Dennis Fusaro, PO Box 1829, Front Royal, VA 22630 – May 13, 2015
Statement to the Virginia State Board of Elections

The Virginia State Board of Elections
C/o Ms. Rose Mansfield
Clerk of the Board
110 Bank Street, 1st Floor
Richmond, VA 23219

Dear Members of the Virginia State Board of Elections:

Thank you for the opportunity to address you.

I wish to express the following concerns and make the following points about the public policy you administer in your capacity as appointed officials representing the government of the Commonwealth of Virginia.

I wish to point out what I see as several infringements on Constitutionally Protected Free Speech, Free Press, Free Association and Equal Protection rights. These infringements, I believe, are illegal and immoral. The Virginia Code in **§ 24.2-405 (Persons who may obtain lists of registered voters), § 24.2-406 (Persons who may obtain lists of persons voting at primaries and elections)** and **§ 24.2-407 (Statement for persons receiving lists of persons registered or voting; penalties)** place dangerous, vague, chilling and, I assert, unconstitutional burdens on individuals, or individuals acting as a group, wishing to associate together for the purpose of exercising their core political rights to make speech, publish their written ideas and other communications as equal participants in the community of actors who desire to affect how public policy is made and how politics is conducted in the Commonwealth of Virginia.

Furthermore, a sincere individual, like myself, acting in good faith faces the risk of CRIMINAL PROSECUTION AND PUNISHMENT INCLUDING IMPRISONMENT AND MONETARY FINES for seeking to engage the decision making public (i.e. registered voters) with his ideas and arguments as to 1) why public policy should be changed, 2) why those who are elected or those who are appointed by those elected to make policy should reject, adopt or change their ideas and goals for public policy, 3) why registered voters should accept, reject or challenge those seeking elected office because of the public policy agendas they seek to establish in the Commonwealth of Virginia under its constitution and laws.

Why do I say this? Because the restrictions and burdens I am being asked to accept, and swear to under oath at risk of criminal prosecution, in order to access the list of registered voters maintained by the Virginia Department of Elections are applied unequally to different classes of individuals without a rational basis. Several of these restrictions and burdens also have the effect of attacking and infringing on a whole set of core political rights protected by the U.S. Constitution including Freedom of Speech and Freedom of Association. And thus they are unconstitutional restrictions serving no rational basis, but, perhaps, serving the interests of a select political class that wishes to limit and restrict the competition it faces from other views, ideas and analyses of public policy and politics in Virginia.

As an aside, this whole situation is Kabuki Theatre because hundreds, if not thousands, of entities regularly request the registered voter list and use them for all sorts of "undisclosed" purposes on a regular basis. These lists, which the Commonwealth of Virginia through form SBE 407 asserts "are the property of the Commonwealth protected by privacy and copyright laws," are absolutely available from commercial vendors all over the United States.

So if everyone is just "whistling past the graveyard" so to speak on this, why do I, Dennis Fusaro care. Why don't I just sign the form and get the list?

I care because, I don't like lying.

I also care because I can see a time and situation when politically or ideologically motivated government officials could and would seek to punish someone or some group for making protected speech or publishing protected communications that they wish to suppress. And, I believe, they could very well use the unconstitutional procedural burdens and restrictions contained in the Virginia Code (see above 24.2-405, 24.2-406 & 24.2-407) to punish someone or some group for that speech or writing.

Even if the victims of such a politically or ideologically motivated oppression should prevail in court, the chilling effect and the harm inflicted by having to defend in court would be bad in terms of legal costs and, time lost from work and emotional stress.

As former Congressman John Dingell if known for saying, "If I let you write substance, and I write procedure, I will screw you every time." Procedure determines substance and the burdens and restrictions contained in the Virginia Code (see above 24.2-405, 24.2-406 & 24.2-407) impact the substance of the public policy and political debate in the Commonwealth of Virginia.

So here are some more of my reasons for wanting the registered voter list along with some of my concerns:

1) To make political speech and other constitutionally protected communications, in pursuit of core political rights, for any and all political and public policy purposes clearly recognized and protected by the United States Constitution under the Free Speech Clause of the First Amendment to the Bill of Rights.
2) To exercise First Amendment Rights as a natural person acting independently, but also as a participant acting in concert and cooperation with other persons and groups from multiple perspectives using their individual, collective and distributive abilities in pursuit of Freedom of Speech, Freedom of the Press, Freedom of Assembly and Petition of the Government for Redress of Grievence. Such exercise may include, but is not limited to, discussions of government public policy, Austrian Free Market Economics, US Foreign Policy, political candidates, political campaign issues, and, where needed, ridicule or parody of candidates and government officials.
3) To exercise First Amendment Rights as a natural person acting independently, but also as a participant acting in concert and cooperation with other persons and groups using a broad spectrum of communication methods including, but not limited to, Morse code, shortwave

radio, TV ads, Radio ads, phone calls, US Postal System mailings, web sites and blogs, email deployments, twitter, other social media, door-to-door visits and literature drops, leaflets, signs, billboards, speeches at events and rallies.

4) To exercise such First Amendment Rights as explicated by Talley v. California, 362 US 60 - Supreme Court 1960, McIntyre v. Ohio Elections Commission, 514 US 334 - Supreme Court 1995, AMERICAN CIVIL LIBERTIES UNION OF NEVADA v. HELLER, No. 01-15462., US 9th Circuit 2004, Wilson v. Stocker, 819 F. 2d 943 - Court of Appeals, US 10th Circuit 1987, NAACP v. ALABAMA, 357 U.S. 449 - Supreme Court 1958, and Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. 310 (2010).
5) To exercise such First Amendment rights as a citizen, Virginia resident and taxpayer who effectively funded the development of the registered voter information derived from VERIS on an equal basis as candidates, incumbent office holders, Clerks of Courts, political party officials, and certain political action committees. Such entities – candidates, incumbent office holders, Clerks of Courts, political party officials, and certain political action committees – are allowed the use of the registered voter information by the Virginia Department of Elections to advocate their candidacies, ideas and issues to segments the people of Virginia without making the following statement required of **an individual** requestor: "An individual seeking to promote voter participation and registration by means of a communication or mailing without intimidation or pressure."
6) To exercise First Amendment political speech rights on an equal basis as candidates, incumbent office holders, Clerks of Courts, political party officials, and certain political action committees without the chilling effect of subscribing to the vague and ambiguous statement: "An individual seeking to promote voter participation and registration by means of a communication or mailing without intimidation or pressure." This requirement is applied on an unequal and non-rational basis to individuals (and non-profit organizations, too), but not to candidates, incumbent office holders, Clerks of Courts, political party officials, and certain political action committees, by Virginia Code § 24.2-406. Further, it is impossible for this requestor to understand and comprehend what is meant by the statement: "An individual seeking to promote voter participation and registration by means of a communication or mailing without intimidation or pressure." And no one at the Virginia State Board of Elections – staff or board members – seems to be able to explain what it means nor can they give any rational basis for placing this burden on individuals (and non-profit organizations, too) but not candidates, incumbent office holders, Clerks of Courts, political party officials, and certain political action committees. It seems from the unequal burden imposed that there is possibly some sort of animus against individuals (and non-profit organizations, too) participating equally in the political discussion in Virginia, an animus lurking in the individual minds of the majority in the Virginia General Assembly which imposed this requirement in Virginia Code § 24.2-406.
7) To exercise First Amendment political speech rights without the chilling effect of being denied equal protection of the law and suffering the animus of Virginia Code § 24.2-406 as applied to individuals. Is there some established fact that individuals (and non-profit organizations, too) are more likely to "intimidate" and "pressure" while candidates, incumbent office holders, Clerks of Courts, political party officials, and certain political action committees are not? After several

contacts, no one at the Virginia State Board of Elections – staff or board members – has been able to explain the scope and meaning of the required statement. Even if it was applied equally to all requestors, which it is not, it still has a chilling effect on the exercise of constitutionally protected Free Speech and its associated core political rights. Because this requestor intends to engage in a course of conduct affected with a constitutional interest and there is a credible threat that the "intimidation or pressure" statement cited above will be invoked by politically motivated officials who will apply their own subjective definitions to the meanings of the words "intimidation" and "pressure" contained in the required statement. This requestor fears that state or local officials in Virginia government may seek to punish and harm him using their discretionary power and this statement against him because they dislike perfectly legitimate Free Speech. (See the intimidation of Mike Rothfeld at http://shaunkenney.com/2004/06/956/ or The Free Lance-Star - Rothfeld Accepts Plea Deal – June 23, 2004 as examples of vindictive government officials seeking to punish Free Speech and political dissent.) This requestor has credible fear of being punished by those with political motivations, and this fear is about concrete and particularized injury. (i.e. He faces 10 years in prison and being fined up to $2500 or alternatively the punishment, anguish and costs of defending himself from a malicious prosecution even if he were to prevail in such a criminal case.)