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**MEMORANDUM**

**FROM:** Dominick Schirripa, Vice Chair

**TO:** Arlington County Electoral Board  
Arlington County General Registrar  
Arlington County Deputy General Registrar

**DATE:** May 14, 2024

**RE:** Procedures for facilitating partisan affiliation of interested Officers of Election

Pursuant to the resolution of the Electoral Board at its meeting of April 11, 2024, I was tasked with reporting back to the Board at its May meeting (to be held May 20, 2024), concerning options and recommendations for how the Electoral Board and the Office of Elections might facilitate the efforts of the two major parties in recruiting and nominating Officers of Election who are affiliated with one of those parties.

[Virginia Code §24.2-115](#) states that “if practicable, officers [of election] shall be appointed from lists of nominations filed by the political parties entitled to appointments.” Further, that section requires parity in the number of officers appointed from each of the political parties (“The representation of the two parties shall be equal at each precinct having an even number of officers and shall vary by no more than one at each precinct having an odd number of officers.”) Pursuant to [Opinion of the Attorney General No. 23-031](#) (issued to Del. John J. McGuire, III, dated October 2, 2023), the requirement of parity is a primary policy goal, but is subject to practicability. Where the parties do not provide lists, either in a timely manner, or at all, the requirements are not triggered. In such cases, and where it is not practicable to staff an election according to the parity dictates of Code, the Electoral Board may appoint and assign officers of election who are not affiliated with either political party. See also, [Opinion of the Attorney General No. 06-058](#) (issued to Hon. Jean R. Jensen dated September 15, 2006).

Further, [Virginia Code §24.2-115](#) requires the Electoral Board to appoint one Chief Election Officer and one Assistant Chief Election Officer for each precinct, and requires that the assistant chief not represent the same political party as the chief officer, again, if practicable. Where an officer of election not affiliated with either political party will be appointed as the Chief or Assistant Chief Election Officer, the Board is required to provide the political parties with notice

of the intention to appoint such unaffiliated individuals at least 10 days prior to the election “so that each party shall have the opportunity to provide additional nominations.”<sup>1</sup>

Given these legal requirements, it is clear that the political parties bear the primary onus of recruiting and nominating officers of election who will be affiliated with their parties such that the Electoral Board may then act pursuant to the Code. However, given the potential for party failures to have serious ramifications to the good working order of elections, including by forcing the Board to appoint individuals without prior election experience to precinct leadership positions for which they are unqualified (see, e.g., the situation in Prince William in 2022 where new election officers, who had not previously been appointed, were required to be appointed and assigned a mere six days prior to Election Day), it is in the Board and the Office’s best interests to attempt to facilitate the parties in maintaining lists numerous enough to ensure smooth and successful elections that accord with the Virginia Code, to the extent such facilitation can be done without undue burden on the Board or the Office, and to the extent such facilitation will not otherwise negatively affect the ability of the Board and the Office to properly staff and conduct elections as required by Virginia law.

While facilitation would appear to be a single question (“Whether and how the Board will facilitate affiliations?”), in the present circumstances, it is actually three questions based on three populations of individuals and the timing/elections for which the facilitation will be pursued. Therefore, I break the remainder of the memorandum into three parts to address three distinct “who and when” questions that are presented. First, I address those who are not currently officers of election but might apply to serve in the future. Second, I address the group of officers of election who have already been appointed for terms running through February 28, 2025. In this category there is a further distinction as to timing – whether and how to facilitate affiliation for those in this group who will be reappointed to new terms commencing March 1, 2025, and running through February 28, 2026, and whether and how to facilitate affiliation for this group in advance of the November 2024 election.

## Facilitating the affiliation of future Officers of Election

### *Officer of Election Applications*

Currently, Arlington has prospective officers of election apply for the position via the Department of Election’s (ELECT) standardized application available on ELECT’s website.<sup>2</sup> That application does not provide a way for an applicant to even express an interest in representing one of the two major political parties. As such, when such applications are forwarded to the Office of Elections, those applying are appointed as unaffiliated election officers (assuming they

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<sup>1</sup> In an [Order issued on November 2, 2022](#) in *Republican Party of Virginia v. Prince William County Electoral Board*, No. CL2208769-00, the Circuit Court of Prince William County issued a preliminary injunction that required the Prince William Electoral Board to appoint new officers of election nominated by the Prince William Republican Party and to appoint them as chiefs or assistant chiefs in certain named precincts where unaffiliated officers of election were slated to serve in such positions. The Court did not appear to take into account any factors other than that unaffiliated officers were to be appointed and that the Republican Party had nominated additional individuals (e.g., it did not discuss whether the officers nominated were qualified to serve as officers of election, whether they were qualified to serve in precinct leadership, or any other factor that might make it “impracticable” to make the appointments). As the order concerned a request for injunction and was not further pursued or appealed, it is unclear to what extent this would be persuasive precedent in other circuit courts.

<sup>2</sup> <https://apps.elections.virginia.gov/OnlineForms/OfficerofElection>

otherwise meet the requirements to serve). To be nominated by a party, and to be appointed as a representative of a party, a prospective officer of election must both contact the local party committee and also submit the standardized application. This has created some logistical issues – the parties have nominated individuals who contacted them wishing to be affiliated officers of elections who wind up not being appointed because they failed to submit the ELECT application to provide the information needed to confirm that they are eligible. Though, no such instances are known to the author, presumably there are also those who apply via the ELECT website and wish to represent a party, but wind up as unaffiliated officers because they are unaware that they need to contact their party committee in order to affiliate with the party.

Other jurisdictions (but by no means all) have “decoupled” from the ELECT application and developed their own locally-hosted applications. Many of these jurisdictions (Fairfax and Alexandria among them) include in the application a question asking the applicant if they wish to affiliate with a party and/or wish to have their information forwarded to the relevant party committee for purposes of affiliation.

The author understands from the Deputy Registrar, that creating (or copying from another jurisdiction) a separate application form that would include an affiliation question, along with the recordkeeping that would be involved, would not be unduly burdensome. The Office currently uses Airtable for certain functions, including some of its election officer management. The Deputy Registrar has indicated that creating a distinct Arlington application through Airtable should be possible.

Decoupling the Arlington application from the state appears to be a fairly easy, non-burdensome step that we could take to make it easier for applicants to express interest in affiliation with a party and to affect such affiliation. As noted in the proposed resolution, it the committee’s recommendation that we take this step. In conjunction with this new application, the resolution provides that the new form will replace the link to the state form on the Office’s website, and the Board and Office should communicate this new form to any local civic organizations that might currently refer interested Arlington residents to the state form.

However, the resolution also provides that the new application will be non-exclusive – meaning that we should continue to process applications submitted through the ELECT website according to current processes and procedures.

#### *Post-application Processes*

However, the application itself is only one element of the process. Applicants are not permitted to “self-identify” with a party for representation purposes, nor may the Office of Elections or Electoral Board approve an applicant’s request to affiliate. Only the local political party committee may name an officer of election as a representative of the party. Therefore, the Board and Office will need a process by which to take the responses to the affiliation question on the new application and translate it into party action and Board action.

This process has two parts: First, how to transmit the information to the parties. And, second, how, and when, the Board should act on applicants who have signaled a party preference.

On the first point, there are two options: 1. The Office proactively forwards lists of applicants who requested affiliation with the party to the relevant party chair at a predetermined regular interval (e.g., monthly on the 1<sup>st</sup> of the month) covering all applications received since the last

such list. 2. We develop a system that would allow the parties to access their list of applicants independently and on their own time and cadence.

The author understands from the Deputy Registrar that Airtable may permit us to create filters and permissions that would allow us to implement the second option – thereby placing the onus on the parties rather than the Office to evaluate an applicant’s suitability on their own timetable and under their own processes and procedures. This would appear, if feasible, to be the preferred option logistically and administratively, and would minimize the possibility of “human error” or similar failure points in the process (e.g., staff forgetting to send lists due to more highly prioritized work, etc.).

As to the second point – how the Board should proceed with a given application – the resolution recommends that we change little of our current process. The Code does not require the Board to appoint an officer of election as a representative of a political party – we need only appoint a voter as an officer of election. If a political party nominates a person who has already been appointed as an officer of election, the Board does not need to take further action to affect the affiliation of that person with the party – such affiliation becomes merely a matter of recordkeeping.

As such, regardless of the method by which applicants are transmitted to the parties, the resolution recommends that the applicants be presented to the Board at its next scheduled meeting. If an applicant requested affiliation with a party, but the party has not affirmatively informed the Office or the Board that they have approved the applicant as an acceptable representative of the party, the applicant will be appointed as an unaffiliated officer. Should the party later provide affirmative confirmation of affiliation, the Office will update the list of election officers to account for their new affiliation.

As with the recommendation on transmitting information to the parties, this course of action would minimize the burden on the Office in terms of tracking applicants. The most obvious alternative would be for the Board not to act on an applicant until the party has responded one way or the other (that they are or are not an acceptable representative). This option would increase the burden on the Office, as staff would have to keep running tabs on applicants to determine whether responses have been received and therefore, whether the Board could appoint them. In addition, such a course could create delays in making appointments and responding to applicants – one could see situations where a party fails to evaluate and applicant for several months, during which period the Board would take no action on the application, creating questions and concerns from applicants themselves.

### Facilitating the affiliation of already appointed Officers of Election

#### *Affiliation of newly reappointed officers upon acceptance of appointment*

The most straightforward issue for already appointed officers of election comes at the natural “entry point” for them – the reappointment process. Although [Virginia Code §24.2-115](#) allows the Board to appoint election officers for a term of up to three years, Arlington has traditionally made all election officer appointments for one-year terms and routinely reappoints all existing election

officers to a new one-year term at its February meeting each year (terms generally running from March 1 to the end of February of the following year).<sup>3</sup>

Upon reappointment, as upon their first appointment, election officers will receive notice of their appointment, along with a form requesting that they confirm their acceptance of the appointment, provide an initial indication as to whether they are or are not available for any elections known to be occurring during the term, and update any relevant information such as contact information or payroll-related information.

This initial contact point provides a relatively unobtrusive point at which we can provide officers with the opportunity to either seek affiliation with a party, or for those already affiliated, to change or drop their affiliation if their circumstances have changed. This information can then be shared with the parties in the same form and by the same process as is finalized for purposes of new applicants (i.e., by providing a system whereby parties can access information on their own, or by sending lists to the parties). As the reappointments have already been made by the time the questionnaire is sent out, all election officers will be appointed with their preexisting affiliation (or unaffiliated if they had no affiliation) with the parties being able to submit lists of approved representatives after the fact. The Office can then update records as in the case of new applicants initially appointed as unaffiliated pending party action.

Given the relatively ease of this method, this is the recommendation contained in the draft resolution.

#### *Affiliation of existing officers of election for the November 2024 election*

The question of whether and how to facilitate affiliations of already appointed election officers that would apply for purposes of the November 2024 election is the most difficult of the three questions presented.

The Registrar has, in a prior year, sent a communication to all appointed election officers with information on the affiliation provisions of the Code, the rules that govern this issue, and the contact information of the two party chairs, with instructions for election officers to contact their preferred party chair in order to request affiliation with party. As evidenced by the fact that neither political party in Arlington has even enough designated representatives to have one such representative at each precinct in the county on election day, that communication does not appear to have generated extensive interest.

In addition, the communication did lead to a number of questions from election officers concerned that they would be required to affiliate with a party, that they would be unable to work if they did not affiliate with a party, and other similar issues. Given our proximity to Washington, D.C., many officers of election work for federal agencies or other government employers. Rightly or wrongly, some of them have been told that they cannot affiliate with a party due to the Hatch Act; others are simply uncomfortable affiliating with a party because, as they are regularly told during pre-election training, they are supposed to endeavor to be nonpartisan and neutral

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<sup>3</sup> The exception to this practice is in the year prior to a presidential election year, with election officers typically appointed for a term running from March 1 of the year prior to the presidential election (e.g., March 1, 2023) to the end of March of the presidential year (e.g., March 31, 2024), so that appointments do not expire in the midst of voting and staffing the presidential primaries that occur at the very beginning of March.

when conducting an election. The author has personally heard these questions and concerns on a number of occasions, particularly as part of training in the lead-in to elections.

Another similar letter would appear to be the only mechanism by which the Board and the Office could directly facilitate recruitment of party representatives for the November election from the pool of existing election officers. As they were all reappointed earlier this year, they have all submitted their reappointment questionnaire and materials, so while that avenue will be open again early next year, it will not serve for this fall's election.

In the alternative, the Board and the Office could assist the parties themselves in reaching out to election officers, without the direct involvement of the Office or the Board. Specifically, [Virginia Code §24.2-115](#) requires the Secretary of the Board or the General Registrar to prepare a list of all officers appointed, and to make that list available for public inspection at the Office. In addition, each party may request, and upon payment of a reasonable charge not to exceed actual cost, receive a copy of the list including names, home precincts, and party designations or all officers. Although, [Code §24.2-115](#), does not provide for the release of contact information as part of the list, a political party is entitled to obtain a list of all registered voters in the county (or the Commonwealth), including their addresses, pursuant to [Code §24.2-405](#). Thus, a party would have access to sufficient information to contact officers of election on their own.

The primary obligation of the Board and the Office is to competently and fairly administer elections. As noted earlier, the onus for recruiting party representatives is on the parties. So, to the extent any action by the Office or the Board to assist party affiliation efforts risks our ability to properly staff and conduct an election according to law, it should give way to our primary obligation.

Given that and the difficulty of this issue, the resolution does not include any proposal for direct action. Instead, the resolution provides for further consideration of the options above and directs the Vice Chair to work with the Registrar and Deputy Registrar on potential language for such a letter, which would be sent by and on behalf of the Board (rather than under the Registrar's signature) with such draft letter being presented at a future meeting of the Board for further consideration and decision.

## Conclusion

As has hopefully been made clear, the issue presented is not nearly as simple or straightforward as it seems. Much work will remain to bring any of the ideas covered here to fruition, all amid a greatly increased workload that is the natural consequence of a presidential election. As noted, the parties bear the onus for recruiting and nominating party-affiliated election officers; the Code does not provide that where they do not provide the inputs necessary, the Board and/or the Office must step in to do the work for them. The Code also provides ample flexibility to allow the Board and the Office to conduct elections without rigid partisan rules where such flexibility is necessitated by the lack of partisan inputs.

All that said, where the Board and the Office can act with minimal burden and disruption to their own good working order and the conduct of elections, it would appear wise to do so in the name of creating a harmonious election ecosystem that avoids unnecessary appeals to legal formalities and the possibility of damaging litigation. As such, the author respectfully submits the attached draft resolution for adoption by the Board.