



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

# BOARD MEETING

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Wednesday, May 13, 2015  
Washington Building  
Room B27  
2:00 PM

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BOARD WORKING PAPERS



**STATE BOARD OF ELECTIONS  
AGENDA**

*DATE: May 13, 2015  
LOCATION: Washington Building, Room B27  
TIME: 2:00 p.m.*

- I. CALL TO ORDER** *James B. Alcorn  
Chair*
- II. APPROVAL OF MINUTES**  
*April 1, 2015, April 14, 2015, & April 17, 2015* *SBE Board Members*
- III. COMMISSIONER'S REPORT** *Edgardo Cortés  
ELECT Commissioner*
- IV. REPORT FROM LEGAL COUNSEL** *Anna Birkenheier  
SBE & ELECT  
Legal Counsel*
- V. OLD BUSINESS**
- A. WinVote Locality Update *Edgardo Cortés  
ELECT Commissioner*
- B. Complaint Against Mike McHugh *Brooks Braun  
ELECT Policy Analyst*
- VI. NEW BUSINESS**
- A. Request for Full-Time Status- Charles City County *Elizabeth Howard  
ELECT Deputy Commissioner*
- B. Electronic Poll Books – Certification Requirements *Cameron Sasnett  
ELECT Systems Support  
Specialist*
- C. Voter Registration Form & Regulations *Edgardo Cortés  
ELECT Commissioner*
- D. Absentee Ballot Applications-Electronic Signatures *Elizabeth Howard  
ELECT Deputy Commissioner*
- VII. OTHER BUSINESS & PUBLIC COMMENT**
- VIII. GOOD OF THE ORDER**  
*Next SBE Meeting Date – June 9, 2015*
- IX. ADJOURNMENT**



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# Call to Order

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BOARD WORKING PAPERS



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# Minutes Approval

## April 1, 2015

## April 14, 2015

## April 17, 2015

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BOARD WORKING PAPERS  
Board Members



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STATE BOARD *of* ELECTIONS

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# Minutes Approval April 1, 2015

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BOARD WORKING PAPERS  
Board Members

1 MINUTES

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3 The State Board of Elections Board Meeting was held on Wednesday, April 1,  
4 2015. The meeting was held in the Washington Building, Room, Richmond, Virginia –  
5 Room B27. In attendance, representing the State Board of Elections (SBE) was James  
6 Alcorn, Chairman; Clara Belle Wheeler, Vice Chair, and Singleton McAllister, Secretary.  
7 Also in attendance, representing the Department of Elections (ELECT) was Edgardo  
8 Cortés, Commissioner; Elizabeth Howard, Deputy Commissioner; and Rose Mansfield,  
9 Clerk. Anna Birkenheier, Assistant Attorney General and Counsel to SBE and ELECT  
10 attended. Chairman Alcorn called the meeting to order at 2:05PM.

11 Commissioner Cortés requested that an item be added to the agenda under new  
12 business. Commissioner Cortés stated that there are requests from candidates to ask the  
13 Board for extensions under §24.2-503 dealing with extensions on deadlines. Chairman  
14 Alcorn stated that the item requested would be added under new business.

15 The first order of business was the approval of Minutes from the State Board of  
16 Elections Board Meetings held on March 3, 2015, March 7, 2015, and March 19, 2015.  
17 Chairman Alcorn asked if Board Members had any additions or corrections to the Board  
18 Meeting Minutes presented and there were none. Secretary McAllister moved to adopt  
19 the Minutes for the March 3, 2015, March 7, 2015, and March 19, 2015 Board Meetings.  
20 Vice Chair Wheeler seconded the motion and the Board unanimously approved the  
21 Minutes.

22 The seconded order of business was the Commissioner Report delivered by  
23 Commissioner Cortés. Commissioner Cortés stated that Matt Abell, Election Services  
24 Administrator, tendered his resignation with ELECT with his last official day with the  
25 agency being on April 3, 2015. Commissioner Cortés stated that Mr. Abell has been in a  
26 critical and essential role for many years and will be greatly missed by the election  
27 community and staff members at ELECT. Chairman Alcorn echoed those sentiments  
28 and directed the commissioner to prepare a letter of appreciation or resolution for Mr.  
29 Abell.

30 Commissioner Cortés stated that ELECT has completed work on an electronic  
31 pollbook solution and the system will be rolled-out statewide with testing occurring in

32 several localities during the June 2015, primary and statewide testing in the 2015,  
33 General Election. Training will be conducted during the annual training event in July,  
34 2015. Vice Chair Wheeler asked if the training would be available for the district  
35 Virginia Electoral Board Associations' annual meetings. Commissioner Cortés stated that  
36 after the system completed statewide testing it would be available to the elections  
37 community and offered a demonstration at a future Board Meeting.

38 The next order of business was the Legal Report presented by Anna Birkenheier,  
39 Assistant Attorney General. Ms. Birkenheier stated that she request an executive closed  
40 session.

41 The next order of business was a request for full-time status from Mathews  
42 County presented by Elizabeth Howard, Deputy Commissioner. Ms. Howard stated that  
43 this item needed to be held until the next Board Meeting.

44 The next order of business was the Ballot Drawings conduct by Gary Fox,  
45 ELECT Elections Supervisor. Mr. Fox explained the process under *Virginia Code* §24.2-  
46 528. Mr. Fox stated that the districts/elections where simultaneously filling occur the  
47 need for ballot position drawings exist. Board Members completed the process and Ms.  
48 Mansfield entered the ballot order into the official records. The ballot drawings were  
49 conducted with the following order determined:

50 8<sup>th</sup> Senate – Republican Party

- 51 • Bill Desteph
- 52 • Craig Hudgins

53 11<sup>th</sup> Senate – Republican Party

- 54 • Stephen H. Martin
- 55 • Amanda F. Chase
- 56 • Barry F. Moore

57 12<sup>th</sup> Senate – Republican Party

- 58 • Edward S. “Eddie” Whitlock III
- 59 • Siobhan S. Dunnavant
- 60 • Vincent M. “Vince” Haley
- 61 • William R. “Bill” Janis

62 29<sup>th</sup> Senate - Democratic Party

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- Atif M. Qarni
  - Jeremy McPike
- York/Poquoson – Clerk of the Court-Republican Party
- Kristen N. Nelson
  - Lawrence “Tu” Ritter

Chairman Alcorn stated that the ballot drawings are complete and asked if there were any comments or questions. Commissioner Cortés stated that the process of drawing ballot order is a board responsibility and prior to the previous SBE Board this responsibility was delegated to the agency to conduct when the board was not readily available to meet and conduct this activity. Commissioner Cortés asked Board Members to consider reassigning this responsibility when the need for a ballot drawing arises and the board is not scheduled to meet within the required boundaries of the ballot drawing deadline. Vice Chair Wheeler stated that the request of the Commissioner was reasonable. Commissioner Cortés stated that previously when the agency conducted the ballot drawings, the event was conducted in the presence of the Clerk of the House or Senate. Vice Chair Wheeler asked if the individuals placed on the ballot would be notified of the time and location of the ballot drawing. Commissioner Cortés stated that would occur if the board authorizes this change. Chairman Alcorn stated that for situations that foster this need and as long as there is transparency the Board Members would be agreeable to this situational change. Martha Brissette, ELECT Policy Analyst, stated that the change to the delegation of board duties and responsibilities would require posting on the ELECT website. Chairman Alcorn directed ELECT to review the guidance document that contains the list of board delegations and present the changes at the next Board Meeting. Secretary McAllister stated that the proposed ballot order changes were acceptable. Chairman Alcorn asked if there were additional questions or comments and there were none.

The next order of business was the Electronic Poll Books-Certification (EPB) Updates presented by Cameron Sasnett, ELECT Systems Support Specialist. Mr. Sasnett stated that the document presented to Board Members provides further guidance for EPB vendors to bring their systems to the SBE for certifications testing that were prohibited

94 previously due to contradictions in the certification requirements. Mr. Sasnett stated that  
95 in review of the *VAEPB Certification Procedures and System Requirements REV-0315*  
96 the need to change language within the document became apparent as a result of moving  
97 the program in-house. The technical requirements and the functionality of the *Code* were  
98 reviewed. Mr. Sasnett stated that the board would have the ability to call or recall EPB's  
99 for certification and discuss the particulars requirements and limitations placed on  
100 vendors under this document if approved by Board Members. Chairman Alcorn stated  
101 that the interpretation of the document precluded any changes to the EPB system without  
102 prior SBE approval. Mr. Sasnett stated: "That is correct." Mr. Sasnett explained the  
103 difference between changes that ELECT and the vendors would consider major verses  
104 minor. Chairman Alcorn instructed Mr. Sasnett to include these in the definitions section  
105 of the document. Chairman Alcorn asked how the systems currently certified will be  
106 affected by the changes in the EPB Certification document presented to Board Members.  
107 Mr. Sasnett stated the systems currently certified will remain certified and new systems  
108 or systems that require an update will be required to go through the certification process.  
109 Vice Chair Wheeler stated that additional time would be required to review the details of  
110 the document submitted for approval by ELECT and Secretary McAllister concurred and  
111 suggested that this consideration be revisited at the next Board Meeting on May 12, 2015.  
112 Chairman Alcorn confirmed that this item would be reconsidered at the next meeting  
113 with no action occurring at this time.

114 The next order of business was the request for the filing deadline extension  
115 presented by Commissioner Cortés. Commissioner Cortés stated that there are numerous  
116 deadlines for filing different forms related to the candidates and the parties.  
117 Commissioner Cortés stated that §24.2-503 states that SBE can grant a 10 day extension  
118 to candidates for the statement of economic interest form and the statement of  
119 qualification form and would apply to all candidates. There are several requests for  
120 extensions before the board as a result of recent communications with ELECT. Board  
121 approval to allow an extension would be required to allow ELECT to accept the forms  
122 outside of the established deadline. Chairman Alcorn asked if there were public  
123 comments or candidates that wanted to speak to the issue at hand. Leonidas Young,  
124 candidate 74<sup>th</sup> House, approached the podium and discussed the particulars of his request

125 to obtain an extension. Two additional individuals spoke to the same issue and subject  
126 matter. Secretary McAllister asked the Commissioner for historical reference on granting  
127 extensions to candidates regarding this matter. Commissioner Cortés stated that the  
128 process is complicated for all involved and the opportunity for the general assembly to  
129 review the matter and present clarity and simplicity to the process exist. The general  
130 assembly does recognize the issue and provided the Board the ability to grant an  
131 extension through interpretation of the *Virginia Code*. Chairman Alcorn asked if there  
132 were further questions or comments and there were none. Vice Chair Wheeler moved  
133 *that the extension be granted as permitted under §24.2-503*. Secretary McAllister  
134 seconded the motion. Chairman Alcorn asked if there were public comments. Kirk  
135 Showalter, General Registrar of Richmond City approached the podium. Ms. Showalter  
136 stated that she appreciated the boards' consideration of the extension because there is  
137 confusion regarding the paperwork. Chairman Alcorn asked if there were additional  
138 comments and without further comment the Board unanimously approved the motion.

139 The next order of business was the public comment period. Chairman Alcorn  
140 asked if there were any public comments. Mark Coakley, General Registrar Henrico  
141 County, asked if the EPB guidance document could be placed on Virginia Regulatory  
142 Town Hall for public comment. Chairman Alcorn asked if there additional public  
143 comments and there were none.

144 Chairman Alcorn moved *that the SBE Board close the meeting to discuss (i)*  
145 *specific legal matters requiring the provision of legal advice by legal counsel as*  
146 *authorized by § 2.2-3711(A)(7) of the Code of Virginia and (ii) to discuss voting*  
147 *equipment security as authorized by §2.2 3711(A)(35)*. Secretary McAllister seconded the  
148 motion and without public comment the Board unanimously approved the motion.  
149 Chairman Alcorn directed Clara Belle Wheeler, Vice Chair; Singleton McAllister,  
150 Secretary; Anna Birkenheier, Assistant Attorney General; General; Joshua Heslinga,  
151 Assistant Attorney General to remain with the Board during the closed session for the  
152 first item to be discussed in closed executive session. Chairman Alcorn stated that the  
153 second section of the closed meeting would include ELECT staff members;  
154 Commissioner Cortés, Deputy Commissioner Howard, Matt Davis, Gary Fox, Eugene

155 Burton. Chairman Alcorn identified that Joshua Heslinga would attend the second section  
156 of the closed session. The Board went into Executive Session at 3:15PM.

157 At 4:45PM Chairman Alcorn *moved to reconvene in open session and a roll call*  
158 *vote was taken as required by § 2.2-3712(D) of the Code of Virginia, unanimously*  
159 *certifying that during the closed meeting (i) only public business matters lawfully*  
160 *exempted from open meeting requirements under this chapter, and (ii) only such public*  
161 *business matters as were identified in the motion by which the closed meeting was*  
162 *concerned were heard, were discussed or considered.* Vice Chair Wheeler seconded the  
163 motion and the Board unanimously approved the motion. Ms. Mansfield performed the  
164 roll call vote and all Board Members approved the motion. Chairman Alcorn asked if  
165 there were public comments and there were none.

166 Chairman Alcorn stated that the board has received information relating to the  
167 ongoing investigation by ELECT regarding voting incidents that occurred during the  
168 November, 2014, General Election. SBE is requesting that the clerk schedule a public  
169 meeting regarding this matter with all due hast, in coordination with the Board Members  
170 schedules. ELECT is to contact all the affected localities and vendors that are impacted  
171 by the matters before the Board. Chairman Alcorn stated that the matter for the public  
172 hearing will be to discuss the security concerns that SBE has with the WinVote system  
173 and whether or not the Board should decertify the equipment for use in the  
174 Commonwealth. Chairman Alcorn requested that ELECT staff work with existing  
175 materials to release documents to the public regarding this issue without releasing any  
176 information that would place any existing voting equipment systems at a security risk.  
177 The Department of Elections has been granted authorization to access any voting  
178 equipment across the Commonwealth necessary to complete the departments'  
179 comprehensive voting equipment review under *Virginia Code §24.2-629(I)*. Vice Chair  
180 Wheeler moved *that Chairman Alcorn's instructions be followed*. Secretary McAllister  
181 seconded the motion and without further comment the Board voted unanimously to  
182 approve the motion.

183 Chairman Alcorn moved *that the Board adjourn*. Secretary McAllister seconded  
184 the motion and without further comment the Board voted unanimously to adjourn. The  
185 meeting was adjourned at approximately 5:05PM.

186           The Board shall reconvene on May 12, 2015 at 2:00PM in the Washington  
187 Building, 1100 Bank Street, Room B27, Richmond, Virginia.

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Secretary

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Chair

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Vice Chairman

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STATE BOARD *of* ELECTIONS

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# Minutes Approval April 14, 2015

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BOARD WORKING PAPERS  
Board Members

1 MINUTES

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3 The State Board of Elections Board Meeting was held on Tuesday, April 14,  
4 2015. The meeting was held in the General Assembly Building, Room D, Richmond,  
5 Virginia. In attendance, representing the State Board of Elections (SBE) was Clara Belle  
6 Wheeler, Vice Chair, and Singleton McAllister, Secretary. Also in attendance,  
7 representing the Department of Elections (ELECT) was Edgardo Cortés, Commissioner;  
8 Elizabeth Howard, Deputy Commissioner; and Rose Mansfield, Clerk. Kristina Perry  
9 Stoney, Senior Assistant Attorney General and Counsel to SBE and ELECT attended.  
10 Vice Chair Wheeler called the meeting to order at 11:10AM.

11 The first order of business was the Commissioner Report delivered by  
12 Commissioner Cortés. Commissioner Cortés stated that Chairman Alcorn sends his  
13 regrets for being unavailable to attend this Board Meeting and that legal counsel would  
14 be joining the meeting momentarily.

15 The seconded order of business was the Interim Report on Voting Equipment  
16 Performance, Usage and Certification presented by Commissioner Cortés. Commissioner  
17 Cortés stated that during the April 1, 2015, SBE Board Meeting ELECT presented a  
18 report to SBE related to voting equipment issues that occurred during the November  
19 2014, General Election. The Department of Elections contracted with a federally  
20 accredited voting systems test lab, Pro V&V, Inc. This was an inaugural post-election  
21 review regarding election equipment issues. A survey was distributed to the localities  
22 designed to identify issues encountered on Election Day. Commissioner Cortés stated that  
23 50 localities reported equipment issues on Election Day. The independent consultant and  
24 ELECT staff member, Eugene Burton, requested information from select localities and  
25 site visits were conducted at three localities (Virginia Beach, Henrico & Spotsylvania  
26 County). Those localities were following industries “Best Practices”. Commissioner  
27 Cortés stated that the full report is posted on the ELECT website. The issues discovered  
28 were referred to Virginia Information Technologies Agency (VITA) Security Division  
29 according to protocol. The recommendation, presented to ELECT, was to review the  
30 WinVote voting equipment and vulnerability testing was conducted on the equipment.  
31 ELECT received the results of the testing on March 27, 2015 and the report was

32 presented on April 1, 2015 at the SBE Board Meeting during executive session. ELECT  
33 was directed by SBE to release information without compromising the security of the  
34 process. SBE requested that VITA conducted additional testing and that ELECT schedule  
35 a Board Meeting. Commissioner Cortés stated that meetings were conducted at the  
36 localities to discuss the WinVote voting equipment. The discussion regarding preparation  
37 for the June 9, 2015 primaries was initiated and avenues to address voting equipment  
38 options were discussed. Commissioner Cortés stated that an executive session is  
39 recommended to discuss the findings and that locality representatives present in those  
40 affected localities should remain during closed session.

41 Secretary McAllister thanked the Commissioner and the ELECT staff for their  
42 efforts regarding this investigation and stated: “It is important to conduct fair, free, and  
43 transparent elections for the State of Virginia.” Secretary McAllister moved *that the SBE*  
44 *Board close the meeting to discuss (i) specific details and a briefing from VITA regarding*  
45 *the findings of WinVote voting equipment testing and security under the provision §24.2 -*  
46 *625.1 voting equipment security and (ii) specific legal matters requiring the provision of*  
47 *legal advice by legal counsel as authorized by § 2.2-3711(A)(7) of the Code of Virginia.*  
48 Vice Chair Wheeler seconded the motion and without public comment the Board  
49 unanimously approved the motion. Vice Chair Wheeler directed VITA Representatives,  
50 ELECT staff members, and representatives of the localities utilizing WinVote voting  
51 systems equipment to remain with the Board during the closed session. The Board went  
52 into Executive Session at 11:50AM.

53 At 12:45PM Secretary McAllister *moved to reconvene in open session and a roll*  
54 *call vote was taken as required by § 2.2-3712(D) of the Code of Virginia, unanimously*  
55 *certifying that during the closed meeting (i) only public business matters lawfully*  
56 *exempted from open meeting requirements under this chapter, and (ii) only such public*  
57 *business matters as were identified in the motion by which the closed meeting was*  
58 *concerned were heard, were discussed or considered.* Chairman Wheeler seconded the  
59 motion and the Board unanimously approved the motion. Ms. Mansfield performed the  
60 roll call vote and all Board Members approved the motion.

61 Commissioner Cortés stated that the Board Members and participants of the  
62 closed session received an overview by the VITA Chief Information Officer, Mike

63 Watson, regarding the results of the vulnerability penetration testing conducted on the  
64 WinVote system in particular to disable the wireless conductibility without destabilizing  
65 the system. There were technical questions presented by Board Members and  
66 representatives from the localities involved. VITA has provided a report to the Board  
67 Members pertaining to the risk assessment that was performed. Vice Chair Wheeler open  
68 the discussion to the public.

69 The following speakers provided public comment:

- 70 ❖ Alex Blakemore, Virginia Verified Voting, Co-Founder
- 71 ❖ Mary Jo Field, Virginia Municipal League, Director of Research
- 72 ❖ Anthony Sabo, Yankee Laboratories, President
- 73 ❖ Erik Johnston, Virginia Association of Counties, Director of  
74 Government Affairs
- 75 ❖ Jason Corwin, County of Mecklenburg, General Registrar
- 76 ❖ Richard Herrington, City of Fairfax, Secretary of the Electoral Board
- 77 ❖ Kevin Linehan, City of Fairfax, General Registrar
- 78 ❖ Jordon Butler, New Virginia Majority, Voting Rights Coordinator
- 79 ❖ Anna Scholl, Progress Virginia, Executive Director
- 80 ❖ Georgina Cannon, Democratic Party of Virginia, Co-Chair, Voter  
81 Protection Council
- 82 ❖ Amy Hunter, Richmond City, Poll Worker
- 83 ❖ Courtney Mills, Fair Elections Legal Network, Attorney & Election  
84 Official for Fairfax County

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86 Secretary McAllister thanked the speakers for their time and presentations.  
87 Commissioner Cortés stated that ELECT has been working with vendors and the  
88 localities to identify the available options for those localities affected that are holding a  
89 June 2015, general primary. Commissioner Cortés stated that a conference call was  
90 conducted with the vendors to determine the type of assistance that would be provided to  
91 the localities. A report from the vendors was provided to the 10 localities that are  
92 conducting primaries who currently utilize the WinVote systems. Localities will be able  
93 to borrow equipment from other localities that are not holding a June primary. Those

94 localities who wish to purchase new equipment will have access to state contracts.

95 Commissioner Cortés stated: “Based on the full range of testing, we are confident  
96 in saying that there is no way to fully disable the wireless conductivity on the WinVote  
97 system, without destabilizing the system, making it unable to function as required, to  
98 properly administer an election. This creates an unacceptable risk of the integrity of the  
99 election process in the Commonwealth. As the commissioner of elections, I recommend  
100 that SBE move to immediately decertify the WinVote system and prohibited its’ use in  
101 future elections in the Commonwealth.”

102 Secretary McAllister moved *that based on these conclusions, and with*  
103 *consideration given to public comment and the recommendations of the Department of*  
104 *Elections, and pursuant to the Board's authority granted in 24.2-629(I), I move that the*  
105 *board vote to decertify AVS WinVote voting machines for use in the commonwealth of*  
106 *Virginia, effective immediately, based on the significant problems detected after the*  
107 *November 2014 election.* Vice Chair Wheeler seconded the motion and the Board  
108 unanimously approved the motion.

109 Secretary McAllister moved *that having decertified the WinVote voting machines,*  
110 *and in the interest of transparency, I further move that the report prepared by VITA and*  
111 *presented to the Board today, detailing the security assessment performed, be made*  
112 *public and direct the department of elections to post the report on the department's*  
113 *website as soon as practicable, and without delay.* Vice Chair Wheeler seconded the  
114 motion and the Board unanimously approved the motion.

115 Vice Chair Wheeler stated: “This is an important decision with deliberation and  
116 diligence of thought. I would advise that if anyone in the election community has  
117 problems with equipment; bring the issue to the Board Members or to ELECT. Election  
118 Officials need to be educated on the new equipment.”

119 The next order of business was the Legal Report. Ms. Stoney turned the report  
120 presentation over to Joshua Heslinga, Assistant Attorney General. Mr. Heslinga stated  
121 that legal counsel represented SBE today in open court regarding the Joe Morrissey  
122 request. Mr. Heslinga stated that the court denied Mr. Morrissey request for a temporary  
123 injunction based on a lack of evidence presented to the court. Ms. Stoney stated that the  
124 Legal Report was complete.

125 Vice Chair Wheeler moved *that the Board adjourn*. Secretary McAllister  
126 seconded the motion and without further comment the Board voted unanimously to  
127 adjourn. The meeting was adjourned at approximately 1:55PM.

128 The Board shall reconvene on May 12, 2015 at 2:00PM in the Washington  
129 Building, 1100 Bank Street, Room B27, Richmond, Virginia.

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Secretary

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Chair

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Vice Chairman

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STATE BOARD *of* ELECTIONS

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# Minutes Approval April 17, 2015

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BOARD WORKING PAPERS  
Board Members

1 MINUTES

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3 The State Board of Elections Board Meeting was held on Friday, April 17, 2015.  
4 The meeting was held in the Washington Building, Room, Richmond, Virginia – Room  
5 B27. In attendance, representing the State Board of Elections (SBE) was James Alcorn,  
6 Chairman and Clara Belle Wheeler, Vice Chair. Also in attendance, representing the  
7 Department of Elections (ELECT) was Edgardo Cortés, Commissioner; Elizabeth  
8 Howard, Deputy Commissioner; and Rose Mansfield, Clerk. Kristina Stoney, General  
9 and Counsel to SBE and ELECT attended. Chairman Alcorn called the meeting to order  
10 at 2:00PM.

11 The first order of business was the Commissioner Report delivered by  
12 Commissioner Cortés. Commissioner Cortés stated that ELECT was working with the  
13 localities impacted by the recent decertification of WinVote voting systems to explore  
14 their options. ELECT offered to send a communication to the locality leaders regarding  
15 the decertification and the need to purchase new voting equipment in support of their  
16 election office. Commissioner Cortés stated that ELECT approved an engineering  
17 change order for the ES&S Express Vote product under the testing and approval program  
18 delegated to ELECT. The change involves a write-in report produced by ES&S at the  
19 precinct level. The report will expedite the closing process at the polls on election night.  
20 Commissioner Cortés requested that an item be added to the agenda under new business.  
21 Vice Chair Wheeler asked: “How many of the localities utilizing WinVote have notified  
22 ELECT of their plan or procedure for the June primary?” Commissioner Cortés replied:  
23 “Two localities have notified ELECT that they will be borrowing equipment (York &  
24 Arlington County), City of Richmond is finalizing their plans, and in the near future the  
25 other 7 localities will have finalized their plans.”

26 The second order of business was the Legal Report presented by Kristina Stoney,  
27 Assistant Attorney General. Ms. Stoney stated that there no updates to provided the  
28 Board Members.

29 The next order of business was the Hart Intercivic Verity 1.1 Voting equipment  
30 Certification presented by Gary Fox, ELECT Elections Supervisor. Mr. Fox explained the  
31 materials provided to the Board Members. Mr. Fox stated that the equipment was

32 successfully tested in Prince William County. Mr. Fox stated that an evaluation was  
33 conducted on March 23, 2015 through March 24, 2015 in the ELECT offices. Vice Chair  
34 Wheeler asked: “Does this machine have a wireless capability?” Mr. Fox replied: “No.”  
35 Chairman Alcorn stated that during his watch, voting equipment wishing to be certified  
36 for use in the Commonwealth would not have wireless capability. Mr. Alcorn asked if  
37 there were any public comments.

38 Mr. Robert Heisner, Hart InterCivic approached the podium. Mr. Heisner stated  
39 that he was pleased with the opportunity to supply the Commonwealth with voting  
40 equipment and appreciated the professionals encountered at ELECT and the localities.  
41 Chairman Alcorn asked if there were additional comments. Commissioner Cortés  
42 thanked Mr. Fox for his efforts and a job well done on the entire certification program.  
43 ELECT is pleased with the parameters of the current certification program. SBE Board  
44 Members expressed similar sentiment regarding the tireless efforts of Mr. Fox and his  
45 work with the certification program. Chairman Alcorn moved *that the Board certify*  
46 *Hart Verity 1.1 voting systems for use in elections in the Commonwealth of Virginia,*  
47 *pursuant to the State Certification of Voting Systems: Requirements and Procedures.*  
48 Vice Chair Wheeler seconded the motion and without further comment the Board  
49 unanimously approved the motion.

50 The next order of business was presented by Commissioner Cortés regarding the  
51 on-going voting equipment reviews. Commissioner Cortés stated that ELECT was  
52 reviewing voting equipment and that the *Code of Virginia §24.2-629(H)*, states that a  
53 vendor whose voting equipment is approved for use shall provide updates concerning its  
54 recommended practices for optimum security and function and functionality of the  
55 system, as requested by the Board. Any product for which requested updates are not  
56 provided shall be deemed non-compliant and may be decertified at the discretion of the  
57 Board. Commissioner Cortés stated that ELECT requested, on behalf of the Board, the  
58 latest recommended practices for security and functionality of their systems, currently  
59 certified in the Commonwealth to be provided to the ELECT. This feedback would be  
60 available to the localities and to ELECT. Chairman Alcorn inquired about the frequency  
61 of previously submitted request from the vendors. Commissioner Cortés stated that there  
62 is no historical background regarding this type of request and a routine schedule of

63 review should be initiated. Chairman Alcorn stated that the requested was reasonable  
64 from the vendors and a wise action on behalf of the Commonwealth. Vice Chair Wheeler  
65 expressed support of the recommendation from ELECT. Commissioner Cortés stated that  
66 ELECT is in the process of reviewing the data being collected and the certification  
67 program and will bring recommendations to the Board this summer. Chairman Alcorn  
68 moved *that the Board direct the Agency to contact the vendors of all certified voting*  
69 *equipment in Virginia to submit to the Agency their recommended practices for optimal*  
70 *performance as indicated under Code Section §24.2-629(H)*. Vice Chair Wheeler  
71 seconded the motion. Chairman Alcorn asked if there were any public comment and there  
72 was none. The Board unanimously approved the motion.

73 The next order of business was the public comment period and there were none.

74 Chairman Alcorn moved *that the Board adjourn*. Vice Chair Wheeler seconded  
75 the motion and without further comment the Board voted unanimously to adjourn. The  
76 meeting was adjourned at approximately 2:30PM.

77 The Board shall reconvene on May 12, 2015 at 2:00PM in the Washington  
78 Building, 1100 Bank Street, Room B27, in Richmond, Virginia.

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Secretary

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Chair

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Vice Chair

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STATE BOARD *of* ELECTIONS

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# Commissioner's Report

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BOARD WORKING PAPERS  
Edgardo Cortés  
Commissioner  
Department of Elections



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STATE BOARD *of* ELECTIONS

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# Legal Report

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BOARD WORKING PAPERS  
Anna Birkenheier  
Assistant Attorney General



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# Old Business

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BOARD WORKING PAPERS



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# WinVote Locality Update

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BOARD WORKING PAPERS  
Edgardo Cortés  
Commissioner



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# Complaint Against Mike McHugh

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BOARD WORKING PAPERS  
Brooks Braun  
ELECT Policy Analyst



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DEPARTMENT *of* ELECTIONS

## Memorandum

To: Members of the State Board of Elections

From: Brooks C. Braun, Policy Analyst

Date: May 13, 2015

Re: Complaint Against Mike McHugh

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

I move that the Board refer Mike McHugh's failure to properly register as a political action committee and failure to file proper campaign finance reports to the Commonwealth's attorney for the County of Warren.

### **Background:**

On September 23, 2013 the Board heard a matter alleging violations of Chapter 9.3 and Chapter 9.5 of Title 24.2 of the *Code of Virginia* relating to campaign finance disclosure and disclaimer requirements. The former Election Services Division Manager, Chris Piper, presented the relevant information to the board and concluded that it was likely that Mr. McHugh was in violation of Chapter 9.3 for failure to file as a political action committee and that the board should refer the matter to the Commonwealth's attorney in the County of Warren, where Mr. McHugh resided. The Board tabled the matter for discussion at the next meeting; however, the matter was not subsequently raised until today.

Mr. McHugh died on October 14, 2014. Subsequently, the lawyer for Mr. McHugh's estate contacted the Department of Elections to inquire into the status of the complaint against Mr. McHugh and asked that the matter be settled by the Board.

### **Attachments:**

Your Board materials include the following:

- Memorandum from Chris Piper dated September 13, 2013
- E-mail from Chris Piper to himself memorializing his conversation with an anonymous caller
- Letter from Mike McHugh dated June 13, 2013

### **Applicable Code Section:**

§ 24.2-104(A) states,

The Attorney General shall have full authority to do whatever is necessary or appropriate to enforce the election laws or prosecute violations thereof. The Attorney General shall exercise the authority granted by this section to conduct an investigation, prosecute a violation, assure the enforcement of the elections laws, and report the results of the investigation to the State Board.

§ 24.2-946.3 states,

A. It shall be the duty of the State Board to report any violation of the provisions of this chapter to the appropriate attorney for the Commonwealth. The State Board shall report to the attorney for the Commonwealth of the City of Richmond in the case of reporting requirements for campaign committees for statewide office and to the attorney for the Commonwealth of the county or city of the residence of a candidate for the General Assembly. For political committees, the State Board shall report the violation to the attorney for the Commonwealth of the City of Richmond. If all the officers of a political committee are residents of one county or city as shown on the statement of organization required by this chapter, the State Board shall report violations for that political committee to the attorney for the Commonwealth of that county or city.

B. It shall be the duty of the electoral board of a county or city to report any violation of the provisions of this chapter relating to the filing of campaign finance reports required to be filed with the electoral board to the attorney for the Commonwealth for the county or city in which the electoral board has jurisdiction.

C. In order to fulfill the duty to report violations pursuant to subsections A and B, the Board shall establish and implement a system for receiving, cataloging, and reviewing reports filed pursuant to the provisions of this chapter and for verifying that reports are complete and submitted on time. As part of the system referred to in this subsection, the general registrar for each county and city, or the secretary of the electoral board in any county or city in which the electoral board chooses to perform the duties stated in this subsection, shall be required, in accordance with instructions provided by the Board, to receive, catalog, and review the reports filed with the local electoral board and to verify that the reports are complete and submitted on time.

D. The State Board, and the general registrar or secretary of the electoral board in accordance with the instructions of the State Board, (i) shall assess and collect the civil penalties provided in Article 8 and (ii) if unable to collect the penalty, shall report the violation to the appropriate attorney for the Commonwealth for enforcement.

E. The State Board, or the general registrar or secretary of the electoral board in accordance with the instructions of the State Board, shall notify, no later than 21 days after the report due date, any person submitting an incomplete report of the need for

additional information. The State Board, or the general registrar or secretary of the electoral board in accordance with the instructions of the State Board, may request additional information to correct obvious mathematical errors and to fulfill the requirements for information on the reports.

F. Upon notice of a violation of this chapter, the State Board or the general registrar or local electoral board, as appropriate, shall within 90 days of the report deadline notify the appropriate attorney for the Commonwealth, who shall initiate civil proceedings to enforce the civil penalties assessed by the State Board or the local electoral board as provided herein. Any civil penalties collected pursuant to action by the State Board shall be payable to the State Treasurer for deposit to the general fund, and any civil penalties collected pursuant to action by a general registrar or local electoral board shall be payable to the treasurer of the locality for deposit to its general fund.

G. In the case of any political committee that is required to file a statement of organization pursuant to this chapter, the State Board shall be authorized to waive a penalty that has been assessed if the filer demonstrates that there exists good cause to waive the penalty.

H. The State Board shall notify the public through its official Internet website of any violation based on the failure to file a required report by a candidate for statewide office or the General Assembly and the identity of the violator.

I. The State Board shall determine the schedule of civil penalties required to be followed by its staff and local electoral boards in assessing penalties under this chapter. No election official or staff may waive or reduce such penalties, except as provided in § [24.2-946.4](#).

§ 24.2-955.3(D) states,

The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty. At least 10 days prior to such hearing, the State Board shall send notice by certified mail to persons whose actions will be reviewed at such meeting and may be subject to civil penalty. Notice shall include the time and date of the meeting, an explanation of the violation, and the maximum civil penalty that may be assessed.

## **Analysis**

The Department of Elections agrees with Mr. Piper's prior analysis that, with the current information available, there is insufficient information to conclude that Mr. McHugh violated Chapter 9.5 for failure to include specific disclaimers on his website or the advertisements he sponsored. Disclaimer requirements only apply to individuals when an individual makes personal expenditures in excess of \$200. The Department has no information regarding the actual amount spent by Mr. Hugh on communications containing express advocacy. Mr. McHugh also stated that these were personal

expenditures. Absent the intervention of Commonwealth's Attorney's office to determine whether Mr. McHugh actions resulted in political action committee status or the requirement to file an independent expenditure report, the Department is unable to determine whether specific disclaimer requirements apply to the communications distributed by Mr. McHugh.

However, since Mr. Piper found evidence that suggests a violation of Chapter 9.3 for failure to file as a PAC, in accordance with the duty of the board under § 24.2-946.3, the Department recommends that the board refer the matter of Mike McHugh to the Commonwealth's attorney for the County of Warren, for further investigation and/or prosecution. Additionally, we suggest that the board table any discussion of whether Mr. McHugh violated any portion of Chapter 9.5 until after a decision is made by the Commonwealth's attorney regarding Mr. McHugh's status under Chapter 9.3.

The Department of Elections would also like to take this opportunity to communicate with the Board its long standing practices regarding how complaints about violations of chapters 9.3 and 9.5 are handled and to explain the rationales behind those practices.

First, it is the longstanding practice of the Department to not accept complaints that are not related to the Board's authority under § 24.2-955.3(D) relating to political advertisement disclaimers. The reason for this is that neither the Department nor the Board has any investigative or enforcement authority related to violations of Chapters 9.3 and 9.5. As such, the Board has little to no authority to handle or address a complaint not related to Chapter 9.5. Accordingly, it is the Department's practice to redirect any complainants alleging violations outside of Chapter 9.5 to the appropriate attorney for the Commonwealth. It is also the longstanding practice of the Department to not accept anonymous complaints of any kind. There are several reasons for this practice, including the practice's reduction in the number of frivolous complaints filed.

We believe that these practices make sense both as matters of good policy and in light of the legal restrictions placed on the Department and the Board. Unless the Board instructs otherwise, the Department of Elections will continue to follow these practices.



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STATE BOARD *of* ELECTIONS

## Memorandum

To: Members of the State Board of Elections  
From: Chris Piper, Election Services Division Manager  
Date: September 13, 2013  
Subject: Possible Failure to File Statement of Organization and Possible Violation of Title 24.2, Chapter 9.5 of the *Code of Virginia* (aka “Stand By Your Ad”)

---

**Defendant:** Michael McHugh

**Background:** On June 20, 2013, an anonymous caller asked Chris Piper, Election Services Division Manager, to review a website allegedly paid for by Michael McHugh. The website expressly advocated the election of two candidates on the primary election ballot for the House of Delegates. The website contained the disclosure (“Paid for by Mike McHugh”).

Shortly after receipt of the anonymous complaint, Mr. McHugh faxed a letter to the State Board of Elections requesting an extension of any and all filing requirements which may apply to Mr. McHugh until such time as he could review the laws and be sure of his requirements.

In several telephone conversations with Mr. McHugh, he has stated that he solicited and accepted money in excess of \$200 in his efforts to elect the candidates and that he operated independently of the candidates.

### **Relevant Statutory and Policy Provisions:**

§ 24.2-945.1 defines ‘political action committee’ as

“any organization, person, or group of persons, established or maintained to receive and expend contributions for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate.”

§ 24.2-945.1 also defines ‘coordination’ or ‘coordinated’ as

“an expenditure that is made (i) at the express request or suggestion of a candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee or (ii) with material involvement of the candidate, a candidate's campaign committee, or an agent of the candidate or his campaign

committee in devising the strategy, content, means of dissemination, or timing of the expenditure.”

§ 24.2-945.2 states,

“A. Any person, candidate campaign committee, or political committee that makes independent expenditures, in the aggregate during an election cycle, of \$1,000 or more for a statewide election or \$200 or more for any other election shall maintain records and report pursuant to this chapter all such independent expenditures made for the purpose of expressly advocating the election or defeat of a clearly identified candidate.

“B. Independent expenditure reports shall be due (i) within 24 hours of the time when the funds were expended or (ii) within 24 hours of the time when materials, as described in subsection A of this section, are published or broadcast to the public, whichever (i) or (ii) first occurs.”

§ 24.2-949.2 states,

“Except as provided in subsection B or C, each political action committee that anticipates receiving contributions or making expenditures in excess of \$200 in a calendar year shall file with the State Board a statement of organization within 10 days after its organization, or if later, within 10 days after the date on which it has information that causes the committee to anticipate it will receive contributions or make expenditures in excess of \$200 or on which it otherwise becomes subject to the provisions of this chapter.”

§ 24.2-955 states,

“The disclosure requirements of this chapter [Chapter 9.5] apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 (§ [24.2-945](#) et seq.) except that the disclosure requirements of this chapter do not apply to (i) an individual who makes independent expenditures aggregating less than \$1,000 in an election cycle for or against a candidate for statewide office or less than \$200 in an election cycle for or against a candidate for any other office or (ii) an individual who incurs expenses only with respect to a referendum.”

§ 24.2-955.1 defines “print media” as

“billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, and outdoor advertising facilities.”

§ 24.2-956.1 states,

It shall be unlawful for any person or political committee to sponsor a print media advertisement that constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 (§ [24.2-945](#) et seq.) unless the following requirements are met:

1. It bears the legend or includes the statement: "Paid for by .....

[Name of person or political committee]."

2. In an advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [Name of candidate], candidate for [Name of office]" or "Not authorized by a candidate."

3. In an advertisement that identifies a candidate the sponsor is opposing, the sponsor must disclose in the advertisement the name of the candidate who is intended to benefit from the advertisement, if the sponsor coordinates with, or has the authorization of, the benefited candidate.

**Analysis:** Section 24.2-956.1 requires that any “person or political committee” identify whether the candidate(s) supported or opposed in the advertisement whether a candidate authorized the advertisement or, if the advertisement identifies a candidate the sponsor is opposing, the candidate intended to benefit from the advertisement should the candidate have coordinated with the person or political committee. Mr. McHugh’s website failed to include either statement. However, it is not clear that Mr. McHugh spent \$200 or more on the advertisement which would require the disclosure if he was making an independent expenditure as an individual.

If staff were to accept the statements from Mr. McHugh, then he is in violation of § 24.2-949.2 and is acting as a political action committee by soliciting and accepting contributions for the primary purpose of expressly advocating the election of a clearly identified candidate. Therefore, Mr. McHugh has failed to file a statement of organization to register as a political action committee as required by § 24.2-949.2.

If Mr. McHugh or his political action committee did not coordinate this website with the candidates intended to benefit from the advertisement, then he was required to file an independent expenditure report as required by § 24.2-945.2. However, it is not clear that Mr. McHugh spent \$200 or more on the advertisement which would require the disclosure if he was making an independent expenditure as an individual.

**Conclusion:** The information provided is insufficient to find Mr. McHugh in violation of the Act or Stand By Your Ad. Further investigation is necessary, but the State Board is not authorized by the *Code of Virginia* to conduct investigations.

**Staff Recommendation:** Mr. McHugh resides in the County of Warren. Staff recommends that the Board refer the matter to the Attorney for the Commonwealth in the County of Warren for further investigation.

**Authority:** Section 24.2-946.3 states,

“It shall be the duty of the State Board to report any violation of the provisions of this chapter to the appropriate attorney for the Commonwealth. The State Board shall report to the attorney for the Commonwealth of the City of Richmond in the case of reporting requirements for campaign committees for statewide office and to the attorney for the Commonwealth of the county or city of the residence of a candidate for the General Assembly. For political committees, the State Board shall report the violation to the attorney for the Commonwealth of the City of Richmond. If all the officers of a political committee are residents of one county or city as shown on the statement of organization required by this chapter, the State Board shall report violations for that political committee to the attorney for the Commonwealth of that county or city.”

## Piper, Chris (SBE)

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**From:** Piper, Chris (SBE)  
**Sent:** Thursday, June 20, 2013 8:22 AM  
**To:** Piper, Chris (SBE)  
**Subject:** RE: SBYA Complaint

Anonymous caller into SBE asked that I visit this site and bring the matter to the Board's attention.

---

**From:** Piper, Chris (SBE)  
**Sent:** Friday, June 07, 2013 2:12 PM  
**To:** Piper, Chris (SBE)  
**Subject:** SBYA Complaint

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<https://sites.google.com/site/virginiansprotectingchildren/>

**Christopher Piper**  
**Manager, Election Services**  
**Virginia State Board of Elections**  
[chris.piper@sbe.virginia.gov](mailto:chris.piper@sbe.virginia.gov)  
**Office: (804) 864-8907**  
**Cell: (804) 350-8123**

DISCLAIMER: This message is not legal advice, nor a binding statement of official policy. It is intended only for the use of the named addressee(s). Any other use is prohibited. If you received this message in error, please call me at: 800-552-9745, and delete the message and any attachments without forwarding, copying or otherwise disclosing them. This message, including any attachments, may summarize laws, regulations and policies. Furthermore, this message and any responses sent to this email address may be subject to public disclosure under FOIA.

From the Desk of Mike McHugh, PO Box 1599, Front Royal, VA 22640

Dear State Board of Elections,

On Tuesday morning June 11<sup>th</sup>, the morning of the primary, I received from Carol Tobin (spelling?), the registrar in Warren County VA, a large packet of information entitled Candidate Campaign Committees.

I had requested it the day before but her system was down and she was very gracious to put all the information together and went the extra mile to give me a copy of what she considered to be the relevant law governing Campaign Finance Disclosures ( Act of 2006). Carol is an outstanding public servant.

It is my intent to be in compliance with all statutory law regarding my responsibility to report my personal expenditures related to the Gilbert v Prince and Sherwood v Berg primary races on June 11<sup>th</sup> if such a duty exists, does not have an exemption for individuals and provided it is not a statutory duty that infringes upon or has a chilling effect on the God-given right of free speech that is specifically protected by man-made constitutional provision in the Virginia and Federal Constitutions.

Please know that I hold the SBE in highest regard and understand your duty to implement the laws and decrees of Richmond legislators to the best of your ability.

To that end I request an extension of time to report my expenditures because:

1. I have been extremely busy with personal family and work related issues. In fact, I am alone with one son until next week taking care of the home. I then begin work related travel out of state next week and right now Front Royal is in the eye of a massive storm watch for which I need to prepare our animals and property to withstand.
2. I need time to read the massive 24.2 election laws.
3. I need time to get legal counsel as to whether I am properly interpreting these laws.
4. I need time to discern if there is an exemption for individuals spending less than 15 thousand in a year as there appears to be for committees.
5. I need time to discern whether the word person in the law applies to any individual who is NOT part of a campaign or committee.
6. I need time to consider whether the law provides proper and sufficient notice to any such individual that they have a duty to report their speech to the government because one of the unintended consequences of this law may be the entrapment of individuals simply trying to voice their opinions in good faith at election time.

I also certify that:

1. I personally spent money advocating the defeat of Gilbert and Sherwood and the election of Mr. Prince and Mr. Berg on June 11<sup>th</sup>.

2. I don't know the exact amount because I was not aware that I need receipts for this. I have some but need to request others.
3. The money spent was spent on advertising my personal views regarding these candidates.
4. I am not a person with a committee or campaign or candidate. As you know all persons working with committees or candidates are individual persons but not all individual persons are persons working with committees or candidate.

I hope you see my need for an extensive extension of time. It is earnest and sincere desire to avoid a court battle over what appears to an assault on speech and liberty.

---

I am confident that the intent of the legislature was not to protect incumbent legislators from challenges but it does appear to be the consequence of these laws on individuals persons.

Signed this day June 13, 2013 Front Royal Virginia



Mike McHugh

Virginians Protecting Children and Families

Search this site

Do You Approve?

Do You Approve?  
 \*Governor Bill O'Brien Calls Out Gilbert's Behavior  
 \*PDF of "Do You Approve?"  
 \*James, Glenn and Sherwood's Big Judge Speeches with Boy Friend

McHugh Responds to Gilbert's Threat to Take His Home  
 \*McHugh Talks Out Gilbert with Lindour, Fisher, Alpa  
 \*McHugh's Personal Calling Gilbert's Speeches "Pious Responses to Gilbert's Threat to Campaign"

\*Richard Hahn Responds to Ducking the Votes and the Hate  
 \*Kara, Prince on the Hate  
 \*Practical Challenges Gilbert vs. Sherwood  
 \*Sherwood

9

6/26/2013  
 June 11th Republican Primary

Do You Approve?

**Do You Approve of So-Called Pro-Family Delegates Voting for an Activist Homosexual Judge to Be a Role Model for Our Children?**

HOUSE OF DELEGATES RC# 32 GENERAL ASSEMBLY OF VIRGINIA 2013 REGULAR SESSION 1/15/2013 12:52:58 PM  
 JUDICIAL ELECTION OF TRACY THORNE-BEGLAND 15TH JUDICIAL DISTRICT

YEAS -- 66

- Albo Hodges McQuinn Sickles Bob Cole Hope Miller Spruill
- Brink Howell A.T. Matthew Shovel Bulova Benjamin Morris Tara Carr James Kiersey Dorian Constock James O'Bannon Toscano Cosgrove Kea O'Quinn Tyler
- Con. M.K. Kilgore Orick Villanueva Dance Knight Peace Ware, O. Farrell Kory Plum Ware, R.L.
- Fitter-Corn Knapicka Purkey Watts Gilbert Leckeyron Robinson Webber
- Gresnan Lewis Rush Vandyg Harbeck Lopez Russ York Helzel Loupassi Scott E. T. Bill Howell, Mr. Speaker, Herring Massee Scott, J.M. Hester McClellan Sherwood
- NAAYS -- 28

Anderson Crockett Stark Langmiller Penlander, Bull, Richard P. Dudenhofer, Marshall, DYC Ransudan Ball, Robert B. Edmunds Marshall, R.G. Ransome Byron  
 Parris May Stolle Cline Grant Merricks Watson Cole Hugo Morehead Will Cox, J.A. Landes Poyge Wright

ABSTENTIONS - 1 Ingram NOT VOTING - 5 Herald Johnson Ward Inaunou Pitney

Are we losing our children to Todd Gilbert and Beverly Sherwood's morally corrupt world view? Do you want an activist judge's agenda taught to our kids in our schools? I don't care what the so-called Family Foundation of Virginia says. They refused to report Bob Marshall's vote on Life at Convention in 2007 because party boss Howell backed Marshall from GOP Leadership. Gilbert sold out to party boss Howell for 30 pieces of GOP silver. Sadly, the Family Foundation represents GOP party boss Howell to YOU not YOU to the GOP establishment. What's a judge does in private is NONE OF OUR BUSINESS. But it is the duty of every pastor, parent and teacher who loves children to oppose him as an activist. Vote for Prince and Berg on June 11th. Send the message that establishing the church and families of the valley in the past will NOT BE TOLERATED.

**Paid for by Mike McHugh, PO Box 1599, Front Royal, VA 22630. For information email Aaron at blood\_bought\_sinner888@yahoo.com**

# Todd Gilbert and Bev Sherwood's Vision for Valley Children?



Only You Can Protect Children and Families by Voting for Mark Prince and Mark Berg on Tuesday, June 11 in the REPUBLICAN PRIMARY

Mike McHugh  
PO Box 1599  
Front Royal, VA 22630

**Patrons of the Valley!** PLEASE stand up and remember preacher/soldier Reverend Peter Muhlenberg. His statue stands in front of the courthouse in Woodstock. On June 11th vote for Marine Major Mark Prince, and Dr. Mark Berg. Send the message that you do NOT buy **Todd Gilbert and Bev Sherwood's**. Let us do evil that good may come "excuse for voting for a radical activist judge's agenda for our kids. Jesus doesn't" — Isaiah 5:20 and Romans 3:11

**VOTE** for 100% Pro-Life, RTM, Pro-Gun, Cut Spending, Protect Families, **Mark Prince and Mark Berg** on June 11th.

Send a message to Todd Gilbert that refusing to sponsor Bob Marshall's 2007 Life at Conception Act for 6 years is as UNACCEPTABLE as spouting with Barry Bess Howell to Kill Bob Marshall's 2013 Bill HB 2340-VA Firearms Protection Act.

Do you want a delegate that opens PARTY 8055 Speaker Bill Howell while helping local politicians grind the face of the poor with massive tax increases thru gross violations of the VA Constitution? — Isaiah 1:17 and Amos 5:15

[www.VirginiansProtectingChildren.info](http://www.VirginiansProtectingChildren.info)

Subpages (3) ["Statement: Bill Gilbert Calls Out Governor's Behavior"](#) ["PDF of 'Can You Afford?'"](#) ["Video: Gilbert and Sherwood's Own Public Speeches with Bev Berg"](#)

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STATE BOARD *of* ELECTIONS

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# New Business

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BOARD WORKING PAPERS



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# Charles City County Request For Full-Time Status

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BOARD WORKING PAPERS  
Elizabeth Howard  
Deputy Commissioner



★ VIRGINIA ★  
DEPARTMENT *of* ELECTIONS

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## Memorandum

**To:** Members of the State Board of Elections  
**From:** Edgardo Cortés, Commissioner  
**Date:** May 13, 2015  
**Subject:** Electoral Board Request for Full-Time Status for General Registrar

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

Move that the Board approve the request from the Electoral Board of the County of Charles City County for the period of May 1, 2015 through June 12, 2015.

**Applicable Code Sections:** Chapter 3, 2014 Acts of the Assembly, Item 84(C)

### Attachments:

Your Board materials include the following

- Signed request for temporary full-time status from Charles City County Electoral Board

### Background:

The Virginia Budget authorizes and funds general registrars with a population in most counties under 10,000 and cities under 7,500 to work on a part-time basis for most of the year. While the Budget does provide funding for the registrars to be compensated to work full-time for the months surrounding each year's May General Election (March through May), the Budget does not account for other elections, including local elections and primaries.

Chapter 3, 2014 Acts of the Assembly, Item 84(C) (the "Budget") does include an appropriation from the general fund to provide temporary full-time status for part-time general registrars. Specifically, the Budget states:

C. Included in the appropriation for this Item is \$30,900 the first year and \$30,900 the second year from the general fund to provide temporary full-time status for part-time general registrars. Such temporary full-time status may be granted by the Board of Elections, upon request of the Local Electoral Board, in recognition of temporary or permanent increases in workload. In making its determination, the Board of Elections shall consider elections, if any, required to be conducted by the locality during January through July, and evidence submitted by the Local Electoral Board to document increases in workload. Such evidence shall include specific data with comparisons, by transaction type and by month experienced, of

past and present workloads. Temporary full-time status, if granted, may include all or part of the time normally worked on a part-time basis.

ELECT staff recommendation is to approve the request from Charles City County. The request is reasonable and reflects the timeframe in which the obligations for the May General Election reach the point where a part-time registrar should be in the office full-time. Part-time registrars have the same obligations as registrars in larger localities, including meeting important absentee ballot deadlines, administering in-person absentee voting and all the other assorted duties and responsibilities associated with properly administering an election.

**OFFICE OF THE ELECTORAL BOARD  
CHARLES CITY COUNTY  
BARBARA E. HAYES, SECRETARY  
Telephone Home: (804) 829-2663  
Telephone Work: (804) 359-4902 8:30 a.m. to 4:30 p.m.**



**April 09, 2015**

Edgardo Cortes, Secretary  
DEPARTMENT OF ELECTIONS  
1100 Bank Street  
Richmond, Virginia 23219

By Fax: (804) 371-0194

Re: Electoral Boards Request for Full-Time Status for Registrar

Dear Mr. Cortes:

The Charles City County Electoral Board respectfully requests that you authorize Catrinia Barneycastle, Registrar, to maintain office hours five days per week for a period of May 01 until June 12, 2015.

Mrs. Barneycastle is a part-time Registrar and we want to insure that our citizens have full time office hours to implement the voting process by being available for five days per week for this Primary.

We would also like to request the same days for our Assistant Registrar who is only allowed 52 days a year and at this time we have very few days left until the new physical year begins.

We do not have to inform you of the amount of work that is entailed before any type of election, especially when you are alone and part-time. Therefore, we are making our request that our Registrar and Assistant be full time from the above time period and hope that in the future this position will be full-time.

Thank you for your assistance and cooperation in this request.

Very truly yours,

Barbara E. Hayes, Secretary

BEH:  
c. Catrinia Barneycastle, Registrar



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STATE BOARD *of* ELECTIONS

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# Electronic Poll Books Certification Requirements

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BOARD WORKING PAPERS  
Cameron Sasnett  
Systems Support Specialist



★VIRGINIA★  
STATE BOARD  
*of* ELECTIONS

To: Members of the State Board of Elections

From: Cameron Glenn Sasnett – Systems Integration and Support Specialist

Date: May 13, 2015

Re: Revision of EPB Certification Requirements

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

I move that the Board strike the current standing EPB certification documents and approve and adopt the document *VAEPB Certification Procedures and System Requirements REV-0515* as the Board's official certification guidance document.

**Applicable Code Sections:** §24.2-611(D).

**Attachments:**

Your Board materials include the following:

- A draft of *VAEPB Certification Procedures and System Requirements REV-0515*

**Background:**

§24.2-611(D) of the Code of Virginia allows all localities to expend their own funds to purchase electronic pollbooks that have been approved for use in elections by the State Board. ELECT staff redeveloped the Certification document(s) to better incorporate specific requirements for enhanced security and encryption methodologies.

This document further provides for the framework for EPB Vendors to bring their systems to the SBE for certification testing that were prohibit previously due to contradictions in the certification requirements and the *Code of Virginia*.



## Virginia State Board of Elections

### ELECTRONIC POLLBOOK CERTIFICATION

### Procedures & System Requirements Rev-0515(Draft)

Prepared and Managed by:  
**Virginia Department of Elections**  
**Election Administration and Compliance Division**  
1100 Bank Street  
Washington Building – 1<sup>st</sup> Floor  
Richmond, Virginia 23219  
800.552.9745  
[info@elections.virginia.gov](mailto:info@elections.virginia.gov)

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# **PART 1: INTRODUCTION**

## **1.1. PURPOSE OF PROCEDURES**

These procedures have been developed and approved as part of a continuing effort to improve the administration of elections in the Commonwealth of Virginia. They provide a formal and organized process for vendors to follow when seeking state certification for an electronic pollbook system or a significant improvement or modification to an existing electronic pollbook system currently certified for use in Virginia. To this end these procedures are designed to:

1. Ensure conformity with Virginia election laws relating to the acquisition and use of electronic pollbook systems and equipment;
2. Provide an organized and consistent means of evaluating and certifying electronic pollbook systems and equipment marketed for use in Virginia;
3. Provide an organized and consistent means of evaluating and re-certifying additional capabilities and changes in the method of operation for electronic pollbook systems previously certified for use in Virginia;
4. Provide for the improvement of the electoral process by ensuring that all electronic pollbook systems operate properly and are installed and tested in compliance with the State Board of Elections approved procedures; and
5. Provide for the accurate recording and reporting of a list of voters who participated in an election for any jurisdiction in which each certified system is used.

## **1.2. AUTHORITY**

§24.2-611(D) of the Code of Virginia requires Electronic Pollbook (EPB) programs to be approved for use in elections by the Virginia State Board of Elections. Each EPB System submitted for certification in Virginia shall undergo State Certification. State Certification is intended to verify that the design and performance of the electronic pollbook complies with all applicable requirements of the Code of Virginia and that it provides the functionality required by the Virginia State Board of Elections (SBE) and The Virginia Department of Elections (ELECT).

### 1.3. SCOPE OF REQUIREMENTS PROGRAM

1. The electronic pollbook system and equipment must comply with the provisions within the *Code of Virginia* and the *Virginia Administrative Code* relating to pollbooks, voting, and voter registration.
2. The electronic pollbook system or equipment must comply with the provisions in the *Code of Virginia* relating to pollbooks (Chapter 6, Article 3 of Title 24.2).

### 1.4. APPLICABILITY

1. The procedures outlined in this document are applicable to all electronic pollbook systems first used on or after the effective date of this document.
2. These procedures are intended to assist local jurisdictions in identifying electronic pollbook systems that meet all state requirements and are available for purchase based on any individual locality requirements.
3. The requirements of these procedures are waived for any electronic pollbook system or equipment previously certified for and in use in the Commonwealth of Virginia on or before May 1, 2014. The State Board of Elections reserves the right to require re-certification of these systems or equipment at any future date.
4. Any modification to the hardware, firmware, or software of an existing system which has previously been certified by the Virginia State Board of Elections in accordance with these procedures will, in general, invalidate the certification unless it can be determined by the State Board of Elections that the change does not affect the accuracy, reliability, security, usability or accessibility of the system.
5. The intent of these procedures is to ensure that electronic pollbook systems have been shown to be reliable, accurate, usable, accessible and capable of secure operation before they are certified for use in the Commonwealth. EPB Systems with performance proven in commercial applications may be deemed acceptable, provided that they are shown to be compatible with the operational and administrative requirements of the election environment.

Typically, the vendor will be required to provide documentation of a product's proven performance, such as test reports to comparable standards. Products not in wide commercial use, regardless of their performance histories, will require qualification, certification, and acceptance tests before they can be used.

6. Electronic pollbook systems generally utilize vendor designed software operating on a variety of commercial-off-the-shelf hardware devices. Certification shall be

provided to only similarly identical, and previously designated, hardware and operating systems at the time of certification.

7. For the purpose of certification, web-based electronic pollbook systems that are operated via a web browser, must certify all requirements across all anticipated device platforms and browsers.
8. Re-certification shall be required when a vendor makes significant changes or enhancements to its electronic pollbook system. This shall include, and not limited to, changes to:
  - a. The programming language in which the certified software was written.
  - b. The operating System(s). Minor updates to previously certified operating systems are excluded, however and SBE will determine if an update to a previously certified operating system is classified as major or minor and shall be consulted prior to any patching of an operating system. Generally, SBE will only seek certification of operating system updates if the update results in a risk to the interfacing systems used for the electronic pollbook device.”
9. A currently certified systems vendor may submit an Electronic Pollbook System Feature Enhancement Review & Recertification Waiver Request to the Virginia Department of Elections when the vendor believes that an enhancement to its currently certified electronic pollbook software does not warrant the necessity a full certification review of the electronic pollbook system. The Virginia Department of Elections will prepare a summary for the Virginia State Board of Elections to determine if the request is approved. Vendors may submit a maximum of one request per system within a six month period.

A chart of major and minor changes can be found in APPENDIX C.

## **1.5. DECERTIFICATION & SUSPENSION**

The State Board of Elections reserves the right to reexamine and reevaluate any previously certified electronic pollbook system for any reason, at any time. Any previously certified electronic pollbook system that does not pass the re-certification testing will be decertified. An electronic pollbook system that has been decertified by SBE may not be used in elections in the Commonwealth.

When sufficient evidence is provided indicating that a data security vulnerability is present in the software, SBE may suspend the usage of an electronic pollbook system pending the results of its recertification.

## **PART 2: REVIEW AND APPROVAL PROCESS**

### **2.1. SUMMARY OF PROCESS**

*These procedures are limited to those systems and equipment that are in full production and available for immediate installation and use.*

A total of six (6) steps have been established to carry out The Review and Approval Process. These steps are designed so that the State Board of Elections can, at any point, make a determination to continue the evaluation.

### **2.2. PROCEDURE FOR CERTIFICATION**

The evaluation of the electronic pollbook system will proceed in the following steps:

#### **2.2.1. Step 1: Submit Letter of Request for Certification and Certification Fee**

The certification evaluation procedure shall be initiated by a letter from the vendor of the electronic pollbook system to the Secretary of the State Board of Elections requesting certification for either a specific electronic pollbook system or for a software, firmware, or hardware modification to a certified electronic pollbook system.

Vendors must pay a certification fee of \$5,000.00 for Electronic Pollbook System certification and any other fees as required for requests for modifications to a previously certified electronic pollbook system. If SBE's actual costs for reviewing the vendor's submission exceed the amount of the initial fee, the vendor agrees to reimburse SBE for all additional costs incurred. All fees must be collected before certification will be granted.

The State Board of Elections will notify the vendor of the earliest date after which the requested certification evaluation can begin.

If the State Board of Elections finds any reason to deny the request, the vendor will be notified in writing and the certification fee will be returned.

The request to begin the certification process for an electronic pollbook system shall be a written letter addressed to:

Virginia Department of Elections  
Election Administration and Compliance Division  
1100 Bank Street, 1st Floor  
Richmond, Virginia 23219

## Letter of Request for Certification Components

The request shall be signed by a company officer and contain the following information:

- Identification of the specific electronic pollbook system to be evaluated for certification. Each electronic pollbook system or version of an electronic pollbook system requires a separate request for certification. Each component of the hardware, firmware, and software must be identified by version number.
- Copies of documents substantiating completion of certification by any other states' election administration agency.
- Whether the proposed electronic pollbook system has ever been denied certification or had certification withdrawn in any other state.
- A brief overview description of the electronic pollbook system. Typical marketing brochures are usually sufficient for this description (4 copies).
- The completed *Ability to Comply* form (Appendix B).
- A check or money order for the non-refundable certification fee must be included with this request before any certification work begins.

### 2.2.2. Step 2: Submit a Technical Data Package and Corporate Information

The vendor shall submit a Technical Data Package, Corporate Information, and other material described within this section of the document to an evaluation agent. The vendor will be supplied with the contact information of the evaluation agent.

The evaluation agent will review the Technical Data Package, Corporate Information, and other materials provided and notify the vendor of any deficiencies. Certification of the electronic pollbook system will not proceed beyond this step until the Technical Data Package and Corporate Information are completely submitted.

#### Technical Data Package Components

Each item in the package must be clearly identified; if the TDP is incomplete or the items in the package are not clearly identified, the entire package may be returned to the vendor and the evaluation of the electronic pollbook system rescheduled.

- *Customer Maintenance Documentation.* Documentation describing any maintenance that the vendor recommends can be performed by a customer with minimal knowledge of the system.

- *Operations Manual.* Operations documentation that is normally supplied to the customer for use by the person(s) who will operate the equipment.
- *Recommended Use Procedures.* Specific election administration procedures recommended for use with the system.
- *Software License Agreement.* The software license agreement must be perpetual. An annual renewable support fee may be included as an option.
- *Software Source Code.* A copy of the electronic pollbook source code shall be provided. It shall be supplied in the form of a listing and in a machine-readable form on media that is readable by the electronic pollbook system. If there is any chance of ambiguity, the required compiler must be specified.
- *Software System Design.* Documentation describing the logical design of the software. This documentation should clearly indicate the various modules of the software, their functions, and their interrelationships with each other.
- *Customer Documentation.* A complete set of all documentation which is available to the purchaser/user of the electronic pollbook system. Clearly identify the documentation that is included in the cost of the system and the documentation that is available for an additional charge.
- *Standard Contract.* Statement of deliverables to include: verification statement that equipment purchased is identical to equipment certified by the State Board of Elections, software licenses, warranties, support services provided, etc. and associated cost of each.
- *Warranty.* The period and extent of the warranty and the method of repair/replacement for all hardware items; the circumstances under which equipment is replaced rather than repaired and the method by which a user requests such replacement; additional warranties that are available over and above the standard warranty, what these warranties cover, and their costs; the period and extent of warranty and the method of correction or replacement for all software provided as part of the electronic pollbook system; and the technical documentation provided with all hardware and software that is used to certify that the individual component will perform in the manner and for the specified time.

- *Test Data/Software.* Any available test data and/or software that can be used to demonstrate the various functions of the electronic pollbook system or verify that the version of the applications submitted are identical to the versions that will be certified.
- *Recommended Security Practices.* Documentation of the practices recommended by the vendor to ensure the optimum security and functionality of the system.

If the electronic pollbook system is certified, the State Board of Elections will retain all contents of the Technical Data Package as long as the electronic pollbook system is marketed or used in the Commonwealth of Virginia.

### **Corporate Information Components**

Before evaluation can begin, the vendor must submit to the evaluation agent the Corporate Information as detailed below with each item clearly identified. If the Corporate Information is incomplete or the items in the package are not clearly identified, the entire package may be returned to the vendor and evaluation of the electronic pollbook system rescheduled.

The Corporate Information shall contain the following items:

- History and description of the business including year established, products and services offered, areas served, branch offices and subsidiary and/or parent companies.
- Management and staff organization, number of full time employees by category, number of part-time employees by category, resumes of key employees who will assist Virginia localities in acquiring the system if it is authorized for use.
- Audited Report of the business' most current fiscal year.
- Comfort letter from the business' primary bank. If the business uses more than one, multiple comfort letters must be submitted.
- Gross sales in voting products and services for the past three (3) years and the percent that is representative of the total sales of the business and its subsidiaries.
- The location and servicing capability of each service facility that will be used to service the electronic pollbook system for certification and the service limitation of the facility.
- If publicly traded, indexes rating the business debt.
- Quality assurance process used in the manufacturing of the electronic pollbook system.

- Configuration management process used with the electronic pollbook system.

If the electronic pollbook system is certified, the State Board of Elections will retain the Corporate Information as long as the electronic pollbook system is marketed or used in Virginia. The Department of Elections will sign a statement of confidentiality for corporate information only.

### **Proprietary Information**

The vendor must clearly mark any information it requests be treated as confidential and proprietary before providing it to Virginia representatives for evaluation. Stating that the entire package is proprietary will be insufficient. All pages of the documentation that contain information the vendor considers proprietary information must be clearly marked as such. The State Board of Elections cannot guarantee the extent to which any material provided will be exempt from disclosure in litigation or otherwise.

Any non-profit or government agency, including the Virginia State Board of Elections, shall be exempt from sections 2.2.1 and 2.2.2 of this document, at the discretion of the Virginia State Board of Elections.

#### **2.2.3. Step 3: Allow for Preliminary Review**

The evaluation agent will conduct a preliminary analysis of the Technical Data Package, Corporate Information, and other materials provided and prepare an Evaluation Proposal containing the following information:

- Components of the electronic pollbook system requiring evaluation.
- Identification of any additional materials needed to ascertain financial stability and capabilities of the vendor to maintain support of the electronic pollbook system.
- Description of the activities required to complete the portion of the evaluation performed by the evaluation agent.
- Estimate of time required to complete the portion of the evaluation performed by the evaluation agent.

#### **2.2.4. Step 4: Receive Authorization to Proceed**

The vendor will review the Evaluation Proposal and notify the Virginia Department of Elections, in writing, of the desire to continue or terminate the evaluation process. A copy of this notification will be sent to the evaluation agent.

### **2.2.5. Step 5: Test/Pilot Election**

The State Board of Elections will supervise a test use of the system in an actual election with the vendor present prior to final certification.

### **2.2.6. Step 6: Certification**

Based on the information contained in the report from the evaluation agent, Technical Requirements Evaluation, the Test Election, Virginia Functional Configuration Audit, and any other information in their possession, the State Board of Elections will determine whether the proposed electronic pollbook system will be certified for use in the Commonwealth of Virginia and notify the vendor of the decision.

## **2.3. AUDIT AND VALIDATION OF CERTIFICATION**

It is the responsibility of both the vendor and the local jurisdiction to ensure that an electronic pollbook system that is supplied or purchased for use in the Commonwealth of Virginia has been certified by the State Board of Elections. It is the responsibility of the vendor to submit any modifications to a previously certified electronic pollbook system to the State Board of Elections for review.

If any questions arise involving the certification of an electronic pollbook system in use in Virginia, SBE shall verify that the electronic pollbook system in use is in fact identical to the electronic pollbook system that was submitted for certification. Any unauthorized modifications to a certified system may result in decertification of the system by SBE or bar an electronic pollbook system vendor from receiving certification of electronic pollbook systems in the future.

## **2.4. TIME FRAME**

The State Board of Elections reserves the right to terminate the certification process at any time if the vendor fails to proceed in a timely manner. In particular, if a period of three months expires between any request for information by the Board or its evaluation agent and the vendor's response to that request, the Board will terminate the certification process. If the certification process is terminated under this provision, the vendor will forfeit any fees received by SBE. Any certification process terminated under this provision must be re-initiated from Step 1, Section 2.2: Procedure for Certification.

The certification process is also terminated when:

- a. SBE issues a determination regarding certification;
- b. The Vendor withdraws from the process; or

- c. The system fails the certification test; or
- d. The vendor cannot conduct the certification testing with the equipment on-hand.

The process can only be re-initiated from Step 1, Section 2.2.: Procedure for Certification, if the process is terminated under conditions b, c, or d.

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## **PART 3: CERTIFICATION**

### **3.1. CERTIFICATION OVERVIEW**

There are two distinct elements of testing that an electronic pollbook system must successfully complete before it can be certified for use in the Commonwealth of Virginia. These two levels are a **Technical Requirements Evaluation, Virginia Functional Configuration Audit, and Acceptance Testing**.

The Technical Requirements Evaluation is performed to ensure that the electronic pollbook system complies with any statutory and administrative requirements pertaining to data security and usage.

The Functional Configuration Audit is performed to assure that the electronic pollbook system complies with statutory, administrative, and operational requirements set forth by the State Board of Elections.

The Acceptance Testing is a locality event that will be completed after the electronic pollbook system is delivered to a locality to ensure that the system is functionally identical to the system that was certified.

### **3.2. TECHNICAL REQUIREMENTS EVALUATION**

Prior to, or concurrently with, providing its electronic pollbook system to the State Board of Elections for a Functional Configuration Audit, the vendor shall submit its electronic pollbook system to a VSTL to verify functionality, stability, and applicability of the elements of the electronic pollbook system as set forth in this document.

The primary goal of the Technical Requirements Evaluation is to determine if the electronic pollbook system appropriately and securely warehouses, manages, and transfer voter registration data in compliance with the standards set forth by this document.

To support a review of Technical Requirements Evaluation, the following documents shall be provided to SBE:

1. A full copy of the Technical Data Package (TDP);
2. A copy of the Test Plan, Test Report and all Test Procedures and Test Cases from the VSTL;
3. A release to the VSTL to respond to any requests for information from all agencies in the Commonwealth of Virginia;

4. A release to other state election administration agencies which have certified the system or prior versions of the system to respond to any requests for information from the Commonwealth of Virginia; and

### **3.2.1. Electronic Pollbook System Hardware Elements**

All equipment used in the electronic pollbook system shall be examined to determine if it is suitable for election use according to the appropriate procedures contained within this document. Equipment to be tested shall be identical in form and function with production units. Engineering or development prototypes are not acceptable.

Any modifications to existing hardware that has been previously certified by SBE will invalidate the prior certification unless it can be determined by the State Board of Elections that the change does not affect the accuracy, reliability, security, usability or accessibility of the system.

The Virginia SBE recognizes that most EPB vendors develop simple software solutions to be applicable to a variety of commercial-off-the-shelf (COTS) hardware elements that are traditionally chosen by its customers. It is because of this, SBE will only certify an EPB System on current or profoundly similar hardware platforms. A profoundly similar hardware platform shall be any device capable of running the identical version of the operating system as that being certified.

If the vendor is providing a “web-based” EPB solution, the system may only be certified on the devices that are submitted to the VSTL and SBE for the testing.

### **3.2.2. Electronic Pollbook System Software Elements**

All elements of the electronic pollbook system software shall be examined and tested to ensure that it adheres to the performance standards specified within this document. This shall include but is not limited to, the firmware/operating system/platform of all hardware elements,

Modifications to existing software that has been previously certified by SBE will invalidate the certification unless it can be determined by the State Board of Elections that the change does not affect the accuracy, reliability, security, usability or accessibility of the system.

If the vendor wishes to provide a single feature enhancement to a previously certified system, the vendor shall have the opportunity to provide documentation and certification that the code and algorithms previously certified were not substantially altered to facilitate the addition of the single feature. Vendors may submit only one single feature enhancement within a six month window without the necessity to recertify the entire EPB System.

If the EPB system’s operating system requires a modification after the system is certified the system shall maintain its certification with the operating system update, so long as the

modification is provided solely to the operating system, the vendor provides notification of the modification of operating systems prior to their installation, and the update is provided directly from the operating system developer (ie Microsoft, Apple, or Android). This shall apply only to minor version numbers of operating systems. See Appendix C.

The vendor shall submit to SBE, along with the operational version of the software, the source code and version change logs its electronic pollbook software at time of testing or modification.

SBE will not allow any EPB software wholly or containing components utilizing Alpha or Beta versions of software or programs to be tested.

The Virginia Department of Elections shall work directly with the VSTL to determine the specific manner in which the electronic pollbook system shall be evaluated with regards to the listing of the requirements in section 3.3.1 and 3.3.2 of this document and the features of the electronic pollbook system.

### **3.3. VIRGINIA FUNCTIONAL CONFIGURATION AUDIT**

State certification testing is intended to verify that the design and performance of the electronic pollbook system being certified complies with all applicable requirements of the *Code of Virginia* and SBE regulations and policies.

The certification test is not intended to require exhaustive tests of system hardware and software attributes; these are evaluated during the Technical Requirements Audit. However, all system functions, which are essential to the conduct of an election, will be evaluated.

An important focus of Virginia Functional Configuration Audit is to review the operation of the EPB system. This review requires making inquiries of other users of the system. State certification reports and other evaluations of the system are read and analyzed for insight into the suitability of the system for use in Virginia.

The recommended use procedures are examined along with the EPB system to determine how well the system will integrate into Virginia election law and management practices.

Testing is performed to evaluate the system with respect to the specific practices of Virginia.

Testing will evaluate all system operations and procedures that:

- a. Receive and process data containing applicable voter registration information;
- b. Receive and process data containing applicable polling place information;
- c. Receive and process data containing applicable election information;
- d. Verify system readiness for operation;

- e. Accurately maintain whole and separate count(s) of voters distinguishable by Ballot Style, Voter's Party, Precinct, Precinct Split, Curbside Voter, Challenged Voter;
- f. Perform data and operational integrity safeguard tests including:
  - i. Removal and replacement of EPB units and other components,
  - ii. Variable power source evaluation(s);
- g. Obtain data and audit data reports; and
- h. Support recount or election audits.

The test environment will include the preparation and operation of election and voting databases, and the validation, consolidation, and reporting of administrative and voter credit data as required by law.

The state may perform hash testing of applications software to verify that the versions provided by the vendor are identical to the versions that have undergone Technical Requirements Evaluation.

### 3.3.1. Chart of Statutory Requirements

The chart below details EPB functional requirements as designated by statutory standings contained within *The Code of Virginia, Title 24.2. Elections*.

For the purpose of this chart, the following terms shall apply:

**EPB System** – an entire software and hardware solution (including networking and peripheral devices) that consists of an election management module and deployed scalable and networkable Precinct EPBs.

**Precinct EPB** – a software and hardware solution (including networking and peripheral devices) that are operated specifically within a precinct for the purpose of checking voters into the polling place(s).

**VERIS** – The Virginia Elections and Registration Information System. This is the online voter registration and election management portal used by SBE and ELECT to manage voters and elections.

*Items marked with an “\*” indicate items that will be evaluated during both the TRE & VFCA.*

Code Section	Requirement
Va. Const. Art. II, § 2	The EPB System shall have the ability to ensure that only voters residing within specific precinct are allowed to be checked into the current precincts on election day.
*§ 24.2-531	The EPB System shall have the ability to prepare a separate pollbook report for each party taking part in a primary election at the same time.
*§ 24.2-668(C)	The Precinct EPB shall have the ability to read and write data upon a removable memory device that can produce a list of those who voted. The Precinct EPBs removable memory device shall be sealable with other records of the election from the precinct.  - or -  The Precinct EPB must have the ability to produce a physical printed list directly from the pollbook device of persons who voted. The Precinct printed list of those who voted shall be formatted in a manner as to be sealable with other records of the election from the precinct.
*§ 24.2-668(C)	The EPB System shall have the ability to indicate the election in which the data and reports were used.

Code Section	Requirement
*§ 24.2-611(B) § 24.2-668(C)	The EPB system shall have the ability to produce a final consolidated list of those who voted for the purpose of applying voter credit to VERIS.
*§ 24.2-611(B)(ii)	The Precinct EPB shall have the ability to indicate whether a voter voted “Outside Polls” or “OP.” The operator shall be allowed to notate independently or in conjunction with other notations set forth in these requirements. The Precinct EPB and the EPB System shall have the ability to provide listings and counts of such voters.
*§ 24.2-611(B)	The Precinct EPB shall have the ability to automatically record a consecutive number of the voter at the time he offers to vote.
*§ 24.2-611(C)	The EPB System shall employ AES standardized encryption methodologies to safeguard the data.
*§ 24.2-651 § 24.2-652	The Precinct EPB shall have the ability to indicate when a voter has signed a required statement allowing him to vote. The Precinct EPB and the EPB System shall have the ability to provide listings and counts of such voters.
*§ 24.2-652	The Precinct EPB shall have the ability to add additional voter records to the data set. This action shall prompt the Precinct EPB operator to verify that the addition was authorized by a locality’s General Registrar.
*§ 24.2-653	The Precinct EPB shall NOT contain the ability to apply a consecutive pollbook count (PBC) number to any voter who cast a Provisional Ballot. The Precinct EPB and EPB System shall be able to produce a separate report listing all voters who cast a Provisional Ballot.
*§ 24.2-711	The EPB System shall contain the ability to identify voters (contained within the initiating data set) who have already voted via the absentee process. All such voters, shall be displayed, at minimum, with the designation of “AB” in the record listing.
§ 24.2-711	The Precinct EPB shall contain the ability to produce a printable and/or screen displayed listing of all voters having been marked with “AB.”
*§ 24.2-711	The Precinct EPB shall contain the ability for the operator to edit any voter record to include or to update a voter’s record to reflect a corrected or updated status of absentee voting.

### 3.3.2. Chart of Operational & Technical Requirements

The chart below details EPB operational and technical requirements as determined necessary for the effective use of EPB systems in Virginia.

For the purpose of this chart, the following terms shall apply:

**EPB System** – an entire software and hardware solution (including networking and peripheral devices) that consists of an election management module and deployed scalable and networkable Precinct EPBs.

**Precinct EPB** – a software and hardware solution (including networking and peripheral devices) that are operated specifically within a precinct for the purpose of checking voters into the polling place(s).

**VERIS** – The Virginia Elections and Registration Information System. This is the online voter registration and election management portal used by SBE and ELECT to manage voters and elections.

*Items marked with an “\*” indicate items that will be evaluated during both the TRE & VFCA.*

Applicability	Requirement
*Database	The EPB System shall contain the ability to import, collect, store, retrieve, display, and edit information for all voter records and fields provided by VERIS.
*Search/Lookup	The Precinct EPBs shall contain the ability to retrieve and display information for voters by any combination of manual or automated search fields: Last Name, First Name, Street Address, District Information, Voter ID Number, and/or DMV Customer Number
*Simultaneous Elections	The EPB system and Precinct EPBs shall maintain the ability to consolidate the functional operations of multiple simultaneous elections while maintaining separate pollbook counts for each election.
*Simultaneous Elections	The EPB system and Precinct EPBs shall maintain separate unique election records for each election held on the same day.
*Simultaneous Elections	The Precinct EPBs shall prohibit the ability for any voter who has participated in one of the elections from participating in any of the other elections held on the same day without indicating that he has participated in the other election.

<b>Applicability</b>	<b>Requirement</b>
*Overall Capabilities	The EPB System and Precinct EPBs shall be structured with sufficient storage, networking, and processor components to access, display, and process 100% of voter records for a precinct containing at least 10,000 voter records.
*Overall Capabilities	The EPB System and Precinct EPBs shall be structured with sufficient storage, networking, and processor components to access, display, and process voters from datasets with at least 800,000 voter registration records contained within the data set.
Overall Capabilities	The EPB System and Precinct EPBs shall have the ability to support all VA election types and ballot combinations.
Voter Check-In	The Precinct EPBs shall have the capability of providing the EPB operator with sufficient voter record information for determining a voter’s eligibility to vote, voter status, voted status, absentee status, districts and precinct information, and ballot code/type.
*Voter Check-In	The Precinct EPBs shall have the ability to display informational prompts and/or warnings based on non-qualifying voter criteria. The Precinct EPBs shall have the ability to require an advanced user authentication to “override” check-ins for non-qualified voters.
*Multiple Unit Synchronization	The Precinct EPBs must have the ability to conspicuously and automatically display and update the total count of voters checked-in at the precinct. If the Precinct EPBs communicate outside of their precinct, then EPB System shall have the ability to prohibit the display and/or combination of pollbook counts within any other precinct.
*Multiple Unit Synchronization	The EPB System and Precinct EPBs shall be configured in such a manner that when any two (2) or more Precinct EPBs are networked together, all data on any one of the Precinct EPBs is automatically and simultaneously synchronized between all other Precinct EPBs.
*Continuity of Operations	The EPB System and Precinct EPBs shall be configured to automatically synchronize data across any authorized device at added to the precinct network.

Applicability	Requirement
User Interface & Reports	The Precinct EPBs shall contain the ability to display data reports on the Precinct EPB device screen and should allow the operator to send reports to a printer. At minimum, available reports must be able to contain a timestamp, the election identification information, total number of voter's assigned to a precinct, total number of "AB" voters, total number of voters with status of "active," total number of voters with status of "inactive," total voters checked-in, and total number of voters checked-in by party.
*Overall Capabilities	The Precinct EPBs shall be capable of automatically switching to a self-contained direct current power source and not interrupt the operation or integrity of the data.
*User Interface	The Precinct EPBs shall be configured in such a way that the operator is provided indication when the Precinct EPB device(s) is operating on battery power (DC). The Precinct EPBS shall be capable of operating on battery power for a minimum of 2 hours.
*Data Security	The EPB System and Precinct EPBs shall be configured to ensure controlled, secure logical/administrative access.
*Data Security	The EPB System and Precinct EPBs shall be capable of providing accessible and exportable comprehensive audit logs of all transactions to include at minimum, timestamp and transaction/event.
*Data At-Rest Security	The EPB System, Precinct EPBs, and all other components shall be configured in such a manner to provide a constant static data encryption methodology that minimally meets AES Data Encryption Standards at a level utilizing at least 256-bit keys.
*Data In-Motion Security	<p>The EPB System and Precinct EPBs shall be configured and managed in such a manner that all data in-motion maintains the highest level of physical or digital protections.</p> <p>The EPB System and Precinct EPBs shall be configured and managed in such a manner that they may never connect to a publically accessible network.</p>

Applicability	Requirement
*Data In-Motion Security	<p><i>If Precinct EPBs utilize LAN networking connectivity:</i></p> <p>All Precinct EPBs must be connected via LAN Ethernet Cable utilizing a closed and independent switch.</p> <p><b>-or-</b></p> <p>All Precinct EPBs must be connect via a closed wireless non-SSID broadcasting router with WPA/WPA2 encryption methodology employed, including and additional filtration scenario to allow only the known Precinct EPB devices the ability to connect to the wireless network.</p> <p><b>-and-</b></p> <p>The Precinct EPBs shall be configured in such a manner as to only be capable of connecting to the designated wireless networking device.</p>
*Data In-Motion Security	<p><i>If EPB System and Precinct EPBs utilize WAN networking connectivity:</i></p> <p>All Precinct EPBs must be connected via a wireless non-SSID broadcasting router or network with at minimum WPA/WPA2 encryption methodology employed, including an additional filtration scenario to allow only the known Precinct EPB devices within the precinct to connect to the wireless network.</p> <p><b>-and-</b></p> <p>The EPB System shall be configured in a manner that all data transmission shall only use full tunneling methodology that permits specific routing and approved encryption standards. (VPN)</p> <p><b>-and-</b></p> <p>The EPB System and Precinct EPBs shall be configured in such a manner that the wireless infrastructure must authenticate each client device prior to access.</p> <p><b>-and-</b></p> <p>The EPB System and Precinct EPBs shall be configured in such a manner that two-factor authentication is employed.</p>
*Data Storage & Redundancy	<p>All Precinct EPBs shall be configured in such a manner to automatically replicate and securely encrypt a copy of the data at all times to a removable/relocatable memory device such as a USB Memory Flash Drive.</p>

Applicability	Requirement
*Data Storage & Redundancy	<p><i>If the EPB System and Precinct EPBs are designed in such a manner to not be capable of connecting to a peripheral memory device:</i></p> <p>The Precinct EPBs shall be configured in such a manner to provide for the functionality to print reports and lists within the precinct at all times.</p> <p>-and-</p> <p>The Precinct EPBs shall maintain connectivity to the EPB System where each Precinct EPB's local data shall stay copied, secured, and remotely accessible at all times.</p>
Maintenance & Support	<p>The purchase of an EPB System and Precinct EPBs shall include warranty and service agreement options (hardware, software, technical support—telephone helpdesk, on-site support).</p>
Maintenance & Support	<p>The vendor of an EPB System and Precinct EPBs shall provide comprehensive training options for the locality.</p>

### 3.4. ACCEPTANCE TEST

Acceptance Tests will be conducted by the local jurisdiction, with the assistance of state. Acceptance testing will be performed as part of the procurement process for the electronic pollbook system.

The local jurisdiction will conduct tests to confirm that the purchased or leased system to be installed is identical to the certified system and that the installed equipment and/or software are fully functional and capable of satisfying the administrative and statutory requirements of the jurisdiction. The state may require localities to perform hash testing of applications software for this purpose. SBE will request that upon acquiring equipment, the locality forwards a letter to SBE confirming that the versions of all software and model(s) of equipment received are identical to the certified system that was ordered.

The acceptance test will demonstrate the system's ability to execute its designed functionality as advertised and tested, including but not limited to:

- a. Create a deployable election based on the type of locality;
- b. Mark voters as having voted and been given a ballot only after specific action;
- c. Provide the user notification and prompt specific action for: protected voters, inactive voters, absentee voters, voters out of precinct, voters that already voted;
- d. Provide for the ability to add a voter to the electronic pollbook and to the ability to record as the voter as having voted;
- e. Generate system status and error messages;
- f. Comply with and enable voter and operator compliance with all applicable procedural, regulatory, and statutory requirements.
- g. Produce an audit log.
- h. Close the election and provide multiple secure files capable of providing voter credit to SBE systems.

## **PART 5: APPENDIX A - GLOSSARY**

**Acceptance Testing** - The purpose of acceptance testing is to demonstrate and confirm to the greatest extent possible that the electronic pollbook systems purchased or leased by a local jurisdiction are identical to the electronic pollbook systems certified by the State Board of Elections and that the electronic pollbook systems equipment and software are fully functional and capable of satisfying the administrative and statutory requirements of the local jurisdiction. Acceptance testing is conducted when electronic pollbook systems are initially received by the local electoral board from a vendor or other outside source (e.g., another local jurisdiction).

**Certification Testing** - The purpose of certification testing is to verify that the design and performance of the electronic pollbook system being tested comply with all of the requirements of the *Code of Virginia*. Certification testing is not intended to exhaustively test all of the electronic pollbook system hardware and software attributes; these are evaluated during qualification testing by an approved VSTL. However, all electronic pollbook system functions, that are essential to the conduct of an election and a recount, are evaluated.

**Electronic Pollbook System** - The term “electronic pollbook system” refers to the total combination of mechanical, electro-mechanical, electronic and digital equipment (including the software, firmware, and documentation required to program, control, and support the equipment). The system is used to verify voter registration; track and report the voter count total(s); and to maintain and produce any review audit information.

**Evaluation Agent** – A staff member, or independent contractor, designated by the Virginia State Board of Elections to perform analysis and testing of an electronic pollbook system.

**Functional Configuration Audit** – A series of comprehensive tests of the Electronic Pollbook System to determine the specific and situational capability and compatibility of the system to facilitate the statutory and administrative requirements

**Technical Requirements Evaluation** - The purpose of Technical Requirements Evaluation is to demonstrate that the electronic pollbook system complies with the requirements of its own design specifications and operates in accordance with the statutory and administrative requirements of the Commonwealth of Virginia and the State Board of Elections. This testing encompasses selective in-depth examination of software; inspection and evaluation of electronic pollbook system documentation; tests of hardware under conditions simulating the intended storage, operation, transportation, and maintenance environments; and tests to verify system performance and function under normal and abnormal operating conditions. Technical Requirements Evaluation is normally conducted by a Voting System Test Laboratory (VSTL).

**Voting Systems Test Laboratory (VSTL):** Test laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) to be competent to test electronic pollbook systems. When NVLAP has completed its evaluation of a test lab, the Director of NIST will forward a recommendation to the EAC for the completion of the accreditation process. It can also be referred to as an electronic pollbook system Test Laboratory.

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## PART 6: APPENDIX B – ABILITY TO COMPLY FORM

This form is required to initiate the procedures of Electronic Pollbook System Certification in Virginia. A corporate officer of the primary company that is responsible for the development, maintenance, and support of the Electronic Pollbook System must complete this form.

Name of Company: \_\_\_\_\_

Primary Address of Company: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Name of EPB System to be certified: \_\_\_\_\_

Version Number/Name of EPB System to be certified: \_\_\_\_\_

Brief description of software capabilities, hardware components, and operating systems(s) to be certified: \_\_\_\_\_

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Name and Title of Corporate Officer: \_\_\_\_\_

I acknowledge that I have reviewed the entirety of *Electronic Pollbook Certification, Procedures & System Requirements, Rev-0315* and acknowledge that the above stated Electronic Pollbook System contains the ability to meet all requirements as designated within sections 3.3.1. Chart of Statutory Requirements and 3.3.2. Chart of Operational & Technical Requirements.

Furthermore, I acknowledge that the above stated company and Electronic Pollbook System will comply with all elements of this certification program.

Signature of Corporate Officer: \_\_\_\_\_

Date: \_\_\_\_\_

*\*This form is to be submitted with the Request for Certification Letter*

## PART 7: APPENDIX C – CHART OF MAJOR VS. MINOR CHANGES

The chart below will help vendors understand the Virginia State Board of Elections’ definition and applicability of the major and minor changes to electronic pollbook software and its operating system.

“A major release is an incompatible change to the system software, and implies that [some] applications dependent on the earlier major release (specifically those that relied upon the specific features that have changed incompatibly) will need to be changed in order to work on the new major release. A minor release of the system software is an upward-compatible change--one which adds some new interfaces, but maintains compatibility for all existing interfaces. Applications (or other software products) dependent on an earlier minor release will not need to be changed in order to work on the new minor release: Since the later release contains all the earlier interfaces, the change(s) imparted to the system does not affect those applications<sup>1</sup>.”

Description	Example	Recertification Required?
Change operating system developer.	Microsoft to Apple	YES
Major OS version build change.	Windows 7 to Windows 8	YES
Minor OS version build change.	Windows 8 to Windows 8.1	NO
Operating System and/or Background Services Security Update	Security Update for Microsoft .NET Framework 3.5 on Windows 8.1 and Windows Server 2012 R2 for x64-based Systems (KB2972213)	NO, so long as no additional software is installed
EPB Software Code Language Change	Migration from C++ to C#	YES
EPB Software “Bug Fix”	Fix to known deficiency of a feature not associated with statutory or technical requirements. ( <i>Button requires double click and should be single click</i> )	NO, so long as the vendor applies for and receives waiver
EPB Software “Bug Fix”	Fix to known deficiency a function associated with statutory or technical requirements. ( <i>Units do not sync properly</i> )	YES
Peripheral Support	Changes previously certified drivers or functionality of peripheral devices such as printers or scanners.	NO
Peripheral Addition	Adds drivers or functionality of peripheral devices such as printers or scanners that were not previously certified.	YES

<sup>1</sup>

Runge, D. J. (2000). Library Interface Versioning in Solaris and Linux. *Proceedings of the 4th Annual Linux Showcase and Conference.*

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## PART 8: APPENDIX D – CONTACTS

**Cameron Glenn Sasnett**

*Systems Integration and Support Specialist*

Virginia Department of Elections

Telephone: (804) 864-8948

Email: [Cameron.Sasnett@Elections.Virginia.gov](mailto:Cameron.Sasnett@Elections.Virginia.gov)

-or-

**Eugene Burton**

*Voting Technology Coordinator*

Virginia Department of Elections

Telephone: (804) 864-8912

Email: [Eugene.Burton@Elections.Virginia.gov](mailto:Eugene.Burton@Elections.Virginia.gov)

1100 Bank Street

Washington Building, 1st Floor

Richmond, Virginia 23219-3497



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# Voter Registration Form & Regulations

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BOARD WORKING PAPERS  
Edgardo Cortés  
Commissioner

## Proposed Revisions to Voter Registration Application Regulations

- 1 1 VAC 20-40-70. Applications for Voter Registration; Affirmation of United States Citizenship.
- 2 A. Form and signature.
- 3 1. Applications for voter registration shall be on a form approved by the State Board of
- 4 Elections or appropriate federal agency.
- 5 ~~2. Applications for voter registration must be signed by the applicant. If the applicant is~~
- 6 ~~unable to sign due to a physical disability, the name and address of the person assisting~~
- 7 ~~the voter shall be entered on the application according to the form instructions.~~
- 8 2. *A signature is required by each applicant for voter registration unless the applicant is an*
- 9 *individual with physical disabilities. An applicant with physical disabilities who does not*
- 10 *sign the form must indicate physical disability in Box 7 or the application will be denied.*
- 11 B. ~~Material omissions on applications for voter registration in general.~~ The following omissions
- 12 are not material ~~if any of the following, or combination thereof, exists:~~
- 13 *and a voter registration application may not be denied for failure to include one or more of*
- 14 *the following:*
- 15 1. Daytime telephone number;
- 16 2. ~~Description of rural address;~~
- 17 3. Mailing address different from residence address;
- 18 4. Date of the application;
- 19 5. ~~Whether the applicant is interested in working as an election official;~~
- 20 *Response indicating interest in serving as Election Officer;*
- 21 6. ~~Whether the applicant requests to have his residence address excluded from published~~
- 22 ~~lists;~~
- 23 *Protected Voter Code;*
- 24 7. ~~Whether the applicant has a disability that requires accommodation in order to vote;~~
- 25 *Response indicating the applicant has a physical disability;*
- 26 8. Gender;
- 27 9. *Social security number if the applicant writes "None" in Box 1;*
- 28 *10. Response indicating military service or status as qualified spouse or dependent;*
- 29 *11. Response indicating U.S. citizenship in Box 1 if the applicant has signed the affirmation;*
- 30 *12. Response affirmatively indicating that the applicant is not a felon in Box 5 if the*
- 31 *applicant has signed the affirmation;*
- 32 *13. Response affirmatively indicating that the applicant has not been previously adjudicated*
- 33 *to be mentally incapacitated in Box 5 if the applicant has signed the affirmation;*
- 34 *14. Signature of applicant if applicant indicates that he is an individual with physical*
- 35 *disabilities in Box 7;*
- 36 *15. Address at which the voter is previously registered if the previous voter registration*
- 37 *address is available in VERIS;*
- 38 *16. Witness signature in Box 7;*
- 39 *17. Middle name if the voter indicates "none;" or*
- 40 *18. Suffix.*
- 41 C. Middle name may be material to determining eligibility to vote. If the applicant does not
- 42 include a middle name *and does not indicate none*, the registrar shall:

## Proposed Revisions to Voter Registration Application Regulations

- 1           1.    As far as practical, attempt to contact the applicant and obtain his middle name or  
2                    lack thereof to determine if the application is complete.
- 3                    a.     If the applicant indicates that he has no middle name, the registrar shall  
4                            process the application.
- 5                    b.     If the applicant indicates that he has a middle name, the registrar shall inform  
6                            the applicant that the middle name is required, deny the application, and send  
7                            the applicant a new application.
- 8           2.    If the registrar is unable to contact the applicant and therefore unable to determine if  
9                    the application is incomplete, he shall give the benefit of doubt to the applicant and  
10                   process the application.
- 11   D.     A general registrar shall not change information provided by an applicant on an  
12            application for voter registration without written authorization signed by the applicant.
- 13   E.     Persons identified as noncitizens in reports from the Department of Motor Vehicles *or*  
14            *other state or federal government sources* shall have the opportunity to affirm United States  
15            citizenship status using any approved voter registration application or other form containing the  
16            required affirmation. The *Department* of Elections shall automate the process for requesting  
17            affirmation of United States citizenship prior to cancellation.
- 18   F.     *If the individual submitting this form is currently a registered voter in Virginia, then the*  
19            *registrar must process the form as a request to update or change the registered voter's*  
20            *information if the form contains new information and is signed by the voter. If a registered voter*  
21            *with a physical disability only includes a mark in Box 7, then the request must also be signed by*  
22            *a witness in Box 7.*
- 23   G.     For cases not covered by this section, the general registrar in consultation with the  
24            electoral board and *Department* of Elections staff shall determine materiality on a case-by-case  
25            basis that may result in further amendment of this regulation.



# Virginia Voter Registration Application Form Instructions

## Instructions

You can apply to register to vote online: [elections.virginia.gov/register](https://elections.virginia.gov/register). Use this form to register to vote in Virginia or report a change in name or address. If you are already registered with your current name and address, you do not need to re-register. You are not officially registered to vote until this application is approved. You should receive confirmation of your voter registration status in the mail. If you do not receive confirmation within thirty (30) days after submitting this form or have questions, please contact your local voter registration office or the Virginia Department of Elections toll free (800) 522-9745 • TTY 711. You may check your voter registration status online at [vote.virginia.gov](https://vote.virginia.gov).

**Attention:** Overseas citizens, uniformed service voters, qualifying spouses and dependents: those individuals may register and request absentee ballots using a single federal form, the Federal Post Card Application (FPCA), available at [www.fvap.gov](https://www.fvap.gov).

**WARNING: INTENTIONALLY VOTING MORE THAN ONCE IN AN ELECTION OR MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO \$2,500.**

## Address

### Requirements

All applicants must provide a street address/description of their physical dwelling place for residence address in **Box 2**. If that address is not serviced by the U.S. Postal Service, the applicant is authorized to list a mailing address. Overseas citizens, uniformed service voters, qualifying spouses and dependents may also list a mailing address. No other applicant may include a mailing address unless the applicant qualifies as a protected voter. See below. A qualified protected voter is required to list a post office box within Virginia as a mailing address in **Box 2**, please see below.

## Protected Voter Requirements

To legally qualify to non-publish your residence address on voter lists, you must meet certain statutory requirements. Your application must claim one of four reason codes, applicable to you or a member of your household:

- LEO: active or retired law enforcement officer, judge, U.S. or Virginia Attorney General attorney;
- CPO: have a court issued protective order for your benefit;
- TSC: have evidence of filing a complaint with law enforcement that he/she is in fear for his personal safety from another person who has threatened or stalked him/her;
- ACP: registered with the Virginia Attorney General's Address Confidentiality Program.

## Mailing

### Instructions

- Mail your completed application to the voter registrar for the county or city where you live.
- Must be postmarked at least twenty-two (22) days before the next Primary or General Election in which you plan to vote.

## Signature

A signature is required from each applicant for voter registration unless the applicant is an individual with physical disabilities. An applicant with physical disabilities must indicate her status in **Box 7** if the application is not signed. Currently registered Virginia voters with physical disabilities must sign the form or, at minimum, include a mark and indicate physical disability status on the application. If a registered voter with physical disabilities provides a mark in lieu of a signature, then a witness must sign the application.

**Privacy Act Notice:** Article II, Section 2 of the Constitution of Virginia (1971) requires that a person registering to vote provide his or her social security number, if any. Therefore, if you do not provide your social security number, your application for voter registration will be denied. Section 7 of the Federal Privacy Act (Public Law Number 93-579) allows the Commonwealth to enforce this requirement, but also requires that you be advised that state and local voting officials will use the social security number as a unique identifier to ensure that no person is registered in more than one place. This registration card will only be open to inspection by the public if the social security number is removed. Your social security number will appear on reports produced only for official use by voter registration and election officials, for jury selection purposes by courts, and all lawful governmental purposes. Whether you register to vote and the office where you submit an application are confidential and will be used only for voter registration purposes.

## Virginia Voter Registration Application Receipt (on reverse)

### Identification Requirement

All voters are required to present one (1) acceptable valid photo ID when voting in-person. Acceptable forms of photo identification include Virginia DMV-issued photo IDs and driver's licenses; U.S. Passports; employer-issued photo IDs; student photo IDs from a college or university located in Virginia; photo ID cards issued by the United States, the Commonwealth of Virginia, or a local Virginia government; and Virginia Voter Photo ID Cards. All of the acceptable forms of photo ID can be used up to a year after the ID has expired. If you do not have an acceptable form of photo ID, you can also apply for a free Virginia Voter Photo ID Card at any local Virginia voter registration office throughout the year, even on Election Day. Once you complete and sign the Virginia Voter Photo ID Application, your Virginia Voter Photo ID Card will be mailed to your address on file in the Virginia Voter Registration System, which takes approximately two to four weeks. You may also be eligible to receive a Temporary Identification Document to use in the election while your permanent ID card is processed through the mail. For more information on voter photo IDs, visit: [elections.virginia.gov/voterID](https://elections.virginia.gov/voterID) or call toll free at: (800) 552-9745.



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# Absentee Ballot Applications Electronic Signatures

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BOARD WORKING PAPERS  
Elizabeth Howard  
Deputy Commissioner



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DEPARTMENT *of* ELECTIONS

## Memorandum

To: Members of the State Board of Elections

From: Elizabeth L. Howard, Deputy Commissioner

Date: May 13, 2015

Re: Electronic Signatures on Absentee Ballot Applications

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

I move that the Board direct registrars to accept electronic signatures on Absentee Ballot Applications so long as the applicant was required to affirmatively check a box confirming acknowledgment of the Affirmation Statement which appears on the Absentee Ballot Application and the completed Absentee Ballot Application includes a disclaimer indicating that it includes an electronic signature.

**Applicable Code Section:** Va. Code Ann. § 24.2-701; Uniform Electronic Transactions Act, Va. Code Ann. §§ 59.1-479 through 59.1-498.

### **Background:**

The Department has been asked whether the State Board of Elections will accept electronic signatures on absentee ballot applications.

Currently, casting an absentee ballot is a seven step process:

- 1) Eligible individual must register to vote.
- 2) Eligible registrant must complete and submit an absentee ballot application.
- 3) General Registrar reviews submitted applications.
- 4) Approved applicants are sent absentee ballot.
- 5) Voter submits signed Voter Statement and completed ballot and other materials, if required.
- 6) General Registrar reviews returned Voter Statement and other materials.
- 7) Absentee ballot from voter with properly completed Voter Statement and other materials, if required, is counted on election day.

In this process, the State Board is tasked with various responsibilities, including creating and distributing absentee ballot applications. *Va. Code Ann. § 24.2-701.* State law establishes certain

criteria for this application, such as it must “be signed by the applicant.” *Id.* When a signature is required by statute, absent any relevant prohibitions against electronic signatures, the State Board of Elections has the discretion to accept electronic signatures pursuant to the Virginia Uniform Electronic Transactions Act (“UETA”). Va. AG Opinion (September 26, 2014). Therefore, the State Board of Elections is authorized to require the acceptance of electronic signatures, giving them “legal consequence” when affixed to an absentee ballot application.

The Department of Elections recommends that the Board direct general registrars to accept and process absentee ballot applications containing electronic signatures when the electronic signature requires the signer to affirmatively check a box confirming acknowledgment of the Affirmation Statement which appears on the Absentee Ballot Application and the completed Absentee Ballot Application includes a disclaimer indicating that it includes an electronic signature. Authorizing electronic signatures on this form is recommended because the General Assembly has recognized this particular step in the absentee ballot process as a proper area for increasing voter convenience through the use of technology for over twenty years, and accepting electronic signatures on this application will make it easier for currently registered voters who are qualified to cast an absentee ballot to vote.

### **Absentee Ballot Application Approval Process**

Absentee Ballot Applications (“Applications”) are completed by currently registered voters who qualify to obtain an absentee ballot in Virginia. Applicants must provide various information on the Application, such as the applicant’s name, year of birth and the last four digits of an applicant’s social security number. In addition, applicants must sign the Application. Completed Applications may be submitted to the registrar either via email, fax, mail or in-person. The registrar reviews the application to ensure that the applicant is a registered voter and that the provided information matches the voter’s information stored in VERIS, e.g., the last four digits of the applicant’s social security number. This review process does not include a comparison of the applicant’s signature to the signature provided on the applicant’s voter registration form.

The Application step is located between two important voter authentication procedures in the casting an absentee ballot process: voter registration and submission of signed Voter Statement. Currently registered voters are subject to various authentication processes, at minimum the registrant’s address has been confirmed, and several have been authenticated through the DMV matching process associated with the Department’s online voter registration system.

Upon approving an Application, registrars send successful applicants an absentee ballot and instructions to properly cast an absentee ballot. The voter must comply with all instructions provided, mark the ballot, and sign the Voter Statement that appears on Envelope B (which contains the returned ballot). Electronic signatures are not accepted on Envelope B, and if the Voter Statement is not signed, the returned ballot is rejected and not counted.

## **Legislative History**

For various reasons, such as the authentication procedures built in on both sides of this step in the absentee ballot process, the General Assembly has consistently identified the Absentee Ballot Application step as a proper area to increase voter convenience through electronic means for over 20 years.

As early as 1992, the General Assembly singled out Absentee Ballots Applications for special treatment. At that point, the General Assembly mandated that Absentee Ballots Applications, dissimilar to other election related documents, must be accepted if submitted by “mail, electronic or telephonic transmission.” *Va. Code Ann. § 24.2-701(B)(1) (1994)*. This measure proved successful and popular, so in 1998, the General Assembly required the State Board to enable registered voters “to request and receive an absentee ballot application electronically through the global information system known as the Internet.” *Va. Code Ann. § 24.2-701 (1998)*. As indicated by the language, the General Assembly openly embraced what was at that time a novel technological advance for this step. This mandate still applies today and these “electronic applications shall be in a form approved by the State Board.” *Va. Code Ann. § 24.2-701 (2015)*.

## **Uniform Electronic Transaction Act**

The State Board has the authority to conclude that electronic signatures on Absentee Ballot Applications are valid. In Virginia, the Uniform Electronic Transaction Act (“UETA”) applies to “electronic signatures related to a transaction...[such as] an action or set of actions occurring between two or more persons relating to the conduct of... government affairs.” While UETA does “not require public bodies of the Commonwealth to use or permit the use of electronic... signatures,” it does enable public bodies, such as the State Board, to decide whether “an electronic signature has legal consequence” on certain governmental documents, such as Absentee Ballot Applications.

In recognizing this authority, UETA provides that

To the extent that public bodies of the Commonwealth use... electronic signatures..., the following rules apply:

\*\*\*\*\*

(2) Public bodies of the Commonwealth may specify the type of electronic signature required, the manner and format in which the electronic signatures must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process.

*Va. Code Ann. § 59.1-496.*

Therefore, under UETA, the Board has the authority to conclude that electronic signatures are acceptable on the Application and the criteria to ensure authenticity of the signer. While UETA does

not contain specific mandates or recommendations for electronic signature authentication, there are various “best practices” from which the Board can select.

As there is no clear consensus on the proper best practices, the Department recommends an authentication process that is only slightly more rigorous than the current authentication process used for Absentee Ballot Applications submitted with hand-written signatures. Again, the current authentication process conducted by registrars only includes confirmation that the applicant is a registered voter and that the information provided, such as the last four digits of the applicant’s social security number, on the application matches the voter’s information stored in VERIS.

Therefore, the Department recommends the Board require that Absentee Ballot Applications signed electronically include a disclaimer on the Application indicating that the application was signed electronically, and that applicants be required to affirmatively check a box by the signature collection box in which, at minimum, the applicant affirms acknowledgment of the Affirmation Statement that appears on the Absentee Ballot Application.

These requirements will ensure that the applicant has intent to sign the form and provide transparency regarding Absentee Ballot Applications that include electronic signatures.



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# Other Business & Public Comment

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BOARD WORKING PAPERS



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# Good of the Order

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BOARD WORKING PAPERS



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# Adjournment

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BOARD WORKING PAPERS



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

# BOARD MEETING

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Wednesday, May 13, 2015  
Washington Building  
Room B27  
2:00 PM

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BOARD WORKING PAPERS  
Rose Mansfield  
SBE Clerk