



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Tuesday, March 1, 2016
The Washington Building
Room B27
8:00AM



**STATE BOARD OF ELECTIONS
AGENDA**

DATE: March 1, 2016
LOCATION: The Washington Building, Room B27
TIME: 8:00 a.m.

I. CALL TO ORDER

*James B. Alcorn
SBE Chair*

II. APPROVAL OF MINUTES

January 8, 2016 & February 4, 2016

SBE Board Members

III. COMMISSIONER'S REPORT

*Edgardo Cortés ELECT
Commissioner*

IV. REPORT FROM LEGAL COUNSEL

*Anna Birkenheier
SBE & ELECT
Legal Counsel*

V. NEW BUSINESS

A. General Elections

SBE Board Members

B. Ballot Order Draw for May 3, 2016

*Reiko Doğu
Senior Elections
Administrator*

VI. OTHER BUSINESS & PUBLIC COMMENT

**Next SBE Meeting-March 15 , 2016 @ 10am GAB-
Room C**

VII. ADJOURNMENT



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Call to Order

BOARD WORKING PAPERS
Clara Belle Wheeler
SBE Vice Chair



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval
Of
Minutes
January 8, 2016
&
February 4, 2016

BOARD WORKING PAPERS
SBE Board Members



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval
Of
Minutes
January 8, 2016

BOARD WORKING PAPERS
SBE Board Members

1 MINUTES

2

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

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

19 The next order of business was the Commissioner Report presented by Edgardo
20 Cortés, ELECT Commissioner. Commissioner Cortés stated that Goochland County did
21 conduct a post-election audit and has requested that a brief report be given during this
22 meeting. Chairman Alcorn stated that the requested item would be added under other
23 business. Commissioner Cortés reported that Gary Fox, ELECT Voting Equipment
24 Supervisor, has retired. Mr. Fox’s expertize will be missed and ELECT wanted to thank
25 Mr. Fox for his service and dedication to the entire elections community. Commissioner
26 Cortés stated that the Governor has submitted his budget to the General Assembly. The
27 request includes a change to this years’ appropriation that covers reimbursement for
28 presidential primary expenses which was approximately, 3.8 million dollars for this fiscal
29 year. Monies were included in the request for the cost associated to printing voter
30 absentee applications, voter outreach, and state mail services. Commissioner Cortés
31 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 allegation 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 is 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 allegation be*
78 *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 "expressed advocacy" is a legal term
112 that has been utilized since 1976, and since then the term has been used and interpreted
113 by a number of courts and legislatures at both the state and federal level. Chairman
114 Alcorn 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 "expressed 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 concerned 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 Ms. Showalter does
245 extensive training before each election and has worked under both party administrations."
246 Ms. Stevens stated that: "The Electoral Board does address issues with election officers
247 and the City of Richmond is fortunate to have Ms. Showalter." Ms. Stevens stated that:
248 "The electoral board fully intends to work closely with Ms. Showalter, her staff, and
249 election officers and look into each and every recorded incident that occurred on Election
250 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 arose. Vice Chair Wheeler stated that as a former electoral board
262 member she would emphasize 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 did
297 not do a line by line comparison before issuing the training document and the
298 administration did not notify our office of the change. Ms. Showalter stated that
299 document used on November 3, 2015 was the same document utilized for the June 2015,
300 primary. Commissioner Cortés asked Ms. Showalter if provisional ballots were issued to
301 voters who were issued the wrong ballots in the split precinct situation. Ms. Showalter
302 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. Ms. Showalter stated that
323 she agreed with the Chairman. Chairman Alcorn inquired if there were any other
324 comments and there were none.

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

330 Chairman Alcorn moved *that the SBE Board close the meeting to discuss specific*
331 *legal matters requiring the provision of legal advice by legal counsel as authorized by §*
332 *2.2-3711(A)(7) of the Code of Virginia*. Vice Chair Wheeler seconded the motion and
333 without public comment the Board unanimously approved the motion. Chairman Alcorn
334 directed Clara Belle Wheeler, Vice Chair; Singleton McAllister, Secretary; Anna
335 Birkenheier, Assistant Attorney General and SBE Counsel; Commissioner Cortés;
336 Deputy Commissioner Howard and Confidential Policy Advisor, Martin Mash to remain
337 with the Board during the closed session. The Board went into executive session at
338 2:25PM.

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

347 The next order of business was the Halifax County Voting Equipment Issues
348 presented by Commissioner Cortés. Commissioner Cortés stated that Vice Chair Wheeler
349 inquired during the last board meeting about the voting equipment issues experienced in
350 Halifax County and as a result Halifax County was invited to attend this board meeting to
351 discuss the issues. Heather Harding, Director of Elections Halifax County approached the
352 podium. Ms. Harding referenced the voting equipment display that was available for
353 demonstration. Commissioner Cortés stated that Halifax County voting equipment
354 experienced calibration issues on Election Day which resulted in the incorrect candidate
355 being selected by the voter. Commissioner Cortés stated that Halifax County conducted L
356 & A testing on all the equipment deployed for use on Election Day and all equipment
357 passed testing to the vendor standards; which allows a quarter-inch variation.
358 Commissioner Cortés stated that one unit was pulled on Election Day and no calls were
359 received regarding the issue. Commissioner Cortés stated that after the election a
360 candidate called and stated that there were a substantial number of voters who expressed
361 concern regarding calibration issues on Election Day. Commissioner Cortés stated that
362 Ms. Harding conducted additional L & A testing on the equipment once the equipment
363 was released back to the locality. Commissioner Cortés stated that the candidates and the
364 political parties were invited to the testing. Commissioner Cortés stated that some voting
365 equipment did not pass the quarter-inch standard and most of the equipment did pass the
366 L & A testing. The candidate express concern and has appeared before the Halifax
367 County Board of Supervisors regarding the voting equipment currently being utilized in
368 the County. As a result, the Board of Supervisors has set aside funds for new voting
369 equipment. Ms. Harding approached the podium and explained the testing timelines and
370 process. Ms. Harding stated that 18 of the 56 units in Halifax County needed to be
371 recalibrated as a result of the testing and on Election Day three machines were replaced
372 as a result of issues that arouse. Ms. Harding reported that a candidate witnessed the
373 canvass because of his concerns and felt he should have received more votes than
374 reported and that candidate was present during the review of the machines when they
375 were returned to the office. The results of the testing were shared. With the concern for
376 voter faith in the equipment, Halifax County has purchased new voting equipment which
377 will be in use for the March 2016 primary and the November 2016, General Election. Ms.

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

391 The next order of business was Prince William County presented by
392 Commissioner Cortés. Commissioner Cortés explained the materials in the Board
393 Working Papers. Commissioner Cortés stated that discussions were held prior to the
394 November 2015, General Election related to potential signature verification of returned
395 absentee ballots based on how the voter chooses to apply for the absentee ballot. The
396 Department was asked by the Prince William Electoral Board to provide advice on
397 adopting a policy. The Departments' policy was signature verification is not supported
398 and is not contemplated in the *code*. Commissioner Cortés stated that he attended the
399 local electoral board meeting and answered questions regarding the concern of signature
400 verification. Commissioner Cortés recalled the outline of events that occurred between
401 the Electoral Board and the Director of Elections, Michele White. Mr. Guiffré, Chairman
402 of the Prince William County Electoral Board, then selected four individuals and
403 deputized those individuals as officers of elections. Commissioner Cortés stated that Mr.
404 Guiffré then undertook the process of signature verification comparing them to the
405 absentee ballot application that should have been in the courthouse but, were not, due to
406 instructions provided by Mr. Guiffré. Commissioner Cortés stated that Mr. Guiffré then
407 compared the signatures, on the absentee ballot envelopes, to the voter registration
408 applications in the Director of Elections Office, without authorization, which is required

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

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

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

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

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

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

501 from our electoral board. Thank you, very much.” Chairman Alcorn asked if there were
502 any questions for Mr. Scarborough and there were none. Chairman Alcorn asked if there
503 were any other comments. Michele White, Director of Elections Prince William County,
504 approached the podium.

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

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

525 Mr. Card stated that the absentee ballot program is important and Chairman
526 Guiffre is our appointee. Mr. Card stated: “The idea that we are not going to compare
527 signatures is Ludacris. This same electoral board rejected a ballot because signatures did
528 not match. The treatment of electronic signatures is different and this ballot is different
529 than any ballot of people lined up at the polls.” Mr. Card stated: “There were ballots that
530 were submitted that should of not been because of the investigation. Senator Black
531 submitted a FOIA to keep the suppression of information occurring from the other

532 electoral board members.” Chairman Alcorn asked if there were any other speakers.
533 Larry Haake, Director of Elections Chesterfield County approached the podium.

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

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

561 Chairman Alcorn stated that while in agreement to testing the process the
562 established procedures must be followed. Secretary McAllister stated: “In this particular

563 case, I am leaning towards going with our chairman for all the reasons cited. Having read
564 all the materials and listened to the folks here, Prince William County and the
565 Commissioner, and what has happened. This sends ripples among the elections
566 community and they will know what is going on. They will see what this board is doing,
567 how did we respond to this, did we take it seriously, and the *code* is quite clear.”
568 Chairman Alcorn stated that he was fully supportive of testing the decisions of the Board
569 and suggested that if Vice Chair Wheeler would like to develop a plan to include testing
570 that it be bought before the Board. Chairman Alcorn asked if there were any other
571 comments and there were none. Chairman Alcorn moved *that the State Board of*
572 *Elections under the authority of §24.2-103 institute proceedings under §24.2-234 for the*
573 *removal of Tony Guiffre from the Prince William County Electoral Board.* Secretary
574 McAllister seconded the motion. Chairman Alcorn asked if there were any further
575 comments and there were none. A voice vote was taken. The motion passed 2 to 1:
576 Chairman Alcorn, Yea; Secretary McAllister, Yea; and Vice Chair Wheeler, Nay.

577 The next order of business was the City of Winchester Voting Request presented
578 by Commissioner Cortés. Commissioner Cortés stated that the City of Winchester
579 Electoral Board has sought approval for §24.2-630 to currently certify voting systems in
580 the March 1, 2016 Presidential Primary. The City of Winchester would like to purchase
581 new voting equipment and there are two voting systems they are considering: one from
582 ES&S and the other from ESO that they would like to test during the election before
583 making a final purchasing decision. The Departments’ recommendation is that this is
584 approved and this has been done previously by other localities. Vice Chair Wheeler stated
585 that this process of testing equipment has occurred previously in Albemarle County and
586 was very successful. Chairman Alcorn moved *that SBE the experimental use of the*
587 *Unisyn election systems, DS200 and Express Vote system in the City of Winchester for*
588 *the March 1, 2016, Presidential Primary Election.* Secretary McAllister seconded the
589 motion and without public comment the Board unanimously approved the motion.

590 The next order of business was the Albemarle County Electoral Board Request for
591 Guidance presented by Commissioner Cortés. Commissioner Cortés stated ELECT
592 received this request from Albemarle County recently regarding the Republican Party of
593 Virginia (RPV) statement to be signed by the voter. The administrative regulations,

594 1VAC 20-70-20, which deals with material omissions from Envelope B is of concern to
595 the central absentee precincts officers. Commissioner Cortés stated that if the situation is
596 not covered in the administrative regulation the officer of election will be responsible for
597 determining what is a material omission and what is not a material omission. There is
598 also the concern of whether Envelope B can be opened to determine whether the
599 statement was accidentally included with the ballot prior to deciding whether or not to
600 count the ballot. Commissioner Cortés stated that the Department talked with the Federal
601 Voting Assistance Program (FVAP) and they had concerns on how this would impact
602 military and overseas voters. Commissioner Cortés stated that there are some suggested
603 solutions, but that would require board approval and RPV approval. Commissioner
604 Cortés requested board approval to move forward and ELECT has spoken to the
605 Executive Director of RPV regarding this issue.

606 Chairman Alcorn stated the RPV would have to sign off on this consideration.
607 Chairman Alcorn asked if there is a way to get instructions to those impacted voters on
608 the RPV statement. Commissioner Cortés stated that with Board approval ELECT would
609 help coordinate those efforts. Matt Davis, ELECT CIO, stated that this would only apply
610 to the federal write-in voter because the federal write-in envelope arrives without an
611 actual absentee ballot. Chairman Alcorn moved *that SBE approve box 6 of the federal*
612 *write-in absentee ballot and if it indicates Republican that it meets the statement*
613 *requirement for participation in the Republican Presidential Primary and for ELECT to*
614 *seek approval from the Republican Party of Virginia for the same, and if they are in*
615 *agreement, to coordinate with the Federal Voting Assistance Program and to*
616 *communicate this to voters. Vice Chair Wheeler seconded the motion and without further*
617 *public comment the Board unanimously approved the motion. Commissioner Cortés*
618 *stated that in addition to this item being added to the next board meeting agenda that*
619 *guidance should also be given to how to handle provisional ballots if the voter refuses to*
620 *sign the RPV statement. Commissioner Cortés stated that written guidance will be*
621 *provided to the Board Members at the next meeting of SBE.*

622 The next order of business was the 2016 Presidential Election Preparation &
623 Planning presented by Chairman Alcorn. Chairman Alcorn stated he would like to start
624 the process of establishing the goals of SBE over the next year and would like to have the

625 support of the Virginia Electoral Board Association (VEBA) & the Virginia Registrars
626 Association of Virginia (VRAV). Chairman Alcorn stated that a list of priorities should
627 be established by SBE for the next three years and certainly over the next year with a
628 statement of these are the things we want to address. Chairman Alcorn stated that this is
629 important and we need to set aside time to work through our priorities while conducting
630 the business of the Board. Chairman Alcorn stated that he wanted to continue the culture
631 of asking tough questions with goal of continued improvement for the entire elections
632 community. Chairman Alcorn stated that his goal was to create a written workplan. Vice
633 Chair Wheeler stated that she would like to table this item to give more consideration to
634 the topic. Secretary McAllister stated that the plan was excellent and if we are not
635 proactive we will always be reactive. Secretary McAllister stated that she would like to
636 talk to her constituents and will bring ideas to the next meeting. Commissioner Cortés
637 stated that the Department has been focused on transparency and a voter data collection
638 project for which a lot of input has been received and ELECT will be ready to present to
639 the Board at the next meeting. Commissioner Cortés stated that the Department has been
640 focused on how to provide support to the localities and additional training efforts outside
641 of the annual training program.

642 Chairman Alcorn asked if there were any public comments. Tracy Howard,
643 VRAV President, stated that everything that has been talked about boils down to dollars,
644 “We could do great things if we were funded”. Mr. Howard stated that he would like to
645 convince the General Assembly that elections are a core governmental service. Mr.
646 Howard stated that VRAV will do everything to help the Department of Elections, SBE,
647 and other localities to work as a team. Chairman Alcorn asked if there were additional
648 public comments and there were none.

649 The next order of business was a report from Robin Lind, Electoral Board
650 Secretary Goochland County, on the voting equipment audit that was conducted in
651 Goochland County. Mr. Lind reported that Goochland County has ten precincts plus a
652 central absentee precinct utilizing the DS200 voting equipment. During the canvass of
653 results of the November 2015, General Election, we observed a pattern of unusual results
654 in particular we noticed that the ballots cast for treasurer and sheriff in three separate
655 precincts were identical. In the fourth precinct, the ballot candidate count was identical

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

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

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

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

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Secretary

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Chair

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Vice Chair

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DRAFT



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval
Of
Minutes
February 4, 2016

BOARD WORKING PAPERS
SBE Board Members

1 MINUTES

2

3 The State Board of Elections Meeting was held on Thursday, February 4, 2016.
4 The meeting was held in the Monroe Building, Richmond, Virginia – Room C/D/E. In
5 attendance, representing the State Board of Elections (SBE) was Clara Belle Wheeler,
6 Vice Chair and Singleton McAllister, Secretary. Also in attendance, representing the
7 Department of Elections (ELECT) was Edgardo Cortés, Commissioner; Elizabeth
8 Howard, Deputy Commissioner and Rose Mansfield, Clerk. Anna Birkenheier, Assistant
9 Attorney General and Counsel to SBE and ELECT attended. Vice Chair Wheeler called
10 the meeting to order at 11:00AM.

11 Vice Chair Wheeler stated that this was a special meeting of SBE and that the
12 agenda contained a single item. Vice Chair Wheeler stated that the item to be discussed
13 was the Republican Party of Virginia’s (RPV) voter statement requirement.
14 Commissioner Cortés stated that on January 30, 2016, ELECT received a request from
15 the RPV to repeal the requirement for voters to sign a statement of affiliation.
16 Commissioner Cortés stated that the Department immediately began the process of
17 contacting the Board Members to establish a meeting date to consider this matter.
18 Commissioner Cortés stated that the question, before the Board, is whether to repeal the
19 statement of affiliation under §24.2-545A of the *code* of Virginia that was passed at the
20 December 16, 2015, SBE Board Meeting. Commissioner Cortés stated that absentee voting
21 started on January 15, 2016. The Department needed to review how a significant change
22 would impact voters in the middle of the voting process. Vice Chair Wheeler asked John
23 Findlay, RPV Executive Director, to address the Board Members on the issue.

24 Mr. Findlay stated that the letter sent to ELECT on January 30, 2016 addressed
25 the decision made by the RPV. Secretary McAllister asked for the reasoning behind the
26 request. Mr. Findlay stated that: “The reasoning was covered in a press release issued by
27 the RPV on January 30, 2016. The press release stated that the form, that was approved
28 by SBE, on December 16, 2015 was different that the form that was put forth from the
29 RPV. Additionally, the day before the RPV meeting, we found out from a report in the
30 Virginia-Pilot that signing the form could be basically drawing a line, or marking an “x”,
31 and or drawing a Mickey Mouse and that would count as a signature. Mr. Findlay stated

32 that the original form was on a half-sheet and we received information that the font size
33 on the document was 6.5 and when we called the Department we were told that there was
34 an error in the document which created a reprint. Mr. Findlay stated that there were
35 several issues and as time passed it became unacceptable to our membership.” Secretary
36 McAllister asked Anna Birkenheier, Assistant Attorney General and Counsel to SBE and
37 ELECT, to consider the matter before the Board. Ms. Birkenheier stated that the Office of
38 the Attorney General has reviewed this matter and concluded that the Board has the
39 authority to rescind the voter statement and it is at the Board’s discretion to consider this
40 matter.

41 Vice Chair Wheeler stated that there have been 5,720 applications to vote
42 absentee in the presidential primary on March 1, 2016. Secretary McAllister stated that
43 SBE needed assurances from the Republican Party that: “You will not change your mind,
44 again.” Mr. Findlay stated: “I cannot speak if someone calls an emergency meeting to try
45 and change it again; I think that the likelihood of that is exceedingly small as in 0.000. I
46 cannot foresee any situation where there will be any type of request to re-implement
47 this...” Secretary McAllister asked Mr. Findlay if he was aware that the taxpayers of the
48 Commonwealth spent over \$60,000.00 to implement this and the Office of the Attorney
49 General has spent over 150 hours of work on this request. Mr. Findlay stated: “I am
50 aware of this and that is why in our initial statement we offered to pay for the cost of the
51 forms. I understand that usually the cost of the elections document is usually printed by
52 the agency, but in this case where printed by an outside vendor...we offered to do this but
53 this was the decision of the Board. We offered to pay for this. We looked at the printing
54 cost and we really encourage you guys to look at cost, as we have vendors that could do
55 this at 50% less then what was paid. I can’t speak to why our initial request to pay for this
56 wasn’t granted?” Secretary McAllister stated that the Commissioner had reviewed this
57 issue.

58 Commissioner Cortés stated that the letter sent by the party in late December
59 indicated that the party would pay as long as the party could determine everything related
60 to the printing. As a state agency, there are procurement rules that must be followed. “I
61 am frustrated that the statement: “The reasoning that the Republican Party has given for
62 rescinding this requirement suggests that there are some actions that the Department of

63 Elections or the State Board of Elections committed that led to this being and issue.” The
64 Department has gone above and beyond, and so has the Board, in ensuring that the
65 party’s rights under *code* have been realized and it is up to the party to determine the
66 requirement and up to the Board to certify it under *code*. Regardless or not if I thought it
67 a wise move in terms of participation or administration of elections, it is the party’s right
68 to exercise that right. ELECT had to testify in federal court in defense of your party’s
69 right to do that. So, now to pull this requirement, after the start of absentee voting, when
70 there were questions about when to pull it or if there were plans to pull it. I made clear at
71 the December meeting the January date when voting would start there would be
72 significant issues to properly administering the election after that date. It is really
73 frustrating to hear you not accepting responsibility that this is your decision to move
74 forward with the statement and now that because you have seen that voters are unhappy
75 with it and you have gotten bad publicity you have chosen now to rescind it and try to
76 suggest this is because of some action on our part. We are required to follow the *code* and
77 implement it...and to have you suggest publically that this is not on some blog but this is
78 the official statement of the party, suggesting that we were politicalizing this issue and
79 working with the Attorney General Office and the Governors’ office to politicalize this
80 issue. I would really like a response to as why you have gone that route instead of just
81 saying: “Hey, we chose to take an action, that was our right as a party to take, and we
82 now realize this is a bad idea and we would really like to work with you to reel this back
83 because it was a bad idea and how do we move forward.” That is not what is happening,
84 here.”

85 Mr. Findlay stated: “The reason it was repealed was on the statement we put out
86 and it came to light late in the process that anything would be accepted as a signature. I
87 understand that you are frustrated, but we are also very frustrated. We got the email with
88 the proposal of the pledge at midnight, 12:05am, the day of the meeting that it was to be
89 approved with less than eight hours to look it over, we all were really asleep, so really we
90 had three hours to look over the initial thing. We then went back on December 23rd, week
91 after the meeting; I sent an email to the Department of Elections Staff asking that the
92 statement be modified to reinstate some of the original language that was in the form and
93 two more requests subsequent to that asking for changes before absentee voting, two

94 weeks before. I would be happy to forward those emails, if they were not forwarded to
95 you directly, and that request fell on deaf ears. There was no action and some of the
96 language was very different than the form and so we put our request for changes in before
97 the deadline that you publically stated and those were not acted upon. The late news
98 about the signature requirements, not really being a signature requirement, as well as
99 some of the original issues, those are the reasons the state central voted for it and it was
100 not due to...I understand that you would like to make it an issue of us, voter back-lash, I
101 was in the room, I was in the executive session when it was talked about: It was due to
102 the reasons cited in that press release. That is the reason, and I really wish that the
103 changes that we asked to be implemented were implemented.”

104 Commissioner Cortés stated: “It appears from the original request that the state
105 central committee made the request back in September, but didn’t notify the state until
106 the end of November, during the course of that or even subsequent to that, did you
107 discuss with anybody, current or former election officials some of these issues of
108 signature requirements. This is not a new thing; there is not a signature legibility law in
109 Virginia. The issue of the forms not being available to you until afterwards was decided
110 back in 2012, under a previous board. Did you speak with an election administrator about
111 some of these questions, or discuss this with us in advance in order to move forward with
112 this and in the direction?”

113 Mr. Findlay stated: “I believe you received a letter from Don Palmer in 2012
114 when he based the original decision. The meeting that was cancelled in early February, I
115 believe there was on the agenda a chance for us to discuss getting access to the
116 information, afterwards. Again, Don Palmer read the memo in 2012 and a brief for us that
117 were very detailed and cited *codes* and cases. He went through the various reasons why
118 we had an argument that the forms should be access to FOIA under *Virginia Code*. We
119 obviously did speak to experts, and it was well considered, and did you receive that?”

120 Commissioner Cortés stated that does not change the position of the Department, in
121 consultation with legal counsel in 2012 that these forms were not subject to release. The
122 Department did get in touch with you about the changes and informed you that it required
123 board action and you were at the meeting. Commissioner Cortés stated: “This is an
124 attempt to throw back on the Department, who worked with all the elections officials

125 throughout the state, to try to properly administer this election. They are all now
126 frustrated, they have been catching a lot of grief from voters and having to go through a
127 lot of hoops to try and get this implemented and now we are pulling it at the last minute.
128 This has been a huge frustration, that there has been no acceptance of responsibility by
129 the Party in the terms of their actions and changing the rules in the middle of a federal
130 election.”

131 Vice Chair Wheeler stated that the matter has been reviewed by the Attorney
132 General’s Office and there is no reason why the Board cannot remove this request, which
133 had been previously granted, at this time. The discussion was on “How do we treat all
134 voters’ equally.” Secretary McAllister stated that you approached the Board with this
135 request and we asked if you were sure you wanted to do this and you said, yes. We
136 honored your request and I believe that the Department has done an outstanding job to try
137 to make this work for you and as a result we all went to court together. “At the end of the
138 day, we want to make sure we are doing what is right for the Voters of Virginia and not
139 making this a partisan issue, and everyone has transparency and they can vote. I am not
140 going to try to shift blame one way or another, and I hope that you do not try to do the
141 same.”

142 Vice Chair Wheeler asked if there were any public comments. Public speakers
143 were: Hope Amezquita, ACLU of Virginia; Robin Lind, Secretary of the Goochland
144 County Electoral Board; Cameron Sasnett, Fairfax County General Registrar, and Donald
145 F. McGahn, Trump Campaign. Vice Chair Wheeler asked if there were any other
146 comments and there were none.

147 Vice Chair Wheeler moved *that the Board accept the Republican Party of*
148 *Virginia's request to repeal the Republican Party of Virginia's Statement of Affiliation for*
149 *the 2016 Republican presidential primary election, and that the Board delegate to the*
150 *Department of Elections authority to issue guidance to localities to ensure that the*
151 *Republican Party of Virginia's Statement of Affiliation is repealed.* Secretary McAllister
152 seconded the motion and without further comment the Board unanimously approved the
153 motion.

154 Vice Chair Wheeler moved *that the Board adjourn*. Secretary McAllister
155 seconded the motion and without further comment the Board voted unanimously to
156 adjourn. The meeting was adjourned at approximately 11:55AM.

157 The Board shall reconvene on March 1, 2016 at 8:00AM in the Washington
158 Building, Richmond, Virginia 23219 – Room B27.

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Secretary

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Chair

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Vice Chair

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DRAFT



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Ballot Order Draw May 3, 2016

BOARD WORKING PAPERS
Reiko Doğu
Senior Elections Administrator



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

Memorandum

To: Members of the State Board of Elections
From: Reiko T. Doğu, Senior Elections Administrator
Date: March 1, 2016
Re: Ballot order draw for May 3, 2016 City and Town General elections

Suggested motion for a Board member to make

I move that the Board certify the ballot order as drawn.

Applicable Code Section

Va. Code § 24.2- 613 which reads in pertinent part:

[T]he State Board shall determine by lot the order of the political parties, and the names of all candidates for a particular office shall appear together in the order determined for their parties. . . . "[R]ecognized political parties" shall be treated as a class; the order of the recognized political parties within the class shall be determined by lot by the State Board; and the class shall follow the political parties as defined by § [24.2-101](#) and precede the independent class. Independent candidates shall be treated as a class under "Independent"; their names shall be placed on the ballot after the political parties and recognized political parties; and where there is more than one independent candidate for an office, their names shall appear alphabetically.

Background

All Parties and Recognized Political Parties will be included in the drawings. Any Party or Recognized Political Party not represented by a candidate will not appear on the ballot and the positions will shift up accordingly.

Class 1: Democratic and Republican

Class 2: Constitutional, Green, Independent Green, Libertarian, Natural Law, Reform, Social Democratic, Southern, and Virginia Taxpayers

Class 3: Independent candidates in alphabetical order (no drawing necessary)



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Adjournment

BOARD WORKING PAPERS



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STATE BOARD *of* ELECTIONS

BOARD MEETING

Tuesday, March 1, 2016
The Washington Building
Room B27
8:00AM

Board Working Papers
Prepared by Rose Mansfield
SBE Clerk