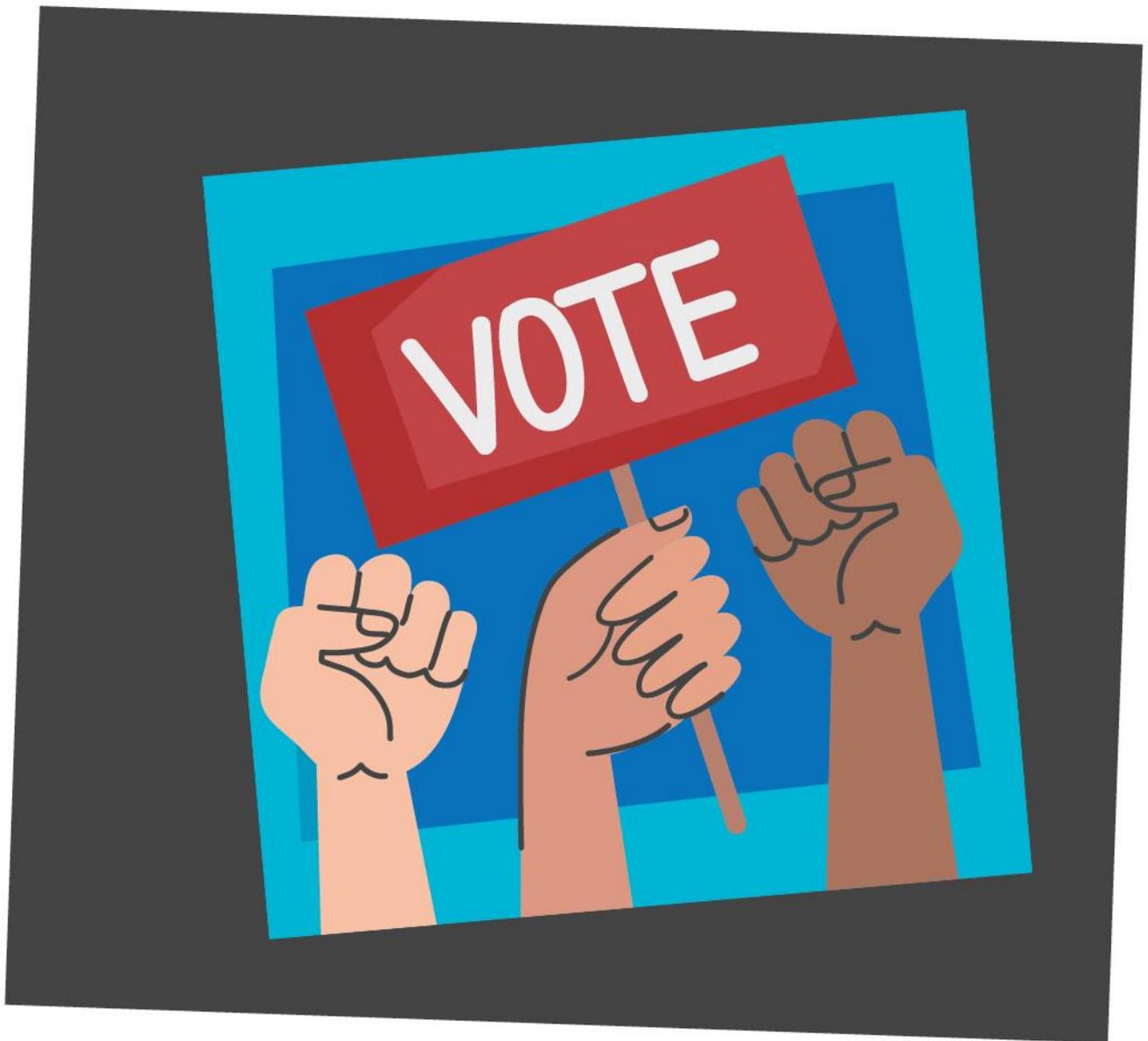


PRACTICAL GUIDANCE

Nonprofit Voter Assistance

VIRGINIA



Democracy  **Capacity**


 **BOLDERADVOCACY**
A program of Alliance for Justice

Q: How should we think about using this Practical Guidance resource?

This Practical Guidance – Nonprofit Voter Assistance resource is designed to help your organization determine how state or local regulations might apply (or not!) to your existing or proposed voter engagement and Get Out the Vote (GOTV) work in your state.

For each FAQ in this Practical Guidance, we have provided links where you can find additional information to familiarize yourself with the applicable rules.

We've also provided links to some helpful fact sheets and best practices toolkits that other organizations have created, to help you save time and avoid repeating work.



Practical Tip

- Where appropriate, we make practical suggestions about how you might make the operational task of complying with these state rules easier.



Watch Out

- Some voter engagement activities involve some measure of risk for nonprofit organizations doing the work. There are certain actions you will need to avoid, but as long as you read up on the rules before you begin, you should be able to successfully navigate these voter engagement and GOTV activities in your state.



Danger Zone

- Some activities are much more dangerous for nonprofits because the relevant rules are vague, in rapid flux, unpredictably enforced, or all of the above. It may be best to avoid including these activities in your programming, unless you have a good lawyer on speed dial to help you!
- There are also some activities that are prohibited under current law. We highlight where nonprofits are advised to steer clear.

In giving you concise and accessible information about relevant laws in your state we hope that this Practical Guidance will help you choose activities that make the most sense for your civic engagement and GOTV programming. Knowing about the details of the rules can also help you make your programs bolder, more effective, and operationally easier to carry out.

We wish you every success in your work!



Q: What federal rules do we need to remember to think about?

In addition to any state and local rules that might apply to your organization's civic engagement and GOTV work, you also always need to keep in mind the federal tax law that applies to nonprofit organizations, federal election laws that are applicable when federal candidates are on the ballot, and federal telecom rules relating to calling or texting.

IRS regulations for 501(c)(3) public charities: If you are a 501(c)(3) organization, you must always remain nonpartisan and never do or fund work that could be deemed to support or oppose candidates for public office (electioneering activities).

IRS regulations for 501(c)(4) social welfare organizations: You can support or oppose candidates for public office, but this work cannot be your primary purpose. This generally means that more than half of your work must be nonpartisan and be designed exclusively to promote social welfare.

Federal elections and voting laws: In elections where there is a federal contest on the ballot, it is a crime to knowingly or willfully pay, offer to pay, or accept payment for registering to vote or for voting. Any type of incentive can be considered a "payment" (e.g., something as seemingly innocent as giving out cupcakes) if they are tied to registering or voting. Federal law also prohibits making or offering to make an expenditure to any person, either to vote or withhold their vote, or to vote for or against any candidate. For more details see: <https://bolderadvocacy.org/resource/can-a-nonprofit-provide-incentives-to-encourage-citizens-to-register-to-vote-or-vote/>

Federal communications laws: There are many federal laws relating to how you may communicate via landline or mobile phones. We give some practical tips on how to deal with these laws in the FAQ on other GOTV activities in this Practical Guidance.



Practical Tip: Read up on how 501(c)(3)s stay nonpartisan

- **Comparison of 501(c)(3) and 501(c)(4) permissible activities:** <https://bolderadvocacy.org/resource/comparison-of-501c3-and-501c4-permissible-activities/>
- **Keeping nonpartisan during election season:** <https://bolderadvocacy.org/resource/keeping-nonpartisan-during-election-season/>
- **How to stay nonpartisan while conducting a voter registration drive:** <https://bolderadvocacy.org/resource/want-to-conduct-or-fund-a-voter-registration-drive/>
- **Social media:** It is sometimes particularly hard to recognize when social media postings might cross the line into supporting or opposing a candidate for public office. This is especially true if you are a 501(c)(3) organization affiliated with, or working in a coalition with, a 501(c)(4) organization. See: <https://bolderadvocacy.org/resource/influencing-public-policy-in-the-digital-age>



Watch Out

- **No exceptions for 501(c)(3)s:** There are no exceptions and no minimum amount of electioneering that you can do without jeopardizing your tax-exempt status if you are a 501(c)(3) public charity or private foundation!

Q: Can we put out information about how to register and vote?



Sure! Just be careful how you do it.

Practical Tip: Use official sources

- Generally, it's best to link to either the official voting authority sources in your state or city, or to a trusted aggregator of voting-related information with dedicated legal staff working to confirm the information is always current and accurate.
- It's just too easy to include a typo or an accidental miscommunication if you try to reproduce the information yourself.

Department of Elections: Virginia's elections are overseen by the Virginia Department of Elections. Their voter-facing information page is here: <https://www.elections.virginia.gov/casting-a-ballot/>

County General Registrars: Each county has its own General Registrar that oversees elections. You can find their contact information and links to their websites here: <https://vote.elections.virginia.gov/VoterInformation/PublicContactLookup>

Some counties have great information on their sites and may include well-produced voter guides, posters, or other information that you can link to. For example, Fairfax County's website has this helpful FAQ page on voting in Virginia: <https://www.fairfaxcounty.gov/elections/faq>

Election Protection: Election Protection's website <https://866ourvote.org/states/> is regularly updated and reviewed by lawyers, and lawyers staff the Election Protection Hotline available by both phone and text at 1-800-OUR VOTE (1-866-687-8683). There are also multiple assistance hotlines for non-English speakers. See the additional options available here: <https://866ourvote.org/about/>

Watch Out

- **TYPOS! TYPOS! TYPOS!** Do you really want your group to be the one that accidentally tells voters that the polls close an hour later than they do? Don't try to reproduce the information yourself. Use links to official information and established websites instead!
- **County General Registrars sometimes apply laws differently:** In Virginia each county General Registrar may have its own way of doing things. It is worth taking the time to check the websites of the General Registrars where you will be doing your work.

Q: What rules do we need to follow to run a voter registration drive?

Virginia has some very specific rules for groups running voter registration drives, and if you are going to run a drive where you collect and return applications for voters you must create strong processes to ensure you are complying with all of the rules.

The State “Guidelines for Voter Registration Drives” manual is quite comprehensive, and you should read these guidelines carefully before you begin your drive.

Virginia guidelines for conducting voter registration drives:

<https://www.elections.virginia.gov/media/formswarehouse/veris-voter-registration/voterregistrationdrives/2022-Guidelines-for-Voter-Registration-Drives.pdf>

Fair Elections fact sheet: The Fair Elections Center also has a good summary fact sheet called Conducting a Voter Registration Drive in Virginia that you can access here:

<https://www.fairelectionscenter.org/voter-registration-drive-guides>

Groups requesting 25 or more voter registration forms from the State Department of Elections or from the local General Registrar are required to certify that they have had at least one representative take the State-produced online training course.



Practical Tip

- Since you will be required in any case to train your staff and volunteers on the State voter registration rules they must follow, it is to your advantage to go ahead and do the training even if you are not officially required to do so.
- If you wish to avoid some of the rules about returning applications, you can consider running a registration drive where you help applicants check their registration or apply online, or run your drive next to a USPS mailbox so registrants can return their application themselves.



Watch Out

- **You must provide registrants with a receipt:** If you will deliver applications for registrants, you must provide them with a receipt (available on the bottom of the State application form). **Failure to provide a receipt can result in criminal penalties!**
- **You must deliver the applications on time:** Applications must be mailed or delivered within 10 days of the applicant’s signature (or by 5pm on the application deadline if the deadline is earlier) and **failure to do so can result in criminal penalties!**
- **Applications should be delivered with a cover list:** The State requests that you deliver your applications to each appropriate local General Registrar’s office with an alphabetical list of the names of the registrants included in your package.
- **Potential funder restrictions:** Some funders do not allow the use of their funds for voter registration drives. You will need to check your grant paperwork to make sure that you are using funds that are available for this work.

CHECK YOUR REGISTRATION!



Q: How can our organization help people vote by mail?

Clear and easy access to voting by mail and early voting empower more voters to exercise their right to vote, and many nonprofit organizations are eager to help voters understand and exercise their right to vote through these mechanisms. Many states have rules and regulations about what third parties – whether individuals or organizations – can or cannot do to assist voters with this task. These rules are constantly changing and come up in many different activities related to voting by mail.

Virginia permits no-excuse absentee ballot voting by mail.

Assisting with absentee ballot applications:

- Organizations may print and distribute absentee ballot applications, which may be obtained here: <https://www.elections.virginia.gov/registration/voter-forms/>
- The law is silent on whether organizations can pre-pay return postage for an application or collect and return completed absentee ballot applications.

Assisting with absentee ballots: State law is explicit that outside of very specific exceptions for disabled or ill voters, **only the voter** may return their absentee ballot, so organizations cannot collect and return absentee ballots for voters.



Practical Tip: Focus on applications and information

- Given the restrictions on helping your constituents return absentee ballots, it is worth focusing instead on getting them access to applications and trustworthy official information about the absentee voting process itself,
- The absentee voting page for voters at the Virginia Department of Elections is here: <https://www.elections.virginia.gov/casting-a-ballot/early-absentee/>



Danger Zone

- **Assisting with returning absentee ballots is not permitted!** Another person or group may not return a voter's completed absentee ballot by mail or in person unless the voter is ill, disabled, or there is an emergency.



Q: Can we help voters fix problems with their absentee ballots?

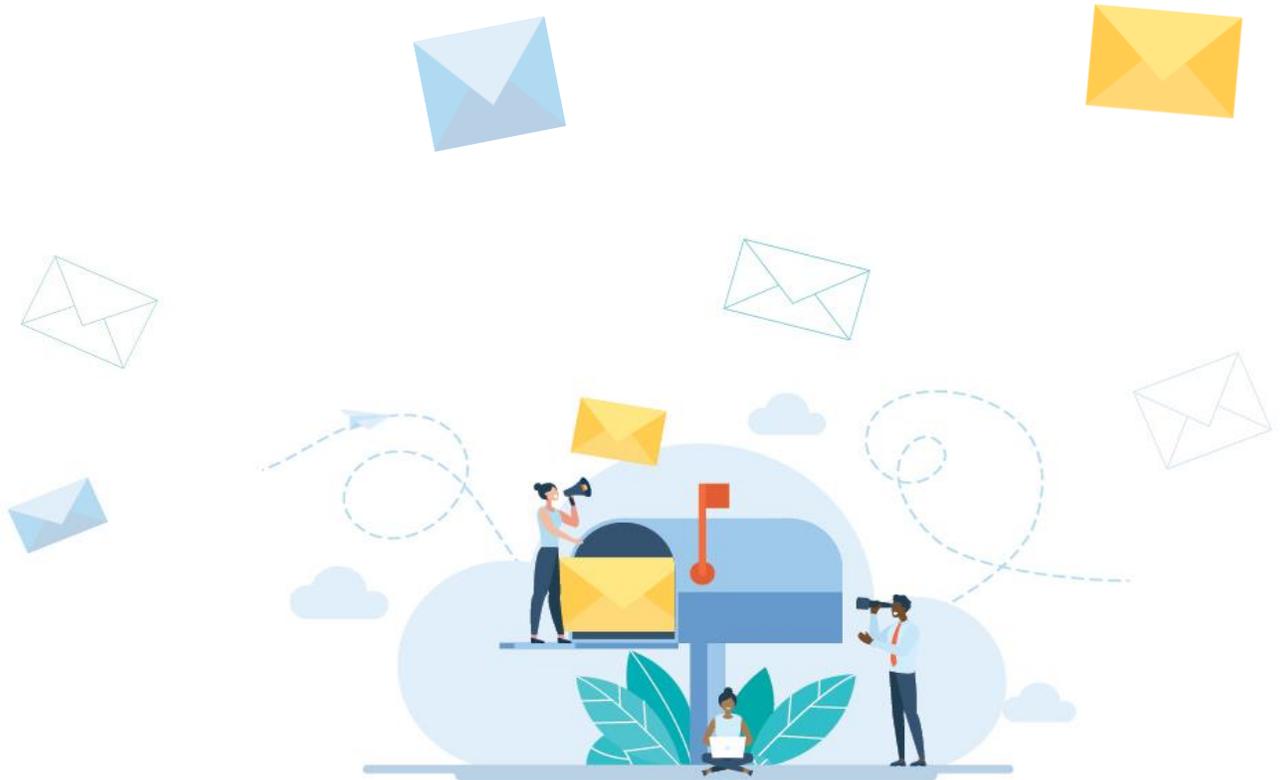
Running a full absentee ballot “cure program” (where organizations help track down voters whose ballots have been rejected and help them “cure” the ballots) can be complicated and is usually beyond the capacity of smaller organizations.

That said, it can be enormously helpful for you to educate your constituents about how to track their own ballots, and how to contact their official election official’s office if they need to cure their ballot.



Practical Tip: Use official sources of information!

- In Virginia, voters can check the status of their absentee ballot here: <https://www.elections.virginia.gov/citizen-portal/>
- The contact information for the General Registrar’s office for each county if additional information is required can be found here: <https://vote.elections.virginia.gov/VoterInformation/PublicContactLookup>



Q: Can we help with a rides to the polls program?

It is currently legal to give voters rides to the polls in Virginia.



Practical Tip: Consider partnering with existing programs

- You don't necessarily need to organize a rides to the polls program on your own. You might consider partnering with another organization that is already doing this work. Many of the major rideshare companies offer free or discounted ride codes to help facilitate voting. Other organizations also help coordinate carpools to the polls.



Watch Out

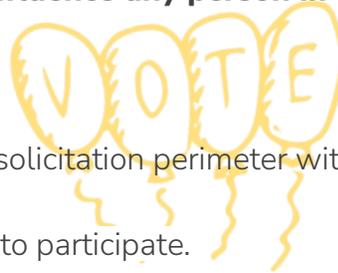
- **Staying nonpartisan:** If your organization is a 501(c)(3) public charity, all of your work must remain strictly nonpartisan. In the context of a rides to the polls program, this means you must offer rides in a nonpartisan way. You should not turn away voters because you think they are likely to vote for a particular political party or candidate. You should also avoid targeting your services to local communities based on partisan criteria.
- **Auto insurance and driver's licenses:** If you do decide to put together your own rides to the polls program you should contact your organization's insurance broker to make sure that your insurance program covers the use of staff cars or volunteers' cars for this purpose! You should of course also ensure that all of your drivers (both employees and volunteers) are themselves licensed and insured in accordance with the rules of your state before they participate in your program.



Q: How can we help voters who are already at the polls?

Many nonprofit organizations put on programming designed to provide support and encouragement for voters who may face long lines or tough weather conditions, and to make voting a fun and festive occasion. These activities are often referred to as **“line warming.”** Nonprofits participating in line warming activities need to carefully think through which state and local laws may apply to them. In today’s environment, these rules are also constantly changing, so it’s worth checking on the current status of the law before you begin planning any line warming program.

Virginia law prohibits certain activities within 40 feet of the entrance of the polling place. Prohibited activities include loitering, congregating, handing out campaign materials, hindering or delaying a voter in entering or leaving a polling place, possessing a firearm, and **“in any manner attempt[ing] to influence any person in casting his vote.”**



Practical Tips

- Stay well outside the 40-foot no solicitation perimeter with all of your line warming activities!
- Allow both voters and nonvoters to participate.
- You can call Election Protection if you need assistance with what is happening at your polling place: 1-866-OUR-VOTE (1-866-687-8683). Election Protection also tries to staff volunteer lawyers on the ground on election day who can assist in person if needed.



Watch Out

- **Special noise restrictions apply:** Virginia law prohibits the use of loudspeakers within 300 feet of a polling place on an election day.
- **Remember IRS rules still apply:** IRS rules for nonprofit organizations always apply - even to your state level work. 501(c)(3) organizations must remain strictly nonpartisan in all of their line warming activities.
- **Federal election and bribery rules may also apply:** In any election where federal candidates are also on the ballot, federal election rules also apply. See: <https://bolderadvocacy.org/resource/can-a-nonprofit-provide-incentives-to-encourage-citizens-to-register-to-vote-or-vote/>



Q: What other state rules might apply to our GOTV work?

Observers inside the polling area: Most states have fairly strict rules for what kind of observers are allowed into the polling area while people are voting, and what they are allowed to do while inside. In general, nonprofit organizations usually find that running an observer program is complicated, and it may be more effective to focus on other civic engagement and GOTV work in their communities.

State rules about lawn signs and road signs: Generally, Virginia law restricts placement of any road signs along state or county roads without a permit. Political signs may only be placed on private property with the permission of the owner. See the FAQ on campaign finance rules below for more information.

Partisan or nonpartisan GOTV clothing and buttons: Partisan and nonpartisan clothing and materials (e.g., hats, buttons, T-shirts, etc.) are allowed within the 40-foot no solicitation perimeter, so long as they aren't worn by a candidate, representative of a candidate, or any other person who approaches or enters the polling place for any purpose other than voting.

Selfies in or near the polling place: Electronic devices are generally allowed in the polling places, including to take photos or videos, so long as it isn't hindering, delaying, or disrupting the voting process, attempting to influence another voter, or intimidating a voter. Officers of election are authorized to ask an individual to cease use. It is also unlawful to be in a position to see the marked ballot of any voter. Consider posting selfies with the "I Voted" sticker instead of asking constituents to post ballot selfies!

Phone and text banking: As we discussed earlier in this Practical Guidance, you will need to comply with federal telecom rules applicable to phone and text banking programs in all states. In general, these rules cover how you are allowed to reach out to landline or mobile phones depending on whether or not you have consent from the phone owner, and what rules apply if the communication is automated (e.g., robocalls, autotexting, etc.). In addition, partisan communications will likely have additional disclaimer requirements.



Practical Tips

- If a nonprofit organization is doing text or phone banking, it is often simplest from a practical perspective to have volunteers use a call list, or text banking interface, that is only partially (not fully) automated, so that federal robocall rules are not implicated.
- If your program is nonpartisan, so long as it is not fully automated, it is unlikely that you will implicate state-based telecom robocall rules.



Watch Out

- **Don't use the phone or text banking program to do something you can't do in person!**



Q: When might our work also trigger state campaign finance laws?

State-level campaign finance laws can apply not only to giving cash or in-kind contributions to candidates, but to other activities as well. For example, they also often apply to political-related advertising, political speech on signs and billboards, and to partisan phone or text banking programs.

Nonprofits that are allowed to do partisan electioneering work need to be particularly aware that their support or opposition of candidates will likely trigger campaign finance related reporting to the state.

In Virginia, Title 24.2, Chapters 9.3 and 9.5 of the Virginia Statute outlines the state-level campaign finance regulations that might apply to your work.

<https://law.lis.virginia.gov/vacode/title24.2/chapter9.3/>
and <https://law.lis.virginia.gov/vacode/title24.2/chapter9.5/>



Practical Tip

- **Bolder Advocacy's Technical Assistance Hotline:** Bolder Advocacy's free Technical Assistance Hotline team can help lead you to some current state law resources on campaign finance for your state. You can e-mail advocacy@afj.org or call 866-NP-LOBBY (866-675-6229) during standard business hours.



Watch Out

- **Partisan GOTV work:** In Virginia, these state campaign finance rules cover, among other things, how disclaimers must be added to political ads, rules relating to disclosure and reporting requirements for groups making campaign expenditures, and text and phone banking rules. If you are doing partisan GOTV work, you will need to carefully examine the Virginia campaign finance statute and consider seeking additional legal advice.
- **Working on ballot measure initiatives:** Ballot measure initiative work can also trigger state campaign finance rules, even for nonpartisan groups. 501(c)(3) organizations are allowed to work on ballot measure initiatives because the IRS considers such work legislative lobbying (as opposed to prohibited electioneering), but state law usually regulates this activity under campaign finance laws.



Q: How can we help recruit poll workers?

Poll worker recruitment is handled in Virginia by the state Department of Elections.

Each poll worker (called Officer of Elections in Virginia) must be a citizen and, if practicable, a qualified voter of the precinct they apply to serve, but in any case, a qualified voter of Virginia.

You can find the Officer of Elections factsheet and application here:
<https://www.elections.virginia.gov/officer-of-elections/>

✓ Practical Tip

- While more poll workers are often urgently needed, it can sometimes be frustratingly slow to get started. You may need to start this process early and have some patience with your poll worker recruitment plan.
- If your organization is considering doing a poll worker recruitment drive and has trouble reaching the right person at the Department of Elections, it may be worth considering partnering with an organization that can help manage the initial intake and encourage your potential recruits to be persistent.
- We like the work of **Power the Polls**: <https://www.powerthepolls.org/faq> and you can e-mail them to discuss potential partnering opportunities here: partners@powerthepolls.org

👁 Watch Out

- **Managing volunteer expectations:** This kind of programming doesn't have too many legal compliance issues to deal with – but you'll need to manage the expectations of your volunteers.
 - It may take a bit of persistence to get set up as a poll worker with the county.
 - In particularly contested election districts, there is a possibility of tension at the polls and potential confrontation with members of the public that could make your recruits uncomfortable.



Q: How can we advocate for a new polling place?

Asking for a new polling place is often a multi-step process, but some great materials exist that explain best practices for this kind of program!

✓ Practical Tip

- **+1 The Polls Toolkit:** We like the +1 The Polls Toolkit, created by a collaboration between MTV, the SLSV Coalition, Campus Vote Project, and the Alliance for Youth Organizing. It's geared towards student organizers, but its best practices are relevant even if your work is not on campus. <https://slsvcoalition.org/resource/1-the-polls-toolkit-bringing-a-voting-site-to-your-campus/>

👁 Watch Out

- **It's possible this work can trigger lobbyist registration requirements:** In some cases, your advocacy for a new polling place might count as lobbying under state or local lobbyist registration rules. Virginia does have some local lobbyist registration ordinances in place, so you'll need to check your program plan against both state-level lobbying rules, and the rules of any local jurisdictions you'll be working in. The state lobbyist registration rules can be found in Title 2.2, Chapter 4, Article 3 of the state statute. Our Practical Guidance – What Nonprofits Need to Know About Lobbying in Virginia is also coming soon! Watch here for its publication: <https://www.democracycapacity.org/about-practical-guidance-lobbying-series>



Q: Where can we get additional help?

Bolder Advocacy's Technical Assistance Hotline: Bolder Advocacy's free Technical Assistance Hotline team can help nonprofits and attorneys with questions about the content covered by this Practical Guidance. You can contact Bolder Advocacy's team of experts by e-mailing Bolder Advocacy at advocacy@afj.org or calling 866-NP-LOBBY (866-675-6229) during standard business hours.

Your state or local nonprofit coordinating group: Most states have several nonprofit coordinating groups that you can seek advice from. Some of these groups coordinate programming with their members and offer free or reduced price access to canvassing tools, voter lists, and more. If you are having trouble locating such a group in your area, please reach out to the Democracy Capacity Project at info@democracycapacity.org for referrals.

Links to Some Key Virginia Laws: The Virginia statutes referenced below can be accessed here: <https://law.lis.virginia.gov/vacode/>

- **Third Party Voter Registration:** VA Code § 24.2-418.1 – Receipt for voter registration applications; VA Code § 24.2-1002.01 – Delivery of applications
- **Voting by Mail:** VA Code § 24.2-701 – Application for absentee ballot
- **Line Warning:** VA Code § 24.2-604 – Prohibited areas and activities at polling places; VA Code § 24.2-605 – Loudspeakers prohibited at polls
- **State Rules About Lawn and Road Signs:** VA Code § 15.2-109 – Political campaign signs; VA Code § 33.2-1224 – Signs on Highways
- **Ballot Selfies:** VA Code 1VAC20-60-30 – Electronic devices at polling places
- **GOTV Clothing/Hats/Buttons in Polling Places:** VA Code § 24.2-604(D) – partisan clothing allowed
- **Campaign Finance:** VA Code § 24.2 Ch. 9.3 and 9.5 – Campaign Finance

While this Practical Guidance is designed to give you information about certain laws and rules, it is not legal advice, and does not create an attorney-client relationship. If you need additional advice about your specific situation, you should seek your own legal counsel.

We do our best to keep these Practical Guidance resources up to date, but new laws are put forward every day in this space, as are new lawsuits challenging those laws! Please refer to the "Last Updated" date for this Practical Guidance and seek further assistance if you believe you may need updated guidance.

We reference and link other organizations and other resources in this Practical Guidance because we believe they may be helpful to your work. These resources are publicly accessible to all users, and to the best of our knowledge the original host of the resources has all rights required to make them publicly accessible and usable by you. Your use of such resources is subject to any terms and conditions noted on those resources or in the terms of use or other policies of the host website. The Democracy Capacity Project, a special project of NEO Philanthropy, Inc., makes no representation or warranty regarding the accuracy or applicability of the substantive content of any such linked resources, their fitness for use in your situation, or the intellectual property rights of the works presented.

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The Democracy Capacity Project and Alliance for Justice are strictly nonpartisan, and nothing in this Practical Guidance or any of the resources linked herein is intended as a partisan or electioneering communication.

You can contact the Democracy Capacity Project at info@democracycapacity.org.

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A program of Alliance for Justice