

State Board of Elections Policy 2008-003

A meeting of the Virginia State Board of Elections was held on July 23, 2008 whereby a policy was proposed and approved by the Board:

Certification of unknown Vice-Presidential nominee

WHEREAS, the Code of Virginia, § 24.2-542.1 states:

Notwithstanding the provisions of § 24.2-542, (i) the state political party chairman of a political party whose national convention has been scheduled to be held after the seventy-fourth day before the presidential election, shall file by noon on the seventy-fourth day before the presidential election, with the certification of its at-large electors, a certification of the persons expected to be nominated for President and Vice President at its national convention; (ii) the State Board of Elections shall certify candidates to the local electoral boards and ballot preparation shall proceed based on the state party's certifications; and (iii) the persons nominated by the party at its national convention shall be certified to the State Board no later than 5:00 p.m. on the sixtieth day before the presidential election.

WHEREAS, the seventy-fourth day before the presidential election of 2008 is August 22, 2008;

WHEREAS, the Democratic National Convention is scheduled for August 25 – 28, 2008 and the Republican National Convention is scheduled for September 1 – 4, 2008;

WHEREAS, the expected nominee for President for both parties is known with reasonable certainty at this time but the expected nominees for Vice President are unknown at this time;

WHEREAS, the Supreme Court of Virginia has instructed that the word “shall” is directory:

We have long held that “courts, in endeavoring to arrive at the meaning of language in ... a statute, often are compelled to construe “shall” as permissive in accordance with the subject matter and content.” ***

Moreover, we have repeatedly stated that “the use of the word ‘shall’ in a statute requiring action by a public official, is directory and not mandatory unless the statute manifests a contrary intent.” *** “[A] statute directing the mode of proceeding by public officers is to be deemed directory, and a precise compliance is not to be deemed essential to the validity of the proceedings, unless so declared by statute.”

Tran v. Board of Zoning Appeals, 260 Va. 654, 657-58 (2000).

WHEREAS, the Code does not expressly prohibit formal certification of candidates after August 22;

WHEREAS, the Code sets September 5 as the mandatory deadline by which each political party must certify its nominees for President and Vice President;

WHEREAS, the Supreme Court of Virginia has instructed that a statute may be mandatory in some respect and directory in others:

A mandatory provision in a statute is one that connotes a command and the omission of "which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding; and a statute may be mandatory in some respects, and directory in others."

Cheeks v. Commonwealth, 20 Va. App. 578 (1995) citing *Ladd v. Lamb*, 195 Va. 1031, 1035, (1954).

RESOLVED, by the State Board of Elections under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to § 24.2-103, that

If the expected nominee for Vice President is unknown at the time of the certification required seventy-four days before the presidential election under § 24.2-542.1 of the *Code of Virginia*, the state party chair may indicate that the expected nominee for Vice President is unknown at that time; however, such information will be provided as soon as it is known but no later than the sixtieth day before the presidential election.