

# VFAF Virginia Pre-Election Observation Report

## 5 September 2021

### Introduction

Virginians for America First, in coalition with like-minded organizations, is dedicated to promoting fair and transparent elections. We recognize that public faith in the integrity and fairness of elections has decreased significantly in recent years. To gain a deeper understanding of the issues and factors that have driven this decline in confidence, the VFAF deployed teams of election observers in August 2021 to interview election officials across the state.

In Virginia, elections are administered by the State Board of Elections, through the state Department of Elections. In each city or county there is a local Board of Elections for oversight, and a registrar to manage local administration. Our observation in August was primarily focused on registrars, although in some cases, members of the local Board of Elections were also present during the interviews.

In total, 29 interviews were conducted during the first reporting period, covering more than 20% of the 133 cities and counties in the state. In Fauquier, and Orange Counties the registrars politely declined to be interviewed; while in Surry, Franklin City, Rappahannock, Roanoke County and Brunswick registrars declined to be interviewed in person, but said they would be willing to answer written questions (two submitted brief written responses to the survey questionnaire which are posted on our website, but not included in this report).

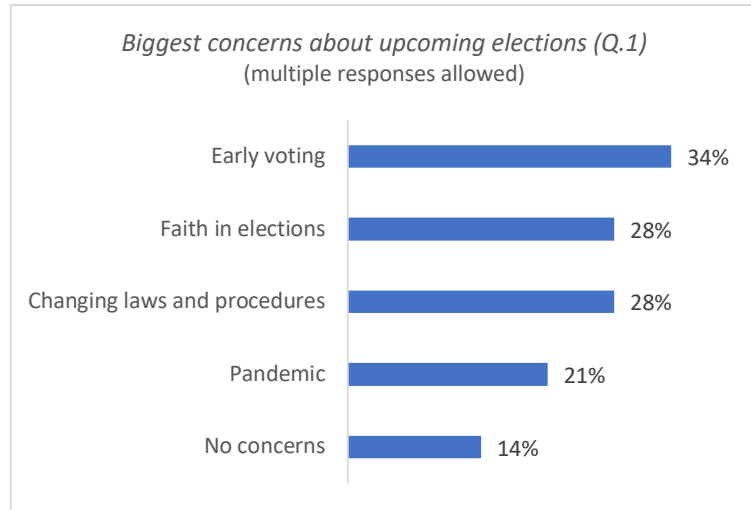
The interviews were conducted using a structured questionnaire, so each registrar was responding to the same questions. This following report summarizes the findings of these interviews, and also includes some analysis as to why certain electoral practices may undermine public confidence in Virginia's election processes.

### 1 Biggest Concerns

The most common concern expressed by the registrars was related to the expansion of early voting, the need that created for more staff, and the lack of funding for these new responsibilities. Many also mentioned their concern that the changes to the absentee process in 2020 had contributed to a general loss of faith in the integrity of the election process among voters, and they worried that would affect their work in the upcoming elections. One registrar cited their use of Dominion voting software as a factor undermining confidence in the voting process.

Also mentioned often was frustration with rapidly changing laws and procedures (one noted there were 61 changes in 2020, and 69 in 2021).

Registrars noted that the changes were often vaguely worded and open to interpretation, and that the lack of guidance from the Department of Elections on implementation of these changes complicated their work. One said the process was becoming too complex to implement. Associated with these remarks was concern that they lack sufficient financial and human resources to effectively implement the changes. In one case, the Chairman of the Election Board, who was present during the interview, refused to allow the registrar to respond to the question.



### Analysis and Recommendations

*The Election Season* – With the newly enacted changes to the election law, Virginia now has one of the longest early voting periods in the nation. This massive expansion from an election day to an election season negatively impacts the administration and integrity of the election process. The 45-day election season puts a huge additional burden on already stretched election administrators, creating fragility in the election process. The extended election period also requires hiring seasonal workers to manage the increased workload; but these workers are not subject to the political parity requirements of regular election officers.

Although political parties can generally organize pollwatchers for an election day; organizing and deploying them for 45 days, and nights, is not possible. Consequently, much of the election is not observed or observable, and this lack of transparency decreases public confidence in the integrity of the process.

The long election season advantages incumbents and the wealthy, because they have the resources to campaign over a long period. Political newcomers, particularly minorities and women, may have fresh ideas, but lack the money needed for extended campaigns. Because of the extended election period we are likely to see an increase in the percentage of incumbents re-elected, and a sharp decrease in representatives elected who are not wealthy or come from privileged backgrounds.

To strengthen public confidence in integrity of the election process, and to strengthen the quality of democracy and representation in Virginia, the legislature should revert to a single election day.

*Changes in Laws and Procedures* – Election professionals are well aware that late changes in laws and procedures before an election always create confusion and fragility in election

processes, and undermine public confidence in election integrity, and consequently should be avoided. Unfortunately, Virginia has elections every year. To provide election administrators adequate time to prepare new procedures, and inform the public of the changes, legislators should endeavor to schedule the entry into force of new election laws and procedures for January 1<sup>st</sup> of the following year.

## 2 Readiness for November Election

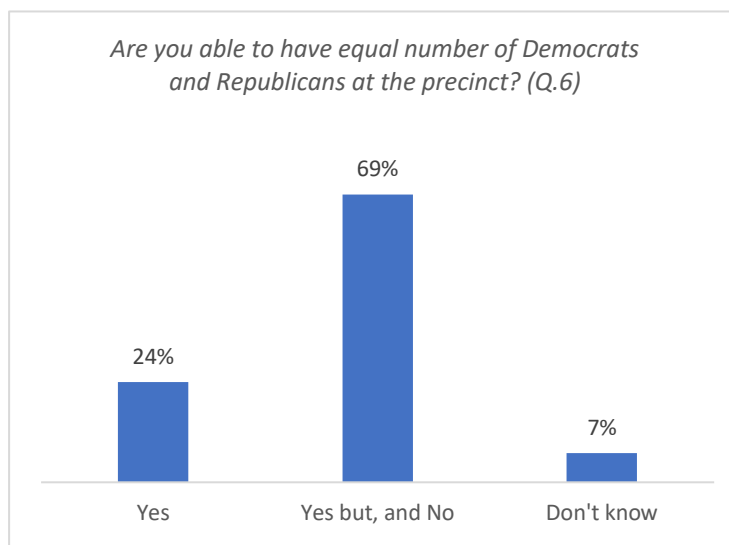
Regardless of their previously expressed concerns, all registrars said they have the resources, equipment, personnel and training needed to run an effective election this November.

## 3 Partisan Representation in Election Administration

To reassure voters and political parties that elections will be conducted fairly for all, Virginia seeks to achieve mixed partisan representation in election offices at every level from the State Board of Elections to the precinct level polling officials. At the county or city level, the Board of Elections should have two members from the party of the current governor, and one from the opposition party.

Registrars and Assistant Registrars are considered non-partisan civil servants, but when recruiting election officers, are required to hire equal numbers of Republicans and Democrats, if possible (it is important to note that this requirement does not apply to temporary staff hired to manage the increased workload associated with the extended early voting period). Local party units can send lists of candidates for election officer, but if they fail to submit sufficient candidates, the registrar can hire officers directly as independents, or ask them to serve for an under-represented party.

We asked each registrar if their local Board of Elections had two Democrats and a Republican, and they all said yes. We then asked them if they were able to hire equal numbers of election officers from each party, and responses varied significantly. Although this was a yes or no question, about a fifth of registrars said yes, but then qualified their response (usually indicating that they had tried to achieve balance, but been unable to).



After analysis, we find that just 24% of registrars were confident they had achieved partisan balance, while 76% were not able to hire equal numbers of Republicans and Democrats, or were unsure. Not every registrar mentioned

who they had difficulty finding, but of those that did, most were unable to hire enough Republicans, but in two heavily Republican counties they were unable to hire enough Democrats.

According to the registrars, parties are supposed to send lists of candidates, but often fail to do that. To make up the numbers needed, registrars directly recruit election officers, allowing them to declare their political allegiance when hired. According to one registrar, in today's politically polarized environment, many recruits are reluctant to publicly align with a party, and declare themselves independents. For sensitive operations that should be overseen by both parties, registrars will sometimes ask election officers who are independents or adherents of a different party to serve as the representatives for an under-represented party.

### Analysis and Recommendations

Partisan representation in staffing is intended to be the foundational safeguard in Virginia elections; but is, as currently implemented, is ineffective at ensuring confidence in the integrity of the process.

Specific weaknesses include uneven application of the principle. For example, certain sensitive processes can only be conducted in the presence of representative workers from both parties, unless a registrar or assistant registrar is present, in which case the assumption is made that this official is by nature neutral, so the process can be conducted without witnesses. Also, temporary election workers are exempt from the requirement to hire based on party affiliation.

The system also breaks down because partisan representation is not actually required. Registrars are only required to try to achieve balance, and are dependent on the parties to forward suitable candidates, and the parties often fail to do their part.

Reform of this system can be done in several ways. Virginia could shift to a neutral and non-partisan election administration structure, where safeguards are provided by enhanced transparency and increased opportunities for partisan pollwatchers and non-partisan observers to oversee critical processes. Alternatively (and probably more realistically in the short term), the State Board of Elections could make policy changes to address the uneven application of the partisan principle, and political parties (particularly the Republican party) could be encouraged (or required) to meet recruitment targets.

## 4 Engagement of Election Boards

We asked how engaged the election boards were with the election process throughout the year and all respondents said they were very engaged. Many also commented on the very positive working relationship between the boards and the registrar's office (one said her board is "Awesome!").

## 5 Voter List Updates

We asked registrars how often their voter list was cleaned (updated to remove the dead and those who had moved out of the area), and about half said yearly and the other half said constant or monthly. Most relied on the state for this process, but some used information from the Bureau of Vital Statistics, local obituaries, and other sources to update their list.

We asked how often registrars had access to the National Change of Address list, so they could strike off voters who had moved out of state, and it was explained to us that this is done at the state level every year, usually in the summer.

There have been allegations that fraud occurred in mail-in voting during the 2020 national elections; and that an indication of this type of fraud would be many individuals registered at a single address. To investigate the potential for this type of fraud in Virginia, we asked registrars how many households in their area had more than seven individuals registered at the same address, and most said there was no way to know. A few mentioned that the only time they saw this was with assisted care facilities. None mentioned this as a potential problem in their area.

When we asked registrars if they were confident their voter file is accurate and up to date, about three-quarters said yes, and a quarter had doubts. Comments from the doubters included: “*Voter registrations systems are antiquated considering commercial abilities to track residents*”, “*too many glitches*”, “*too much information missing*”.

*Citizenship* – As the non-citizen population of the United States grows, and standards for voter identification are weakened, there is increasing anxiety among citizens that non-citizens may be voting illegally and affecting the outcome of elections. During our survey we asked several questions to gain a deeper understanding of how registrars confirm that enrolled or prospective voter registrants are actually qualified citizens.

The clerk of the court in each area maintains a list of people who have declined to serve on a local jury because they were not US citizens, and we asked each registrar if they ever been forwarded that list so they could cross-check it with registered voters, but only three had ever received the list, one three years ago, one in 2010, and one “not in years”. Several suggested it would be illegal to check a voter’s citizenship in this way.

We then asked how they confirm that registrants are citizens, and learned there is no verification process. Registrants simply check a box on the form to indicate they are citizens (one registrar referred to this as the “honor system”). Several registrars mentioned that they are not allowed to check a registrant’s citizenship status.

### Analysis and Recommendations

Internationally, one of the fundamental objectives of voter registration processes is to reassure voters that only qualified citizens will be able to vote. This is done by requiring proof of identity and proof of citizenship at the time of registration and that the non-qualified. Unfortunately, Virginia does neither of these for its voter registration process, and consequently a significant portion of the population believes that large numbers of unqualified people vote in every

Virginia election. To address this the Virginia legislature must modify the law to require effective identification and proof of citizenship for voter registration.

The process for updating and maintaining Virginia's voter roll is ill-defined and opaque. The number of people on the list is known to be much greater than the actual number of qualified voters, but it is difficult for civic organizations or ordinary citizens to quantify the error exactly, as Virginia makes access to the list extremely difficult. Bloated voter rolls enable several forms of fraud, including impersonation and ballot box stuffing, and diminish voter confidence in the integrity of the election process.

To restore voter confidence, the Department of Elections should study international best practice in voter registration, and make a proposal to the legislature for a bill that would reform our process in line with those standards. In the near term, the Department should make its registration processes more transparent, and reduce restrictions and the cost of access to the voter roll.

Typically, in other countries and some states, the voter roll can be had for the cost of reproduction (for electronic files this cost is nominally zero), but Virginia charges up to \$20,000, and then limits the use of the roll. To quantify current error in the roll, to enable targeted reforms in advance of the 2022 and 2024 federal elections, we recommend that civic organizations conduct a comprehensive audit of Virginia's voter roll in early 2022.

## 6 Voting Machines

Doubt about the accuracy and integrity of voting machines is common among voters of both major parties, so we spent some time learning about their use in Virginia's elections. There are, reportedly, five types of machines in use in Virginia, but we encountered only four during our interviews:

- 18 - ES&S DS200;
- 5 - Dominion ImageCast Evolution;
- 4 - UNISYN OpenElect Voting Optical Scan; and
- 2 - Hart Intercivic.

Logic and accuracy tests are done before each election (sample ballots are run through the machines to confirm they are reading and counting accurately). All of the tests are done in the presence of the election board. About a third are conducted by the board itself (which received training from the vendor), a third by locally-hired technicians, and a third by the vendor. Representatives from the major political parties are invited to attend this process, but often don't show up.

When asked if the voting machines are ever connected to the internet, all registrars said no, with some saying the machines were not capable of that. We then asked how they are updated, and in general the response was that they are updated by the vendor or the state with a thumb drive.

## Analysis and Recommendations

Many Americans (possibly most) distrust voting machines, and this distrust is also common among the senior leadership of America's political parties (although few Democrats have spoken on this issue recently, many are on record—including the current Vice President and the Speaker of the House—expressing distrust of voting machines prior to the disputed 2020 presidential elections).

Virginians also distrust voting machines, and perhaps for good reason. Vulnerabilities, which can be found easily through a simple web search, have been discovered in all of the machines used in Virginia (see examples for the ES&S DS 200 in the text box on the right).

While registrars say the machines are never connected to the internet, some do have that capability. And although much focus has been placed on the internet as an avenue for hacking, these machines are also vulnerable through the thumb drives used to update ballots and download results, and to malfeasance by technicians working on the machines (for example, the Secretary of State in Arizona recently decertified machines that had been audited out of concern that they might have been undetectably altered to favor a particular candidate or party during the audit process).

Voting machine processes are opaque, and cannot be effectively observed by poll watchers or election officers, so those who lose elections will always have doubts about the fairness of the process. Ultimately, the only way we can restore trust in Virginia's elections is to revert to an open and transparent manual polling process, that poll watchers, election officers, and ordinary voters can see, understand and verify.

A primary objective of election administrators must be the conduct of a process that voters view as accurate and fair, and results in installation of representatives that voters are confident were legitimately elected. Manual voting and counting is cheaper and faster than the current machine-based process, but even if it were more expensive or slower it is preferable, as it is the only process that generates that level of public confidence in the integrity of the process. For this reason, we recommend that the Department of Elections review international best practices in manual elections (Canada provides a good example), and prepare a plan for the legislature for reversion to a manual election process.

### Links on DS 200 Vulnerabilities

Recent overview of vulnerabilities

<https://uncoverdc.com/2021/08/03/vulnerabilities-of-the-ess-ds200-vote-tabulator/>

2016 report

<https://www.auditelectionsusa.org/2016/12/12/ess-ds200-wireless-vulnerabilities/>

August 2020

<https://wyliberty.org/blog/election-security-standards/which-voting-machines-are-used-and-how-they-are-compromised>

A 2019 report on electronic voting machines (EVM) from RiskBased Security (requires log in)

<https://pages.riskbasedsecurity.com/2019-year-end-vulnerability-quickview-report>

And an RBS update from 2020

<https://profitapp.net/wp-content/uploads/2021/01/2020-Q3-Vulnerability-QuickView-Report.pdf>

Covers several machines

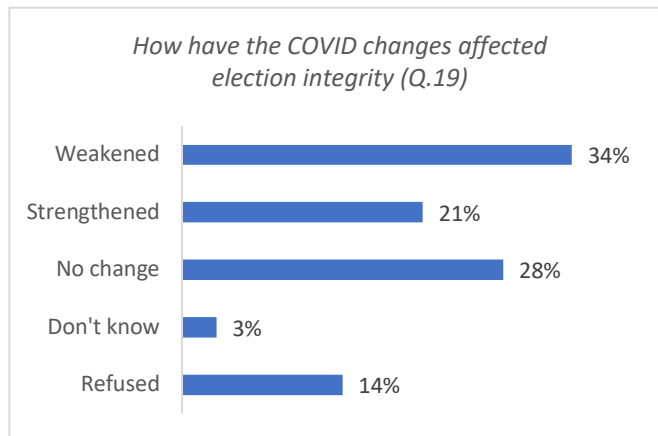
<https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials>

## 7 COVID and Election Processes

Changes in election procedures were introduced in Virginia last year in response to the COVID pandemic, and many people believe these changes weakened election integrity, so we asked registrars for their views, as election professionals, on this issue. We had more variation in response for this question than any other.

One-third of respondents said the changes weakened integrity; primarily because of the increase in absentee ballots that required no ID or witness signature, but one registrar also mentioned concern that independent groups were soliciting citizens to vote absentee.

About a fifth said that the COVID changes had strengthened integrity by expanding opportunities to vote, and protected voters from COVID (neither of which are actual comments on integrity), and one said that it strengthened integrity because the process was “*tested and verified, with checks and balances in place*”.



Slightly more than a quarter said there was no change in integrity, with one noting that process changes added to their workload, and another saying the changes confused voters. One responded “don’t know” if it weakened integrity, but worried that without a witness signature it would be difficult to know if an absentee ballot is legitimate.

Finally, four respondents provided no answer, with one stating she wanted to remain non-partisan. This was interesting in that it suggested that at least some people felt that the “correct” response was dependent on party affiliation.

*Drop Boxes* – The use of supervised and unsupervised drop boxes for absentee ballots increased dramatically in response to the COVID pandemic, due to fear that in-person voting would contribute to the spread of the disease. In the event, this fear proved unfounded, and the use of drop boxes became controversial across the country and in Virginia, as many argued that unsupervised drop boxes enabled fraud. To gain a deeper understanding of how drop boxes are used in Virginia, we asked registrars about the chain of custody procedures for drop boxes in their area.

Two-thirds of those surveyed did not use unmonitored drop boxes. They typically only accepted absentee ballots for drop off inside their office during normal business hours. The other third had external, unmanned drop boxes monitored by video, or placed in rec centers or libraries or in one case at the Sheriff’s office, where the staff there could see them during open hours. Most of those that had video surveillance of external boxes never reviewed the tapes, and those that did, did not invite pollwatchers to review the tapes.



*Private Election Funding* - In the 2020 elections Mark Zuckerberg's Center for Technology and Civic Life (CTCL) sparked controversy across the country by providing funding directly to local government election administrators, ostensibly to help them manage the negative impacts of COVID on the election. Because the funding was allocated and distributed through a non-transparent process based on applications from local officials, rather than being distributed on a per capita basis evenly across the state, some argued it could be seen as a bribe or attempt to influence local election administration. Others argued that it was largely distributed in Democrat-leaning areas, and was an unfair effort to use local governments to increase overall Democratic turnout (in Virginia, according to one [analysis](#), almost 90% of CTCL went to Democrat-leaning counties or cities).

To gain a deeper understanding of the role this funding played in responding to COVID concerns, we asked registrars if they had received any CTCL funding, and if yes, what it was used for. A third of our respondents had received funding from CTCL. Not all reported how much they received, but of those that did, Appomattox was least with just \$9500, while Henrico was the most at \$411,000. They used the money to: *modernize the office, buy poll pads*, and in Henrico to pay for *training, equipment, and PPE*. Sixty percent of those interviewed had not received any CTCL funding.

### Analysis and Recommendations

Some argue that voting should be easy, but there's also an argument to be made that every citizen has a civic duty to vote if they can. We believe there should be no significant barriers to voting, but that initiatives aimed at making voting easier at the expense of election integrity are counterproductive. No excuse absentee voting and the extended early voting period are two such measures that should be abandoned.

It is well known by election professionals that all absentee voting is more susceptible to fraud than in-person election day voting. For this reason, countries and states generally limit absentee voting to a small number of people with a genuine need. Virginia, by expanding the option of absentee voting to everyone, while at the same time removing some of the integrity measures for absentee voting, has both damaged the integrity of the voting process, and undermined public faith in the democratic legitimacy of elected representatives.

The extended voting period also sacrifices confidence in integrity to convenience. The extended period decreases the transparency essential to confidence in elections by making effective observation of the whole process impossible. Parties are unable to deploy pollwatchers for the entire 45-day period, and even if they could, there are long periods (nights and weekends) when election materials are out of sight.

Video coverage of external drop boxes is meaningless as an integrity measure unless party representatives have the right to review the tapes. The Department of Elections should issue a directive clarifying the right of party and candidate representatives to review all drop box video, and should consider live streaming this video for the public at large.

Drop boxes have allegedly been used to facilitate ballot harvesting and impersonation, and consequently the use of drop boxes damages public confidence in election integrity. The Department of Elections should issue instructions to minimize or eliminate the use of ballot drop boxes in Virginia.

To restore confidence in the integrity of Virginia’s election process, the Department of Elections should prepare draft legislation that ends advance voting, and limits absentee voting to those with a genuine need.

## 8 Enhancing Election Transparency and Increasing Civic Participation

To strengthen public confidence in the integrity of the election in Virginia will require more transparent processes. Internationally, in both established and developing democracies, transparency is enhanced by rules that allow both partisan observers (pollwatchers) and non-partisan observers. In Virginia (as in most other states), the law privileges pollwatchers with the right to observe election processes; with non-partisan observers only allowed at the individual discretion of local registrars and election boards.

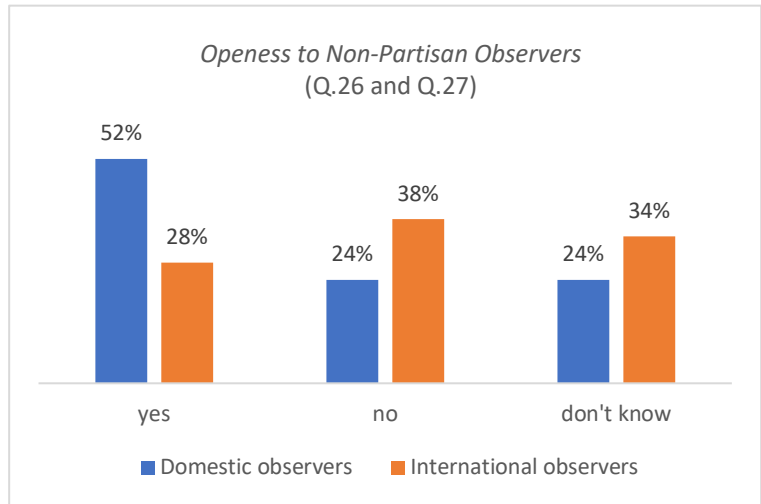
Relying solely on partisan observation contributes to polarization and conflict, as each pollwatcher is assumed to represent the interests of their party; but this can be mitigated by the addition of non-partisan observers, who are present to represent all voters, and dedicated above all to a fair process for all parties. Limiting the right to observation to only partisan representatives decreases opportunity for broader public participation in democratic processes beyond voting. For example, independent voters are a plurality in the US (40%) but have no role in election observation. Likewise, civil society organizations in Virginia that don’t want to be linked to any particular political party—like church groups, sports leagues, or civic groups—can play no role in election integrity; while in many other countries such organizations form the backbone for non-partisan election observation.

We would like to increase public participation in, and ownership of, election processes, through non-partisan observation. This would supplement and reinforce, not replace, partisan observation. We recognize this cannot be codified in law in Virginia before the upcoming elections. Nevertheless, we asked some questions of registrars about their openness to inviting increased non-partisan participation, as this would be a reform priority in 2022.

Virginia’s election law allows high school students to work in elections (but not handle ballots) at the discretion of the registrar. These students are called “pages”, and these programs are often put together by high school government teachers as a form of civic education. When we asked registrars their thoughts on such programs, almost 60% said they were open to having an election day page program, or already have one. About a quarter (28%) of our respondents said they were not interested in an election page program, and the rest were unsure. Most who said “no” to a page program thought it would be more trouble than it is worth.

Half of registrars would allow non-partisan observers, a quarter said no, and a quarter were unsure. A few of those who said “no” cited space or training concerns (most gave no reason). Most of those who were unsure said they would need to check with the election board.

Only about a quarter of registrars were will to accept international observers, while about a third said “no”, and another third were unsure (again most would refer this decision to the election board).



*Pollwatchers for In-Person Absentee Voting* – We asked registrars if they had notified party chairs that they had the right to send pollwatchers to their office every day it is open to receive in-person absentee ballots. At the time this question was drafted, we believed that pollwatchers would have the same rights to observe during the in-person absentee voting as they do on the normal election day, but since then several people have questioned this assumption.

Our confusion on this issue was mirrored by the registrars, with 55% saying they had notified the party chairs, and 28% saying that had not notified the party chairs. Of those who had not notified the party chairs, about half said observers were welcome, one said they didn’t have space for observers, and several said they didn’t have to notify the chairs. The rest responded “don’t know”, with several questioning if that is a requirement.

### Analysis and Recommendations

To enhance transparency, and enable increased participation by an underrepresented plurality of the population, the Department of Elections should prepare draft legislation that empowers non-partisan observers with the same rights and responsibilities as partisan poll watchers. To strengthen civic education in Virginia, the legislature should revise the election law to allow 17 year-olds who will be eligible to vote in Virginia in the year following an election, to work any election as a paid election officer. Finally, the Department of Elections and the State Board of Elections should clarify that, as long as we have an early voting period, pollwatchers will have all the rights and privileges to observe critical processes as they do on election day.

### List of Counties/Cities Surveyed

1. Appomattox
2. Buckingham
3. Culpeper
4. Emporia

5. Franklin
6. Goochland
7. Greensville
8. Hampton
9. Henrico
10. Henry
11. Isle of Wight
12. Lancaster
13. Loudoun
14. Louisa
15. Madison
16. Mecklenburg
17. Middlesex
18. New Kent
19. Northumberland
20. Patrick
21. Petersburg
22. Pittsylvania
23. Prince Edward
24. Pulaski
25. Radford
26. Richmond
27. Virginia Beach
28. Williamsburg
29. York