MINUTES

The State Board of Elections Board Meeting was held on Friday, January 8, 2016. The meeting was held in the General Assembly Building, Richmond, Virginia – Room C. In attendance, representing the State Board of Elections (SBE) was James Alcorn, Chairman; Clara Belle Wheeler, Vice Chair; and Singleton McAllister, Secretary. Also in attendance, representing the Department of Elections (ELECT) was Edgardo Cortés, Commissioner; Elizabeth Howard, Deputy Commissioner; Martin Mash, Policy Advisor; Brooks Braun, Policy Analyst, and Rose Mansfield, Clerk. Anna Birkenheier, Assistant Attorney General and Counsel to SBE and ELECT attended. Chairman Alcorn called the meeting to order at 10:10AM.

The first order of business was the approval of the minutes from the State Board of Elections Board Meeting held on December 16, 2015. Chairman Alcorn asked if board members had any additions or corrections to the Board Meeting minutes presented and there were none. Secretary McAllister moved *to adopt the minutes for the December 16, 2015 meeting.* Vice Chair Wheeler second the motion. The Board unanimously approved the motion. Vice Chair Wheeler requested a closed session to discuss the consent decree mentioned in the minutes. Chairman Alcorn acknowledged the request.

The next order of business was the Commissioner Report presented by Edgardo Cortés, ELECT Commissioner. Commissioner Cortés stated that Goochland County did conduct a post-election audit and has requested that a brief report be given during this meeting. Chairman Alcorn stated that the requested item would be added under other business. Commissioner Cortés reported that Gary Fox, ELECT Voting Equipment Supervisor, has retired. Mr. Fox's expertize will be missed and ELECT wanted to thank Mr. Fox for his service and dedication to the entire elections community. Commissioner Cortés stated that the Governor has submitted his budget to the General Assembly. The request includes a change to this year's appropriation that covers reimbursement for presidential primary expenses which was approximately, 3.8 million dollars for this fiscal year. Monies were included in the request for the cost associated to printing voter absentee applications, voter outreach, and state mail services. Commissioner Cortés stated that a budget request has been entered for a call center for the presidential election

32 due to the increase in calls received by ELECT. Commissioner Cortés stated that the
33 Governor has placed a budget request to enhance and update the campaign finance
34 system. Commissioner Cortés stated that ELECT entered into a consent decree in the Lee
35 *v.* SBE case that was filed on December 23, 2015 and information related will be reported
36 as received by ELECT. ELECT implemented an on-line absentee request capability prior
37 to the November 2016, General Election which should decrease the handling time of
38 these applications by the Directors of Elections.

39 The next order of business was the Legal Report presented by Anna Birkenheier,
40 Assistant Attorney General and Counsel to SBE and ELECT. Ms. Birkenheier stated that
41 there was no report with the exception of honoring the closed session requested by Vice
42 Chair Wheeler later in the meeting.

43 The next order of business was the Campaign Finance Updates presented by
44 Brooks Braun, ELECT Policy Analyst. Mr. Brooks stated that a memorandum regarding
45 incomplete finance reports was included in the Board Working Papers. Mr. Brooks stated
46 that the memorandum is specifically related to allegations from reports that Mr.
47 McCollum continued receiving payments from his employer during a specific period in
48 which he was campaigning full-time. The Republican Party of Virginia claims that this
49 activity is in violation of the Campaign Finance Disclosure Act and ELECT is asking
50 SBE for clarification on whether payments received from one's private sector employer
51 which campaigning fulltime are campaign contributions. Mr. Brooks stated that under
52 §24.2-1019 any complaint or allegation concerning unlawful conduct shall be filed with
53 the attorney for the Commonwealth of the county or city in which the alleged violation
54 occurred. Commissioner Cortés stated that the official referral did not go to the
55 commonwealth attorney's office because the local office had questions as to whether it
56 was appropriate, and asked for guidance from SBE as to if a violation occurred.
57 Chairman Alcorn stated that the *Code* states that itis the obligation of SBE to report
58 violations and this matter is an allegation and in either event the complaint should be
59 referred to the local commonwealth attorneys' office. Vice Chair Wheeler stated that she
60 concurred with the Chairman statement however: "The matter should be handled
61 swiftly." Chairman Alcorn inquired if the campaign had responded to the complaint.
62 Commissioner Cortés stated that the McCollum campaign had not responded to the

63 allegation nor has the department of SBE requested a response. Chairman Alcorn stated
64 that the department should make a request of the campaign to respond to provide
65 information regarding the allegation. Secretary McAllister stated that the definition of
66 contribution should be defined as it relates to one's salary and this will help SBE to know
67 how to move forward. Secretary McAllister recommended that this allegation be given to
68 the commonwealth attorney to do the analysis. Chairman Alcorn stated that the allegation
69 should be investigated under §24.2-1019. Ms. Birkenheier stated that if it is investigated
70 under §24.2-1019, it would be investigated as a criminal matter verses a civil matter, and
71 without suggesting that this would affect the manner in which this complaint is handled.
72 Chairman Alcorn stated that under §24.2-946.3 SBE has the responsibility to report any
73 allegation of incomplete campaign finance reports. Commissioner Cortés stated that
74 when requests are sent to the commonwealth attorneys' offices there are no assurance
75 that when the investigation is complete that that office would notify ELECT of the
76 outcome, however: in future requests for investigations, the request for notification of
77 disposition would be added to the letter. Secretary McAllister moved *that the allegation*
78 *be referred to the local commonwealth's attorney for violations of the Campaign Finance*
79 *Act.* Vice Chair Wheeler second the motion and without further comment the motion
80 passed unanimously. Chairman Alcorn directed Mr. Brooks to notify the commonwealth
81 attorney's office regarding this matter and to update SBE when a determination is made.
82 The next order of business was the Substantial Compliance – History and
83 Standards Memorandum presented by Brooks Braun under the Campaign Finance
84 Update. Mr. Braun stated that on November 16, 2015, SBE asked ELECT to investigate
85 the past practice of the Board in the apparent substantial compliance provision in §24.2-
86 955.3(E)-[Stand by Your Ad]. Mr. Braun stated that ELECT suggests that the Board read
87 §24.2-955.3(E) narrowly. Mr. Braun stated that a narrow reading is good policy for
88 several reasons. First, it would encourage political committees under the scope of Stand
89 by Your Ad to read and carefully comply with the law as written. Second, it would ensure
90 that the information that the legislature intended, be communicated to voters, is actually
91 communicated. Mr. Braun stated that this is to the benefit of voters who have come to
92 expect certain disclosure statements on campaign materials. Under this standard,
93 advertisement disclaimers must communicate to a reasonable person what is intended by

94 the statute and may not admit to alternative interpretations. Vice Chair Wheeler stated
95 that the disclosure would allow interpretation of the words used on the disclosure to have
96 the intended meaning as outline by the statue. Mr. Braun stated that was a correct
97 statement. Secretary McAllister asked how this change would be conveyed to the
98 elections community. Mr. Braun stated that the information would be added to the
99 candidate bulletin which is in the campaign finance manual for candidates. Chairman
100 Alcorn moved *that moving forward §24.2-955.3(E) to mean that the disclosure statement*
101 *must unambiguously contain the information required by Chapter 9.5.* Secretary
102 McAllister seconded the motion and without further comment the Board unanimously
103 approved the motion.

104 The next order of business was the Express Advocacy Memorandum under the
105 Campaign Finance Update presented by Brooks Braun, ELECT Policy Analyst. Mr.
106 Braun stated that Chairman Alcorn requested that a memorandum be prepared that
107 addresses the topic of express advocacy. ELECT has received several complaints alleging
108 improper disclosure of advertisement's in November 2015, General Election. ELECT is
109 awaiting the Board's decision regarding interpretation of the term "Expressly
110 Advocating" as used in §24.2-945.1. The *Code* defines both "expenditure" and
111 "contribution". Mr. Braun explained that the term "express advocacy" is a legal term that
112 has been utilized since 1976, and since then the term has been used and interpreted by a
113 number of courts and legislatures at both the state and federal level. Chairman Alcorn
114 stated that the Board finds it appropriate to ask legal counsel to discuss with the
115 Department the possible legal implications of establishing a policy regarding "express
116 advocacy." Chairman Alcorn stated that this action would allow the Board to move
117 forward on the complaints received by ELECT and would be received by SBE on the
118 definition of "express advocacy".

119 Commissioner Cortés stated that ELECT received a letter on behalf of SBE on
120 January 7, 2016 from the Landmark Legal Foundation regarding consideration of whether
121 to adjudicate violations of campaign finance law prior to election. Chairman Alcorn
122 stated that since the letter was just received the Board shall review the item at the next
123 regularly scheduled board meeting.

124 The next order of business was the GREB Workgroup presented by GREB
125 Workgroup Co-Chair John Hager. Mr. Hager stated that the final report of the GREB
126 Workgroup was due on December 31, 2015 and as a result the final report was placed on
127 the ELECT Website for review and held for formal presentation until the next available
128 board meeting. Mr. Hager stated that the workgroup was chartered on May 14, 2014 and
129 the primary purpose was to study the duties and responsibilities of the electoral boards
130 and general registrars. The workgroup presented an interim report on July 28, 2015. The
131 final report includes a resolution that includes recommendations. Mr. Hager introduced
132 the members of the workgroup and thanked all for their dedication to the efforts and
133 corporative spirit. Mr. Hager thanked the support of the ELECT staff. Robin Lind,
134 Goochland County VEBA representative, GREB Workgroup VEBA representative;
135 Larry Haake, Chesterfield County Director of Elections, GREB Workgroup VRAV
136 representative; and Tracy Howard, Radford City Director of Elections, VRAV
137 representative discussed portions of the workgroup report and resolution with SBE Board
138 Members in detail. The GREB Workgroup resolution as presented:

139 1. The budget submitted by the Commissioner of Elections setting the salary and population
140 brackets for General Registrar/Director of Elections to be the same as that of the Treasurer should
141 receive all necessary support and action to enable adoption by the General Assembly. This action
142 is consistent with the recommendation of the GREB Workgroup in 2014;

143 2. The budget submitted by the Commissioner of Elections requesting a significant increase in
144 funding in order to account for expiring federal funds should receive all necessary support and
145 action to enable adoption by the General Assembly; and

146 3. The State Board of Elections adopt the Electoral Board Job Description included in the Final
147 Report Section 2/Attachment 3 and instruct the Department of Elections to distribute that
148 document to the various circuit court judges and local political party chairs for use in the
149 appointment process to electoral boards; and

150 4. The Code of Virginia be modified to clarify responsibility between the Electoral Board and
151 General Registrar/Director of Elections in the areas of ballots and elections, officers of election,
152 and polling places, per Final Report Section 2/Attachment 2; and,

153 5. The State Board of Elections request that the General Assembly seek prompt re-codification of
154 Virginia Code §24.2 to eliminate archaic language, eliminate contradictory requirements, and
155 update references to reflect modern technology.
156
157
158 SBE Board Members thanked GREB Workgroup Members for their presentation
159 and efforts in reporting the final results. Chairman Alcorn requested that ELECT Staff
160 provide SBE with additional details on the process of re-codification of *Virginia Code*

161 §24.2. Vice Chair Wheeler *moved that the State Board accept the GREB Workgroup*
162 *Final Report and Resolution of Recommendations and forward them to the Office of the*
163 *Governor, Department of Administration, Members of the Privileges and Election*
164 *Committee of both houses, Speaker of the House, and the President of the Senate for*
165 *consideration to include their recommendation for re-codification* . Secretary McAllister
166 seconded the motion. Chairman Alcorn asked if there were additional public comments.
167 Theresa Martin, Virginia League of Women Voters provided supporting comments of the
168 workgroup's efforts. Chairman Alcorn asked if there were additional public comments
169 and there were none. The Board unanimously approved the motion.
170 Vice Chair Wheeler stated that a previous conversation was initiated regarding the
171 extension of the GREB Workgroup's efforts. Vice Chair Wheeler stated that a
172 recommendation to continue the workgroup in its' current format and membership for the
173 upcoming year with the charge to review the re-codification of *Code* and to work
174 independently on other charges, as they deem appropriate, in particular, the day to day
175 work of the election offices. Chairman Alcorn suggested waiting on the re-codification
176 until more information is received and Vice Chair Wheeler agreed. Mr. Hager stated that
177 the workgroup had ten areas of work that could be address during their charge and
178 reviewed those areas with SBE. Commissioner Cortés expressed concern whether the
179 ELECT Staff could provide adequate support during a presidential election year,
180 redistricting, and a long legislative session. Chairman Alcorn stated that the use of
181 department resources was of concern. Mr. Hager stated that the workgroup would
182 exercise extreme respect of the Departments' resources. Vice Chair Wheeler stated that
183 the membership of the workgroup is a volunteer group and would be respectful of
184 ELECT resources. Secretary McAllister stated that maintaining continuity is important
185 when it comes to the efforts of the workgroup and stated that she fully endorsed the
186 continuation of the workgroup efforts with the understanding that there would be respect
187 for ELECT resources in particular staff obligations. Vice Chair Wheeler moved *that SBE*
188 *reconstitute the GREB Workgroup to work on any unfinished business that was initiated*
189 *two years ago and continue to look at the problems they see and bring those practical*
190 *aspects to resolution for the next year with a final report due in January 2017 due to the*
191 *busy election year.* Secretary McAllister seconded the motion. Chairman Alcorn asked if

192 there were further discussion and there was none. A voice vote was taken. The motion
193 passed 2 to 1: Vice Chair Wheeler, Yea; Secretary McAllister, Yea; and Chairman
194 Alcorn, Nay.

195 Chairman Alcorn moved *that SBE go into recess until 12:15PM.* Secretary
196 McAllister seconded the motion and without public comment the Board unanimously
197 approved the motion, The Board went into recess at 12:10PM. Chairman Alcorn moved *that*
198 *the Board reconvene at 12:25PM.* Vice Chair Wheeler second the motion and without public
199 comment the Board unanimously approved the motion.

200 The next order of business was the Richmond City Election Day Issues presented by
201 Edgardo Cortés, ELECT Commissioner. Commissioner Cortés stated that on November 3,
202 2015, Election Day, the Department received several calls regarding pollbooks, split
203 precincts, wrong ballot style, and voter identification issues. Commissioner Cortés stated that
204 a letter expressing those concerns was sent to the General Registrar of Richmond City and to
205 date a response has not been received. Chairman Alcorn asked if Kirk Showalter, General
206 Registrar of Richmond City was present. Ms. Showalter approached the podium.

207 Ms. Showalter stated that: "She had received the letter dated December 31, 2015,
208 which contained a lengthy list of accusations and has not responded to SBE or ELECT due to
209 illness." Ms. Showalter stated that: "When voters were check in on the electronic pollbook it
210 would ask for a valid ID number and this was not something in our protocol." Ms. Showalter
211 stated that this was sporadic throughout the city. Ms. Showalter stated that: "Data shows
212 some precincts, 41% of our precincts opened, actually entered somebody in the pollbook,
213 between 6:00AM and 6:15AM." Ms. Showalter stated that: "Richmond City figured out
214 the situation and determined that they were required to enter a unique identification
215 number." Ms. Showalter stated that: "She only knew of one voter who left." Ms.
216 Showalter stated that: "Part of the problem was that we had to rely on the State Board of
217 Elections Staff as the conduit, with the new vendor, for resolutions of pollbook
218 problems." Ms. Showalter stated that: "The pollbooks sometimes stopped communicating
219 with each other and that there is a patch available; Richmond City had no knowledge of
220 this patch and we have been dealing with this situation for a long time. The State Board
221 knows about the situation and we have had problems with getting voter credit data. The
222 problem with our voter credit data is that the election officers were not closing the
223 pollbooks correctly." Ms. Showalter provided copies of her training classes' schedules

224 and handouts to board members. Ms. Showalter stated that: "Election officers are not
225 full-time positions and we have citizens working the polls that are welfare mothers or
226 hold a PhD, and everything in between." Ms. Showalter stated that: "We try to pair our
227 new election officers with the best chiefs and assistant chiefs." Ms. Showalter stated that:
228 "There were election officers who did not follow the photo ID requirements as they were
229 trained." Ms. Showalter explained the situation with the Governor and the confusion over
230 his photo identification. Ms. Showalter stated that the situation with the split precincts
231 occurred because of eight new split precincts and elections officers having to deal with
232 new voting equipment. Ms. Showalter explained the training process for election officers
233 dealing with split precincts and stated that when the problem was identified that two of
234 the Richmond City Electoral Board Members went into the field to address the problem.
235 Ms. Showalter stated that: "Every now and again, the voter does get the wrong ballot, but
236 overall the process has functioned very well." Ms. Showalter stated that: "Sometimes
237 voters get in the wrong line after checking into the precinct." Ms. Showalter stated that
238 the city was hoping to purchase new electronic pollbooks by March, 2016. Ms. Showalter
239 stated that: "The City of Richmond cares very much about the voters."

240 Chairman Alcorn thanked Ms. Showalter for her time and asked if any of the
241 Electoral Board Members were present and wished to speak. Charlotte Stevens,
242 Richmond City Electoral Board Chair approached the podium. Ms. Stevens stated that
243 she has been working with Ms. Showalter since 2008. Ms. Stevens stated that: "She felt
244 that SBE was targeting the City of Richmond and stated that SBE is acting in a partisan
245 manner. Ms. Stevens stated that Ms. Showalter does extensive training before each
246 election and has worked under both party administrations." Ms. Stevens stated that: "The
247 Electoral Board does address issues with election officers and the City of Richmond is
248 fortunate to have Ms. Showalter." Ms. Stevens stated that: "The electoral board fully
249 intends to work closely with Ms. Showalter, her staff, and election officers and look into
250 each and every recorded incident that occurred on Election Day."

251 Chairman Alcorn stated that SBE wants to accomplish a culture change not a
252 partisan change and by having open and frank conversations about elections
253 administration we can have "lessons learned". Chairman Alcorn stated that SBE heard of
254 the issues on Election Day, in Richmond City, and the three member board of SBE

255 agreed to ask Richmond City to attend a SBE Meeting to discuss the situation. Chairman
256 Alcorn noted that Richmond City was not the first locality to appear before the Board to
257 address issues that occurred in their locality on Election Day. Chairman Alcorn asked if
258 there were any other public comments and there were none.

259 Vice Chair Wheeler stated SBE Board Members were made aware of the calls
260 related to election day issues throughout the day on November 3, 2015, and documented
261 the issues as they arouse. Vice Chair Wheeler stated that as a former electoral board
262 member she would emphasis to election officers in training the value of following the
263 rules and not being creative on Election Day. Vice Chair Wheeler stated that the training
264 program of Richmond City Election Officers is amazing and everyone makes mistakes
265 and equipment will experience problems. Vice Chair Wheeler stated that we should be
266 grateful to the City of Richmond, and to those who are dedicated, and take their jobs
267 responsibly.

268 Secretary McAllister thanked the City of Richmond for providing the opportunity
269 to go on-site on Election Day. Secretary McAllister stated that this review is not a
270 partisan issue and the purpose of this conversation is to review the "lessons learned",
271 2016 is going to be an important year and it is important to work together for
272 transparency, clarity, and to gather those "lessons learned".

273 Commissioner Cortés stated that there are numerous localities across the
274 Commonwealth that utilize this equipment and have not experienced the issues stated by
275 Richmond City. Commissioner Cortés asked Eugene Burton to answer any questions
276 SBE may have regarding the functionality of the electronic pollbook equipment in
277 Virginia. Eugene Burton, ELECT Voting Equipment Specialist, approached the podium.
278 Mr. Burton stated that the valid ID feature is not for Virginia and the data card is for
279 other states. The feature is in the software but is not a feature that ELECTS trains the
280 localities to utilize. This feature was not provided for Virginia and is utilized in states
281 who have super precincts or vote centers.

282 Commissioner Cortés asked Ms. Showalter for a clarification on the percentage of
283 precincts that checked-in with the electronic pollbooks. Ms. Showalter stated that 41% of
284 the precincts actually had someone check into the pollbooks by 6:15AM and another 40%
285 had voters checked-in but required a unique voter identification number; the majority of

286 the precincts were fully functional by 7:00AM. Ms. Showalter confirmed that 19% of the
287 precincts were not totally functional until after 7:00AM. Commissioner Cortés asked Ms.
288 Showalter if provisional ballots were offered to those voters experiencing difficulty
289 checking-in with the electronic pollbooks. Ms. Showalter stated that she did not instruct,
290 to make the offer of a provisional ballot as the voter was in the process of checking-in
291 and the a resolution was being sought, and the situation, would have been resolved in the
292 near future. Ms. Showalter stated that that her office and the Electoral Board would
293 review the situation in the future. Commissioner Cortés asked Ms. Showalter if the
294 precincts had the most recent version of the training document titled "What-If"? Ms.
295 Showalter stated that the training document was from the June 2015, primary and was
296 unaware that the administration had a change in policy in the identification policy and
297 modified the document to fit the paper size/layout and did not do a line by line
298 comparison before issuing the training document and the administration did not notify
299 our office of the change. Ms. Showalter stated that document used on November 3, 2015
300 was the same document utilized for the June 2015, primary. Commissioner Cortés asked
301 Ms. Showalter if provisional ballots were issued to voters who were issued the wrong
302 ballots in the split precinct situation. Ms. Showalter stated: "No".

303 Chairman Alcorn asked Ms. Showalter what was the expected date of the
304 completion of the "lessons learned" by the City of Richmond. Ms. Showalter stated that
305 the purchasing of electronic pollbooks and the March 2016, primary were the priority and
306 the city lack the resources to complete all of the tasks, i.e. the review of "lessons
307 learned". Chairman Alcorn asked Ms. Showalter when the review is normally conducted.
308 Ms. Showalter stated in January however; this is a different year due to the primary and it
309 will be delayed. Vice Chair Wheeler asked if Richmond City would be conducting
310 training of their election officers before the March 2016, primary and if the issues of the
311 November 2015, election would be addressed. Ms. Showalter stated that they would
312 address those issues during training before the March 2016, primary and place an
313 emphasis on the photo identification requirements.

314 Chairman Alcorn asked Ms. Showalter about the issue with the voter credits. Ms.
315 Showalter stated that this is a known issue with the vendor and Richmond City is going to
316 install a patch which will allow voter credits to be uploaded in a timely fashion. Mr.

317 Burton stated that the patch was for a different system other than the ones being utilized
318 by Richmond City. Secretary McAllister thanked Ms. Showalter for her time at the Board
319 Meeting. Chairman Alcorn directed Ms. Showalter to respond to the letter and that the
320 response would be shared with the rest of the elections community so that 'lessons
321 learned" could be shared. Chairman Alcorn stated that when transparency is displayed the
322 accusations will cease and the education process will continue. Chairman Alcorn stated
323 that opening the training to visitors or observers would benefit transparency. Ms.
324 Showalter stated that opening the training to members of the public impedes the training
325 of the election officers. Ms. Showalter stated that she agreed with the Chairman
326 regarding the concern of transparency. Chairman Alcon inquired if there were any other
327 comments and there were none.

328 Chairman Alcorn moved *that SBE go into recess until 2:15PM.* Vice Chair Wheeler
329 seconded the motion and without public comment the Board unanimously approved the
330 motion, the Board went into recess at 2:10PM. Chairman Alcorn moved *that the Board*
331 *reconvene at 2:25PM.* Secretary McAllister seconded the motion and without public
332 comment the Board unanimously approved the motion.

333 Chairman Alcorn moved *that the SBE Board close the meeting to discuss specific*
334 *legal matters requiring the provision of legal advice by legal counsel as authorized by §*
335 *2.2-3711(A)(7) of the Code of Virginia.* Vice Chair Wheeler seconded the motion and
336 without public comment the Board unanimously approved the motion. Chairman Alcorn
337 directed Clara Belle Wheeler, Vice Chair; Singleton McAllister, Secretary; Anna
338 Birkenheier, Assistant Attorney General and SBE Counsel; Commissioner Cortés;
339 Deputy Commissioner Howard and Confidential Policy Advisor, Martin Mash to remain
340 with the Board during the closed session. The Board went into executive session at
341 2:25PM.

342 At 3:25PM Chairman Alcorn *moved to reconvene in open session and a roll call*
343 *vote was taken as required by § 2.2-3712(D) of the Code of Virginia, unanimously*
344 *certifying that during the closed meeting (i) only public business matters lawfully*
345 *exempted from open meeting requirements under this chapter, and (ii) only such public*
346 *business matters as were identified in the motion by which the closed meeting was*
347 *concerned were heard, were discussed or considered.* Vice Chair Wheeler seconded the

348 motion and the Board unanimously approved the motion. Ms. Mansfield performed the
349 roll call vote and all board members approved the motion.

350 The next order of business was the Halifax County Voting Equipment Issues
351 presented by Commissioner Cortés. Commissioner Cortés stated that Vice Chair Wheeler
352 inquired during the last board meeting about the voting equipment issues experienced in
353 Halifax County and as a result Halifax County was invited to attend this board meeting to
354 discuss the issues. Heather Harding, Director of Elections Halifax County approached the
355 podium. Ms. Harding referenced the voting equipment display that was available for
356 demonstration. Commissioner Cortés stated that Halifax County voting equipment
357 experienced calibration issues on Election Day which resulted in the incorrect candidate
358 being selected by the voter. Commissioner Cortés stated that Halifax County conducted L
359 & A testing on all the equipment deployed for use on Election Day and all equipment
360 passed testing to the vendor standards; which allows a quarter-inch variation.
361 Commissioner Cortés stated that one unit was pulled on Election Day and no calls were
362 received regarding the issue. Commissioner Cortés stated that after the election a
363 candidate called and stated that there were a substantial number of voters who expressed
364 concern regarding calibration issues on Election Day. Commissioner Cortés stated that
365 Ms. Harding conducted additional L & A testing on the equipment once the equipment
366 was released back to the locality. Commissioner Cortés stated that the candidates and the
367 political parties were invited to the testing. Commissioner Cortés stated that some voting
368 equipment did not pass the quarter-inch standard and most of the equipment did pass the
369 L & A testing. The candidate express concern and has appeared before the Halifax
370 County Board of Supervisors regarding the voting equipment currently being utilized in
371 the County. As a result, the Board of Supervisors has set aside funds for new voting
372 equipment. Ms. Harding approached the podium and explained the testing timelines and
373 process. Ms. Harding stated that 18 of the 56 units in Halifax County needed to be
374 recalibrated as a result of the testing and on Election Day three machines were replaced
375 as a result of issues that arouse. Ms. Harding reported that a candidate witnessed the
376 canvass because of his concerns and felt he should have received more votes than
377 reported and that candidate was present during the review of the machines when they
378 were returned to the office. The results of the testing were shared. With the concern for

379 voter faith in the equipment, Halifax County has purchased new voting equipment which
380 will be in use for the March 2016 primary and the November 2016, General Election. Ms.
381 Harding asked if there were any questions. Commissioner Cortés asked Mr. Burkhart,
382 Director of Unilect Operations, to explain the calibration issues. Mr. Burkhart explained
383 the vendor specification related to the calibration issues and variations. Chairman Alcorn
384 asked how the variations compare to other vendor voting equipment. Commissioner
385 Cortés stated that currently, there are not federal or Election Assistance Commission
386 (EAC) standards established and currently states do not have regulations regarding the
387 variations in touch screen equipment. Chairman Alcorn asked about the duration of the
388 calibration and the cycle of recalibration. Mr. Burkhart stated that recalibration is
389 recommended every two years. Ms. Harding stated that testing occurs before every
390 election and if the results indicate that recalibration is required, recalibration is
391 conducted. Vice Chair Wheeler thanked Ms. Harding for taking the initiative to replace
392 the equipment. Chairman Alcorn asked if there were any other questions or comments
393 and there were none.

394 The next order of business was Prince William County presented by
395 Commissioner Cortés. Commissioner Cortés explained the materials in the Board
396 Working Papers. Commissioner Cortés stated that discussions were held prior to the
397 November 2015, General Election related to potential signature verification of returned
398 absentee ballots based on how the voter chooses to apply for the absentee ballot. The
399 Department was asked by the Prince William Electoral Board to provide advice on
400 adopting a policy. The Departments' policy was signature verification is not supported
401 and is not contemplated in the *Code*. Commissioner Cortés stated that he attended the
402 local electoral board meeting and answered questions regarding the concern of signature
403 verification. Commissioner Cortés recalled the outline of events that occurred between
404 the Electoral Board and the Director of Elections, Michele White. Mr. Guiffré, Chairman
405 of the Prince William County Electoral Board, then selected four individuals and
406 deputized those individuals as officers of elections. Commissioner Cortés stated that Mr.
407 Guiffré then undertook the process of signature verification comparing them to the
408 absentee ballot application that should have been in the courthouse but, were not, due to
409 instructions provided by Mr. Guiffré. Commissioner Cortés stated that Mr. Guiffré then

410 compared the signatures, on the absentee ballot envelopes, to the voter registration
411 applications in the Director of Elections Office, without authorization, which is required
412 and without any action taken by the Prince William Electoral Board. Commissioner
413 Cortés stated that the applications were not redacted and contained sensitive information,
414 i.e. social security numbers and birth dates. Commissioner Cortés stated that proper
415 notice of this activity was not given and once the Department was notified of the incident
416 the office of the attorney general was notified of the situation. Commissioner Cortés
417 stated: "My concern is that having any local electoral board member, because they
418 disagree with a policy, to undertake actions that are contraire to not only federal and state
419 law but, to advice given by the Department." Commissioner Cortés stated that the
420 Director of Elections and her staff have raised concerns about the process.

421 Chairman Alcorn stated: "The facts and details are rather alarming and that an
422 individual would proceed contrary to advice given by their electoral board and or by the
423 Department." Chairman Alcorn stated that it was understood that there is an open
424 investigation by law enforcement and the local commonwealth attorney's office.
425 Chairman Alcorn asked Mr. Guiffré for an explanation of the situation. Mr. Guiffré
426 stated: "I have been advised by counsel not to say anything." Chairman Alcorn replied:
427 "OK".

428 Vice Chair Wheeler stated that verifying signatures on an absentee ballot request
429 form is important so that you know that the person who is requesting the ballot is the
430 voter who is requesting the ballot. We have received testimony and data that in a
431 particular situation all residents of a block requested an absentee ballot. Vice Chair
432 Wheeler stated that 56% of people who stated that they requested an electronically
433 produced request for an absentee ballot never returned the ballot; which is higher across
434 the state than the standard of people requesting absentee ballots. Vice Chair Wheeler
435 stated that voters presented themselves at polls stating that they had not requested an
436 absentee ballot, but received one, "This is a system that we need to evaluate and the *Code*
437 is specific in stating that the voter must sign the request. I am concerned that the
438 procedure or system that is in place is not a safe process for getting an absentee ballot."
439 Vice Chair Wheeler stated: "I do not see this as criminal activity, I see this as somebody

who was trying to test the system that is in place and see if it is a legal and safe means of requesting absentee ballots."

Chairman Alcorn stated: "My concern is a broader one, no matter the rule and whether we agree with it, but here is a situation where the Board did discuss signature verifications and this was not a required step. I recall that we were signing certificates of elections, and we stated that this is why you do not do signature verification because of the change of signature over time. If a request came through utilizing the proper procedures I would be in full support of those actions. The Electoral Board of Prince William County did not endorse this action. A decision was made and someone decided to go against that decision. That is the underlying issue. Sometimes this Board does not make a unanimous decision but we move forward together. To me that is fundamental. That is my concern." Chairman Alcorn asked if there were any members of the Prince William Electoral Board or the Director of Elections that would like to address SBE.

Keith Scarborough, Secretary of the Prince William Electoral Board, approached the podium. Mr. Scarborough stated: "I take no joy in doing this, but I want to encourage you to begin the process of having Chairman Guiffré removed from our electoral board. I realize this is a very serious step, but I believe that it is fully justified by what took place in our county over the last several months. The record is clear, and there really is no dispute on what has happened. Chairman Guiffré strongly disagreed with a decision you made about using electronic signatures to apply for an absentee ballot. That is certainly his right to disagree with that decision, but his right does not include the steps he has taken over the last several months to do everything he could to undermine that decision that you made and to undermine the operations of our local electoral board. During the fall, he submitted at least four different applications for an absentee ballot using different variations of his name and variations of his address just to test the system to see how it worked. It is true that our local board discussed this issue; we debated for months on how to treat these absentee ballots that were obtained using electronic signature. Initially he wanted to treat all of those as provisional ballots and the Vice Chair and I refused to go along with that, at a meeting on October 7th, yes we discussed the issue of the signature match and one first impression, I will admit, a signature match has some logic. Through a consensus we deferred the decision on how are we going to accept these ballots and we

471 discussed using a signature match, but after, I talked to others to see how they were
472 handling this issue. I talked to election lawyers who are more familiar; signature
473 matching is not an option that we had ever considered on the Electoral Board. After those
474 conversations I became convinced that it was wrong for us to do any type of signature
475 match. I called a special meeting on October 27th to reconsider the issue and to reverse
476 the consensus decision we had made to do a signature match. I asked the Registrar to ask
477 the Commissioner for a statement to consider what our legal options were and whether
478 we had any legal authority to do a signature match. As the Commissioner noted the letter
479 was very clear, and there was a large crowd at our meeting, to nobody's surprise, and
480 very few people there were supportive of the position that we ended up taking.
481 Commissioner Cortés came, we presented the letter, he answered questions from the
482 audience, from the Board, and so after that meeting we voted two to one to not do any
483 signature match. We voted to treat every absentee ballot that was returned identically, no
484 signature matches from any ballots that came back. This vote was on the record in front
485 of a crowd of people during a special meeting of the Prince William Electoral Board. The
486 Chairman voted no on that and after the meeting he indicated that he is going to continue
487 to push on this issue, electronic signatures, because he doesn't trust them. We counted all
488 the ballots in the same way, with no distinctions. Two weeks later the Chairman shows
489 up at the Office of Elections, and the Registrar was out-of-town, and there was no notice
490 given to the Vice Chair, me, anybody else, the Democratic Party. The Chairman showed
491 up unannounced with four friends from the Republican Party, these are not election
492 officials, these people had never even worked in one of our precincts, and these were
493 people who, these were four friends from the Republican Committee. Using the oath to
494 create this perception, that I have the authority to do this, this is legal, I have the authority
495 to do this, he swore these four people in and he proceeded to do arbitrarily exactly what
496 the Commissioner of Elections said we had no authority to do, a signature match. He
497 completely ignored the direction of the Commissioner of Elections; he ignored the vote
498 that we took on October 27th that there was going to be no signatures match. There are at
499 least four sections of the *Code* that have been violated and on Tuesday he left his four
500 friends alone who continued to look through voter registration information while he
501 attended a meeting of the County Board of Supervisors. Mr. Guiffré has ignored and

502 violated the trust of our local electoral board. I know that this is a serious request, but I
503 believe that his conduct was so outrageous and so over the top that he should be removed
504 from our electoral board. Thank you, very much." Chairman Alcorn asked if there were
505 any questions for Mr. Scarborough and there were none. Chairman Alcorn asked if there
506 were any other comments. Michele White, Director of Elections Prince William County,
507 approached the podium.

508 Ms. White provided the background related to her office regarding electronic
509 signature comparisons on absentee ballot requests prior to the November 2015, General
510 Election. Ms. White stated that she asked the Commissioner of Elections directly about
511 signature verification. Ms. White stated that the Commissioner stated that signature
512 verification was not recommended and was in fact a violation of state and federal law.
513 Ms. White stated that Chairman Guiffré directed her and her staff not to seal and deliver
514 absentee ballot materials to the clerk of court, as required by *Code*. Ms. White stated that
515 she was directed during an electoral board meeting to draft a letter, and send it, to the
516 local commonwealth attorney regarding this activity. Ms. White stated that Chairman
517 Guiffré and four individuals gained unauthorized access to voter registration documents.
518 Ms. White stated: "Elections are not being run according to law in Prince William
519 County." Chairman Alcorn asked if there were additional speakers from Prince William
520 County. Jane Reynolds, Prince William Electoral Board Vice Chairman, approached the
521 podium.

522 Ms. Reynolds stated that she shared the views of the Director of Elections and the
523 Secretary of the Electoral Board. Ms. Reynolds stated that after receiving guidance from
524 the Commissioner of Elections the Electoral Board agreed that signatures would not be
525 compared and considering that we are not skilled on signature verification this was
526 understood. Chairman Alcorn asked if there were any additional speakers. Bill Card,
527 Prince William County Republican Committee Chairman approached the podium.

528 Mr. Card stated that the absentee ballot program is important and Chairman
529 Guiffré is our appointee. Mr. Card stated: "The idea that we are not going to compare
530 signatures is ludacris. This same electoral board rejected a ballot because signatures did
531 not match. The treatment of electronic signatures is different and this ballot is different
532 than any ballot of people lined up at the polls." Mr. Card stated: "There were ballots that

533 were submitted that should of not been because of the investigation. Senator Black
534 submitted a FOIA to keep the suppression of information occurring from the other
535 electoral board members." Chairman Alcorn asked if there were any other speakers.
536 Larry Haake, Director of Elections Chesterfield County approached the podium.

537 Mr. Haake stated that a bill was introduced to the General Assembly that would
538 have required general registrars to conduct signature comparisons on absentee ballot
539 applications to voter registration forms. Mr. Haake stated that the bill was defeated
540 because it was realized that the average person cannot do a signature comparison. Mr.
541 Haake stated that in this situation the bottom line is not about electronic signatures it is
542 about what happened in Prince William County, which is a violation of the *Code* and a
543 Class V felony. Mr. Haake stated: "If there is an investigation going on, Tony and four
544 other people will be indicted for a felony and properly for criminal conspiracy charges, as
545 well, as a senior election official we can't let things like this go on. There are things I
546 don't like. I am very concerned and there is a lot of concern in the registrar world."
547 Chairman Alcorn asked if there were any other public comments and there were none.

548 Commissioner Cortés stated: "I would like to recommend that SBE under their
549 authority, §24.2-103, to move for removal of Mr. Guiffré from his office." Chairman
550 Alcorn stated that this recommendation has been received from two individuals and this
551 situation is alarming. Vice Chair Wheeler stated: "This is properly one of the most
552 serious matters this board has had, there are lots of things that have gone on in the last
553 year or two, in the elections community, that I think are egregious in terms of people
554 being removed from their office, or their jobs, when they were trying to do the right
555 thing, and had a history of doing the right thing. The problem of voter integrity needs to
556 be addressed. How do we prevent absentee ballots from being fraudulently obtained and
557 fraudulently voted unless we come up with a protocol to prevent it? I have gone to
558 nursing homes to talk to residents, that had voted absentee, and I could not even get them
559 to understand that I was in the room, much less that they had voted a ballot the week
560 before. That is not only voter fraud, but elder abuse, which I take, very seriously. We
561 need to figure out a way to secure the absentee ballots. I do not think it is legitimate to try
562 to remove from office an electoral board member who is trying to test the system to see if
563 it is legitimate."

564 Chairman Alcorn stated that while in agreement to testing the process the
565 established procedures must be followed. Secretary McAllister stated: "In this particular
566 case, I am leaning towards going with our chairman for all the reasons cited. Having read
567 all the materials and listened to the folks here, Prince William County and the
568 Commissioner, and what has happened. This sends ripples among the elections
569 community and they will know what is going on. They will see what this board is doing,
570 how did we respond to this, did we take it seriously, and the *Code* is quite clear."
571 Chairman Alcorn stated that he was fully supportive of testing the decisions of the Board
572 and suggested that if Vice Chair Wheeler would like to develop a plan to include testing
573 that it be bought before the Board. Chairman Alcorn asked if there were any other
574 comments and there were none. Chairman Alcorn moved *that the State Board of*
575 *Elections under the authority of §24.2-103 institute proceedings under §24.2-234 for the*
576 *removal of Tony Guiffré from the Prince William County Electoral Board.* Secretary
577 McAllister seconded the motion. Chairman Alcorn asked if there were any further
578 comments and there were none. A voice vote was taken. The motion passed 2 to 1:
579 Chairman Alcorn, Yea; Secretary McAllister, Yea; and Vice Chair Wheeler, Nay.
580 The next order of business was the City of Winchester Voting Request presented
581 by Commissioner Cortés. Commissioner Cortés stated that the City of Winchester
582 Electoral Board has sought approval for §24.2-630 to currently certify voting systems in
583 the March 1, 2016 Presidential Primary. The City of Winchester would like to purchase
584 new voting equipment and there are two voting systems they are considering: one from
585 ES&S and the other from ESO that they would like to test during the election before
586 making a final purchasing decision. The Departments' recommendation is that this is
587 approved and this has been done previously by other localities. Vice Chair Wheeler stated
588 that this process of testing equipment has occurred previously in Albemarle County and
589 was very successful. Chairman Alcorn moved *that SBE the experimental use of the*
590 *Unisyn election systems, DS200 and Express Vote system in the City of Winchester for*
591 *the March 1, 2016, Presidential Primary Election.* Secretary McAllister seconded the
592 motion and without public comment the Board unanimously approved the motion.
593 The next order of business was the Albemarle County Electoral Board Request for
594 Guidance presented by Commissioner Cortés. Commissioner Cortés stated ELECT

595 received this request from Albemarle County recently regarding the Republican Party of
596 Virginia (RPV) statement to be signed by the voter. The administrative regulations,
597 1VAC 20-70-20, which deals with material omissions from Envelope B is of concern to
598 the central absentee precincts officers. Commissioner Cortés stated that if the situation is
599 not covered in the administrative regulation the officer of election will be responsible for
600 determining what is a material omission and what is not a material omission. There is
601 also the concern of whether Envelope B can be opened to determine whether the
602 statement was accidently included with the ballot prior to deciding whether or not to
603 count the ballot. Commissioner Cortés stated that the Department talked with the Federal
604 Voting Assistance Program (FVAP) and they had concerns on how this would impact
605 military and overseas voters. Commissioner Cortés stated that there are some suggested
606 solutions, but that would require board approval and RPV approval. Commissioner
607 Cortés requested board approval to move forward and ELECT has spoken to the
608 Executive Director of RPV regarding this issue.
609 Chairman Alcorn stated the RPV would have to sign off on this consideration.
610 Chairman Alcorn asked if there is a way to get instructions to those impacted voters on
611 the RPV statement. Commissioner Cortés stated that with Board approval ELECT would
612 help coordinate those efforts. Matt Davis, ELECT CIO, stated that this would only apply
613 to the federal write-in voter because the federal write-in envelope arrives without an
614 actual absentee ballot. Chairman Alcorn moved *that SBE approve box 6 of the federal*
615 *write-in absentee ballot and if it indicates Republican that it meets the statement*
616 *requirement for participation in the Republican Presidential Primary and for ELECT to*
617 *seek approval from the Republican Party of Virginia for the same, and if they are in*
618 *agreement, to coordinate with the Federal Voting Assistance Program and to*
619 *communicate this to voters.* Vice Chair Wheeler seconded the motion and without further
620 public comment the Board unanimously approved the motion. Commissioner Cortés
621 stated that in addition to this item being added to the next board meeting agenda that
622 guidance should also be given to how to handle provisional ballots if the voter refuses to
623 sign the RPV statement. Commissioner Cortés stated that written guidance will be
624 provided to the Board Members at the next meeting of SBE.

625 The next order of business was the 2016 Presidential Election Preparation &
626 Planning presented by Chairman Alcorn. Chairman Alcorn stated he would like to start
627 the process of establishing the goals of SBE over the next year and would like to have the
628 support of the Virginia Electoral Board Association (VEBA) & the Virginia Registrars
629 Association of Virginia (VRAV). Chairman Alcorn stated that a list of priorities should
630 be established by SBE for the next three years and certainly over the next year with a
631 statement of these are the things we want to address. Chairman Alcorn stated that this is
632 important and we need to set aside time to work through our priorities while conducting
633 the business of the Board. Chairman Alcorn stated that he wanted to continue the culture
634 of asking tough questions with goal of continued improvement for the entire elections
635 community. Chairman Alcorn stated that his goal was to create a written workplan. Vice
636 Chair Wheeler stated that she would like to table this item to give more consideration to
637 the topic. Secretary McAllister stated that the plan was excellent and if we are not
638 proactive we will always be reactive. Secretary McAllister stated that she would like to
639 talk to her constituents and will bring ideas to the next meeting. Commissioner Cortés
640 stated that the Department has been focused on transparency and a voter data collection
641 project for which a lot of input has been received and ELECT will be ready to present to
642 the Board at the next meeting. Commissioner Cortés stated that the Department has been
643 focused on how to provide support to the localities and additional training efforts outside
644 of the annual training program.
645 Chairman Alcorn asked if there were any public comments. Tracy Howard,
646 VRAV President, stated that everything that has been talked about boils down to dollars,
647 "We could do great things if we were funded". Mr. Howard stated that he would like to
648 convince the General Assembly that elections are a core governmental service. Mr.
649 Howard stated that VRAV will do everything to help the Department of Elections, SBE,
650 and other localities to work as a team. Chairman Alcorn asked if there were additional
651 public comments and there were none.
652 The next order of business was a report from Robin Lind, Electoral Board
653 Secretary Goochland County, on the voting equipment audit that was conducted in
654 Goochland County. Mr. Lind reported that Goochland County has ten precincts plus a
655 central absentee precinct utilizing the DS200 voting equipment. During the canvass of

656 results of the November 2015, General Election, we observed a pattern of unusual results
657 in particular we noticed that the ballots cast for treasurer and sheriff in three separate
658 precincts were identical. In the fourth precinct, the ballot candidate count was identical
659 for Senate, and the House of Delegates, and for school board supervisor. Mr. Lind stated
660 that the Goochland County Electoral Board requested an audit and this action were
661 approved by SBE as provided by *Code*. Mr. Lind reported that the audit was conducted
662 on December 16, 2015 in the presence of Mr. Burton, clerk of the circuit court, four of
663 the candidates' names that were on the ballots, and several outside observers. Mr. Lind
664 reported that the hand count of the ballots produced results identical to those reported by
665 the optical scan voting machines when compared to the printouts on the statement of
666 results in the custody of the clerk of the court. Mr. Lind stated that the audit has proven
667 the absolute reliability of the DS200 optical scan equipment used in Goochland County
668 and has further established the wisdom of using paper ballots in the possibility of a
669 recount and has reestablished confidence in voters and the integrity of this voting
670 equipment. Chairman Alcorn stated that this is excellent news and asked if Mr. Lind had
671 any advice to offer other localities who may be thinking of doing audits. Mr. Lind stated
672 always do everything exactly according to *Code*. Chairman Alcorn asked if there were
673 any public comments and there were none.

674 Chairman Alcorn asked if there was any other business. Vice Chair Wheeler
675 stated that the *Code* calls for closing public schools that are used as polling location
676 during the November Election however: it does not call for schools to be closed on
677 primaries. Vice Chair Wheeler stated routinely there is low turn-out in primaries
678 however: this year we are anticipating that the turn-out will be high. Vice Chair Wheeler
679 stated that this raises a safety concern, closing the schools is a local option however: SBE
680 can make a request to please address this concern. Chairman Alcorn asked Commissioner
681 Cortés to help push this message out to the localities and to encourage the localities to
682 close the schools on Election Day, March 1, 2016.

683 Chairman Alcorn asked if there was any other business to come before the Board
684 and there was none. Chairman Alcorn moved *that the Board adjourn*. Secretary
685 McAllister seconded the motion and without further comment the Board voted
686 unanimously to adjourn. The meeting was adjourned at approximately 5:55PM.

The Board shall reconvene on February 2, 2016 at 11:00AM in the Patrick Henry Building, Richmond, Virginia 23219 – West Reading Room.

Secretary

Chair

Vice Chair