

AB APPLICATION FORMS AND ELECTRONIC SIGNATURES

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The SBE should reconsider its May 13, 2015 approval of the electronic submission of the AB Application Form with an electronic signature. Arguments supporting this recommendation are given below.

The SBE at their May 13, 2015 meeting approved an ELECT staff proposal to allow the electronic submission of AB Application Forms using an electronic signature of the voter. Per the Virginia UETA, ELECT has the right to select the form and format of the electronic signature. ELECT chose to require the voter to type in his name on the signature line and check a box indicating this to be an electronic signature. This method was chosen because it was simple and straight forward. It was justified by the reality that the name, address and SSN are used to identify the voter in a mail-in AB application and the actual signature is rarely verified with Registrar or DMV signatures. Thus, the validity of the typed-in signature on the electronic submission was, in effect, declared "not material" since it will not be used as a determinate factor in identifying the voter.

This form and format of electronic signature does not create a legal signature of the voter as required by the Code (§24.2-706) for the following reasons:

- The SBE cannot act *Ultra Vires*. They do not have the legal right to change the Code and make a required signature immaterial despite any common practice or usage or non-usage of that signature. The actual signature on the mail-in AB application remains required and would be a sufficient cause to reject the application by all Registrars. A similar standard must apply to electronic submissions of the AB application.
- The justifying analogy between signatures on the mail-in application form and the electronic application form is not valid. While the actual signature on the mail-in form may not always be used, it is VERIFIABLE if the Registrar needs that information to identify the voter. A typed-in signature is NOT VERIFIABLE and could have been typed-in by anyone. It would be impossible to use this electronic signature method to assist a Registrar in determining the identity of a voter.

This form and format of electronic signature is not consistent with the definition of an electronic signature in UETA (§59.1-480, Paragraph 8) or in the commercial usage of electronic signatures. To be legally valid, an electronic sound, symbol or process must be attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. There must be something uniquely associated or known to the person which provides proof that the person signing electronically is actually the person with the typed-in name. In other words, it must be VERIFIABLE.

Furthermore, the SBE has not defined the process for submitting an electronic AB application form and has, by default, allowed numerous entities to create on-line systems without any oversight. These systems gather AB application form information from the voter in a user-friendly process, reformat the data into a SBE AB Application Form facsimile format and then submit that facsimile application to the Registrar. The SBE, despite having approved the concept, has no control over these on-line applications and has no ability to confirm that they are being done correctly. Specifically:

- The SBE indicated that a checkbox was required to be checked by the voter to indicate that the signature was electronic. While it may be argued that this is an invalid method (see above), anecdotal information provided by several Registrars indicates that the submitted facsimile form received by them does not show the affirmation of the electronic signature checkbox. Thus, it is unknown if the voter ever checked this box or not or whether the on-line system even included that specific electronic signature checkbox.
- Given the electronic process of creating the facsimile form, it is not possible to verify that the voter actually typed in his name on the signature line or whether it was typed-in by a political party or campaign staffer on behalf of the voter who perhaps gave verbal approval for the AB application to be submitted. Despite the questions regarding the SBE approved method of electronic signatures, if the actual voter did not physically type-in his name then there is no possibility that the signature could be considered legal. Verbal approval for a 3rd party to “electronically sign” the application is not sufficient.

A substitute method and process could be easily developed, however, to legally accomplish this electronic submission. The existing signature and process problems can only be resolved with an on-line ELECT facility which must be used by all voters wishing to electronically submit an AB Application Form. This facility would work in the same manner as the on-line voter registration process. As is done commercially, a scheme requiring a partnership with a third-party supplier of electronic signature validations could be used to provide a valid electronic signature with minimal effort by the voter.