignia for election mail provided by the United States Postal Service (USPS). ELECT is required to provide the insignia to General Registrars. The USPS offers three sizes which can be found on the [Absentee Voting page of Forms Warehouse](#) under “USPS Information.”
4. 1VAC20-70-20 – Material Omissions from Absentee Ballots: The State Board’s action amends this regulation to add new sections numbered (F) and (G). The effect of the amendment is if a General Registrar receives an absentee ballot in the mail after

Election Day but before noon on Friday that does not have a postmark, or the postmark is missing or illegible, the ballot can be counted. The missing or illegible postmark is not a material omission.

5. NEW Regulation – Mandatory Logic and Accuracy Testing for Electronic Pollbooks: The State Board’s action creates a new regulation. If a locality is using electronic poll books (EPBs), the locality must complete testing on the units by 12:00 p.m. noon on the day prior to any election and certify to ELECT that all EPBs were tested.
6. 1VAC20-60-50 – Overfull Optical Ballot Scanner: The State Board’s action amends this regulation to clarify procedures for clearing an overfull optical scan machine, especially as it relates to pre-processing mailed absentee ballots and in-person absentee ballots during the early voting period.

The following chapters of the Handbook have been updated to reflect these changes.

- Chapter 4 Voting Equipment
- Chapter 7 Absentee Voting

**Action Items:** For the regulation changes

1. ELECT will no longer print Voter Photo IDs. Use of the Voter Photo ID equipment in locality offices can be discontinued.
2. Note that all of ELECT’s guidance and materials on acceptable ID has been changed to match the new law. Please use these materials and guidance in answering questions for voters and training Officers of Election.
3. For each of the two new requirements:
  - a. Ensure that all absentee outer mailing and return envelopes include an IMb unique to each voter. IMbs compliant with this regulation can be created simply by choosing the option to print three absentee (AB) labels from VERIS. If you currently only print two AB labels from VERIS, please see section 3b below for instructions for changing to print three.
    - i. If, like many localities, you have already begun printing AB labels and have utilized the option for printing two, ELECT is currently developing a solution to allow your office to print only the one additional necessary label. ELECT expects that solution to be available in early September and will provide more information at that time.
  - b. Steps for changing from printing 2 AB labels to 3
    - i. Hover over “Administration” on the top right of the menu bar in VERIS.
    - ii. From the dropdown, hover over “System.”
    - iii. Click on “System Preferences.”
    - iv. Click on “Generate Intelligent Mail Barcode for Returning Absentee Ballot Labels.”

- c. There are many options for ensuring absentee envelopes include the Election Mail logo. The new envelope design from ELECT includes the required logo. If you are using old envelopes, the logo can be added by a stamp, printing the logo on using your own printer, or asking your envelope vendor to print the logo on the envelopes you have in stock. The USPS provides the logos in three sizes. All three can be found on the [Absentee Voting page of Forms Warehouse](#) under “USPS Information.” If you are not using the new template from ELECT, please ensure the USPS has reviewed and approved your mailing envelopes.
4. If your office receives an absentee ballot in the mail after Election Day but before 12:00 p.m. noon on the Friday after the election, and the postmark is missing or illegible on that mailed ballot envelope, that ballot can still be counted if there is no other reason to reject that ballot. This does not apply for ballots that are delivered by the voter to the General Registrar’s office. Ballots delivered by the voter must still be received by the General Registrar by the time the polls close on Election Day.
5. If your locality uses electronic poll books, each unit must be tested by 12:00 p.m. noon on the day before the election, and you must certify as having completed testing to the Department of Elections. ELECT will send instructions on the process for certifying. The process will be similar to certifying Logic and Accuracy testing on voting machines.
6. Ensure your locality has enough appropriate containers to move ballots from an overfull optical scan machine, especially during the mailed absentee pre-processing and in-person absentee period. If ballots that have been run through the voting machine do need to be moved to a new container, make sure to follow all of the protocols in the amended regulation and ensure proper chain of custody.

## CONTACT

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