



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Tuesday, June 28, 2016
Double Tree by Hilton Hotel
Richmond-Midlothian
James River Room
8:00AM

SBE Board Working Papers



**STATE BOARD OF ELECTIONS
AGENDA**

DATE: June 28, 2016
LOCATION: Double Tree by Hilton Hotel
Richmond-Midlothian-James River Room
TIME: 8:00 a.m. – 11:00a.m.

- I. CALL TO ORDER** *James B. Alcorn*
SBE Chair
- II. APPROVAL OF MINUTES** *SBE Board Members*
May 11, 2016
- III. COMMISSIONER'S REPORT** *Edgardo Cortés*
ELECT Commissioner
- IV. NEW BUSINESS**
- A. Certification of the June 14, 2016 Election** *Reiko Doğu*
Senior Elections Administrator
- B. Regulations –Chapters 60 & 80 –Final Adoption** *Paul Stenbjorn & Brooks Braun*
Director of Elections
Administrator & ELECT Policy
Analyst
- C. Election Day Project** *James Alcorn*
SBE Chairman
- V. OTHER BUSINESS & PUBLIC COMMENT**
Next Meeting – August 29, 2016-GAB-Room C @ 1PM
- VI. ADJOURNMENT**



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Call to Order

BOARD WORKING PAPERS
James Alcorn
SBE Chair



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STATE BOARD *of* ELECTIONS

Approval of Minutes May 11, 2016

BOARD WORKING PAPERS
SBE Board Members

1 MINUTES

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3 The State Board of Elections Board Meeting was held on Wednesday, May 11,
4 2016. The meeting was held in the General Assembly Building, Richmond, Virginia –
5 Room C. In attendance, representing the State Board of Elections (SBE) was James
6 Alcorn, Chairman; Clara Belle Wheeler, Vice Chair; and Singleton McAllister, Secretary.
7 Also in attendance, representing the Department of Elections (ELECT) was Edgardo
8 Cortés, Commissioner; Elizabeth Howard, Deputy Commissioner; Martin Mash, Policy
9 Advisor, and Rose Mansfield, Clerk. Anna Birkenheier, Assistant Attorney General and
10 Counsel to SBE and ELECT attended. Chairman Alcorn called the meeting to order at
11 10:00AM. Secretary McAllister exited the meeting at 12:50PM.

12 The first order of business was the approval of the minutes from the State Board
13 of Elections Board Meetings held on April 28, 2016. Chairman Alcorn asked if board
14 members had any additions or corrections to the Board Meeting minutes as presented.
15 Vice Chair Wheeler stated that the minutes should indicate that in the discussion of the
16 Virginia Registration Form that all of the general registrars and a member of the Virginia
17 State Senate all spoke in opposition of the form and requested specifically that the form
18 be placed on Virginia Town Hall for review by the general registrars before being
19 approved. Secretary McAllister stated that comments were also made in support of the
20 form and expressed concern that the minutes reflected the correct balance. SBE members
21 agreed to table the minutes until a review was completed by the Clerk.

22 The next order of business was the Commissioner Report presented by Edgardo
23 Cortés, ELECT Commissioner. Commissioner Cortés stated that ELECT received final
24 review by counsel on the Voter Registration Application Form and associated regulations
25 adopted by the Board at the April 28, 2016 meeting. Commissioner Cortés stated that all
26 guidance documents will be updated. Chairman Alcorn suggested that board members
27 review the form to ensure that it incorporates the approved changes. Vice Chair Wheeler
28 suggested tabling the approved form until the next meeting to allow for review by
29 members and the general registrars. Commissioner Cortés stated that the form only
30 incorporates the approved board changes minus the adjustment of a margin,
31 recommended by the President of the Virginia Registrars Association of Virginia, which

32 would allow for cutting extra paper width to accommodate the filing cabinets of the
33 general registrars' offices. Commissioner Cortés stated that this change is an
34 administrative action, which is allowable. Commissioner Cortés asked if there were
35 additional questions and there were none.

36 The next order of business was the Polling Place Access-Proposed Regulations
37 presented by Elizabeth Howard, ELECT Deputy Commissioner. Chairman Alcorn asked
38 Secretary McAllister to speak to the item, as this subject, was the selected work plan
39 project of the SBE Secretary. Secretary McAllister stated that SBE received a
40 presentation by the Disability Law Center of Virginia (DLCV) and a summary of their
41 report is included in the Board materials. Secretary McAllister stated that the findings of
42 the report were: "Surprisingly, significant barriers to voting were identified in 49 of the
43 202 polling places surveyed, or approximately 24%." Secretary McAllister requested that
44 the ELECT Deputy Commissioner report on these findings so that the proposed
45 regulation can be placed on Regulatory Town Hall for comment.

46 Deputy Commissioner Howard stated that the proposed regulation, 1 VAC 20-60-
47 35, addresses the concerns of the DLCV and will include the following; (i) Reminder
48 from the State Board to all localities stating that general registrars are legally responsible
49 for selecting polling locations that are accessible as required pursuant to VA. Code §
50 24.2-310©; (ii) Official authorization to conduct audits for the purpose of assessing
51 accessibility; and (iii) Policy Statement from the State Board acknowledging DLCV's
52 role in ensuring polling place accessibility. Deputy Commissioner Howard stated that
53 before official adoption, the Department requests that the Board first approve a 21 day
54 public comment period for the proposed regulation and that the materials made available
55 for comment will include the attached draft regulation and the background information
56 included in the Board materials. Deputy Commissioner Howard reviewed each of the
57 provisions of the regulation. Deputy Commissioner Howard stated that the public
58 comments are expected to be available for board review by June 28, 2016. Deputy
59 Commissioner Howard noted that all comments are accessible on Town Hall as they are
60 received. Vice Chair Wheeler stated that it is important to have adequate time for public
61 comment as this will interfere with Election Day activities, and has the potential for being
62 disruptive, as they [sinc DLCV] run around taking measurements, wearing buttons and

63 identifying t-shirts. Chairman Alcorn stated that SBE is trying to strike the right balance
64 between accessibility and facilitating the elections. Secretary McAllister thanked the
65 staff for their work on this project. Chairman Alcorn asked if there were public comments
66 and there were none. Chairman Alcorn moved *that the Board seek public comment, for a*
67 *period of 21 calendar days, on proposed IVAC 20-60-35: Polling Place Accessibility*
68 *Assessments*. Secretary McAllister seconded the motion and the Board unanimously
69 approved the motion.

70 The next order of business was the General Registrar's Full-Time Request presented
71 by Martin Mash, ELECT Policy Advisor. Mr. Mash stated that the City of Buena Vista
72 Electoral Board requested temporary full-time status for their general registrar. Chairman
73 Alcorn moved *that the Board approve the requests from the Electoral Board of Buena Vista*
74 *City for the time period noted in the Board Working Papers*. Vice Chair Wheeler seconded
75 the motion and without public comment the Board unanimously approved the motion.

76 The next order of business was the KnowInk Exception Request presented by SBE
77 Chairman Alcorn. Chairman Alcorn stated SBE directed the ELECT staff to work with the
78 Fairfax County Electoral Board to find a solution that would comply with the *Code of*
79 *Virginia*. Chairman Alcorn noted that Fairfax County has been asking for additional
80 functionality of the system. The exception would require a review through Virginia
81 Information Technologies Agency (VITA). Chairman Alcorn directed that ELECT staff
82 report back to SBE on the status of this request.

83 Commissioner Cortés stated that SBE certified KnowInk in September, 2015
84 which limited the system to non-cloud based solutions because of the sensitivity of data
85 contained within the poll books. Commissioner Cortés stated that Fairfax County is
86 seeking an exception to VITA's regulations related to cloud posting of sensitive data.
87 Commissioner Cortés stated that the general registrar has been notified of the
88 requirements for submitting an exception to VITA. Commissioner Cortés stated that
89 VITA would notify ELECT if an exception is warranted and on that occasion ELECT
90 would return to SBE to notify them of the exception and to receive clarification of the
91 previous certification. Commissioner Cortés stated that currently Fairfax County has a
92 certified poll book system that was fielded during the March 1, 2016 primary.
93 Commissioner Cortés stated that the final decision for the exception would be delivered

94 by the CIO of the Commonwealth. Chairman Alcorn asked if there were any comments.
95 David Greenwalt, Director of Integration-KnowInk and Katherine Hanley, Electoral
96 Board Secretary of Fairfax County provided comments to SBE.

97 The next order of business was the List Maintenance Overview presented by
98 Edgardo Cortés, ELECT Commissioner and Matt Davis, ELECT CIO. Commissioner
99 Cortés presented an overview of list maintenance and the requirements of the program.
100 Commissioner Cortés stated that SBE and ELECT are charged by federal and state law to
101 maintain a central voter registration database: § 24.2-404 charges SBE and ELECT with
102 maintaining a “complete, separate, and accurate record of all registered voters in the
103 Commonwealth.” Commissioner Cortés noted that Virginia is a leader in this area and
104 one of the first states in the country to introduce a centralized voter registration database.
105 In 2007, the state introduced the Voter and Election Registration Information System
106 (VERIS) which expanded the database to include other processes handled by the SBE,
107 such as candidate and petition processing as well as list maintenance reporting.
108 Commissioner Cortés stated that confirmation process provided for in the National Voter
109 Registration Act (NVRA) and in the Code of Virginia stated that a voter registration
110 cannot be cancelled until a set of conformational actions are completed by the State.
111 Commissioner Cortés explained the parameters of the process and the exceptions allowed
112 under NVRA.

113 Matt Davis, ELECT CIO, continued the discussion on list maintenance. Mr. Davis
114 reviewed the data sources that ELECT utilizes to maintain the voter rolls of the
115 Commonwealth. Mr. Davis identified the following sources of information; List
116 Maintenance-DMV Full Data Extract, List Maintenance-DMV Non-Citizen Data, List
117 Maintenance-ERIC Death Data, List Maintenance-ERIC In-State Duplicates, List
118 Maintenance-SSA Death Data, List Maintenance-VDH Death Data, List Maintenance-US
119 District Courts, List Maintenance – VSP Felon Data, List Maintenance – VADOC Data,
120 List Maintenance – SCB Data, List Maintenance – VA Circuit Courts Mentally
121 Incapacitated Data, List Maintenance – Restoration of Rights, List Maintenance- ERIC
122 Cross-State Matches, List Maintenance – ERIC In-State Updates, List Maintenance –
123 Crosscheck, List Maintenance – USPS NCOA Data, and List Maintenance – NVRA
124 Cancellations. Mr. Davis asked if there were any questions.

125 Chairman Alcorn asked who makes the decision to cancel a voters' Virginia
126 registration. Mr. Davis stated that the State performs this function and uses several forms
127 of matching voter information before completing this action which is required by federal
128 law. Vice Chair Wheeler asked about the high percentages of inactive voters on the rolls
129 and the potential for individuals to vote more than once if they are registered in multiple
130 locations. Vice Chair Wheeler stated that this activity could change the results of the
131 elections and when inactive voters show at the polling locations on Election Day they
132 cause the lines to increase, because of the additional paperwork required before they are
133 able to cast their vote. Vice Chair Wheeler stated that it would behoove Virginia to clean
134 up the inactive rolls before August 2016 to prepare for the November 2016 election.
135 Vice Chair Wheeler stated: "We have to do something to clean up the rolls or we are
136 going to have 500,000 inactive voters coming to us causing increased lines, having to fill
137 out forms, and I won't even mention the fact that I have a chief election officer tell me,
138 when I was on the local electoral board, we don't (quote) have time for people to fill out
139 these forms, we just give them the forms and let them do it at home." Vice Chair Wheeler
140 suggested that the general registrars could assist with the cleanup of the voter rolls.

141 Mr. Davis stated that the NVRA does not allow the general registrars to take
142 action when a voter is in inactive status unless the general registrar has something in
143 writing from that voter. Mr. Davis stated that the surge in inactive voters is a direct
144 reflection of the list maintenance that has been occurring and the voter will be removed
145 when the requirements of federal laws are satisfied. Commissioner Cortés stated that
146 federal law is designed not to remove voters until the process is complete to ensure that
147 eligible voters are not removed improperly or accidentally from the rolls of the
148 Commonwealth utilizing the data sources available to ELECT. Commissioner Cortés
149 stated that there is a specific procedure that the officers of elections are to utilize to
150 confirm the address of a voter at the polls. Commissioner Cortés stated that ELECT is
151 doing everything available to ensure accurate rolls. Commissioner Cortés stated ELECT
152 is performing every safety check to ensure that voters are not improperly removed from
153 the rolls. Chairman Alcorn stated that the process has been improved over the years and
154 Virginia has become a leader in list maintenance. Chairman Alcorn stated: "The goal of
155 voter registration is to include people, not exclude eligible Virginians. Maintaining an

156 accurate list that contains every eligible voter and which excludes any non-eligible
157 voter.” Secretary McAllister stated that the annual list maintenance report, June 2013,
158 states that general and federal funds are to be utilized to maintain the list. Secretary
159 McAllister asked if there were funds available to maintain this resource. Mr. Davis stated
160 that increasing resources would allow expansion of the current system and additional
161 personnel to assist with the maintenance. Mr. Davis stated that the data involved in this
162 program is sensitive. The resources required, to protect, our data and system environment
163 is one of our biggest challenges. Chairman Alcorn asked if there were any public
164 comments.

165 Comments were received by the following individuals: William Jenkins, General
166 Registrar of Sussex County; Larry Haake, General Registrar of Chesterfield County and
167 Kevin Reynolds, Chief of Staff for Senator Thomas Garrett.

168 The next order of business was the June 2016 Primaries Update presented by
169 Reiko Doğu, Senior Elections Administrator. Ms. Doğu stated that on January 6, 2016
170 ELECT provided official notice to the party chairs of the filing window for requesting a
171 direct primary which was February 10th thru March 1st. The parties notified ELECT of the
172 adoption of direct primary as the method of making their nominations. Ms. Doğu stated
173 that a special election has been called for November 8, 2016 to fill the remainder of the
174 term vacated by the untimely death of the Honorable John Miller. Ms. Doğu stated that
175 ELECT was instructed to use the new congressional districts as ordered by the court
176 order on January 12, 2016. Ms. Doğu stated that on January 7, 2016 the United States
177 District Court for Eastern Virginia instructed the Department of Elections to implement
178 redrawn congressional districts. The 2016 congressional district lines are in effect for the
179 nomination made at the 2016 June primaries. The internal process of updating the district
180 boundaries was completed on April 16th utilizing the GIS software. ELECT was able to
181 implement the new lines in record time as a result. Ms. Doğu stated that two localities,
182 Chesterfield and James City County, completed a further step of reprecincting and they
183 chose to do this to limit the number of split precincts caused by the new district lines. Ms.
184 Doğu asked if there were any questions and there were none. Vice Chair Wheeler
185 expressed gratitude, on behalf of SBE and the elections community, for the efforts and
186 achievements of Ms. Doğu during her first year in her new position.

187 The next order of business was the SBE Training Standards presented by SBE
188 Vice Chair, Clara Belle Wheeler. Vice Chair Wheeler stated that SBE, according to
189 *Code*, is responsible for training and education. Vice Chair Wheeler stated that members
190 of the election community are responsible for presenting training segments during the
191 annual training in June 2016. Vice Chair Wheeler stated that computer based knowledge
192 centers are being developed to allow election officials the opportunity to train and update
193 their knowledge base at their convenience. Conversations have been held regarding
194 regional training. The annual training event will be information packed and a benefit to
195 all that attend. Those who attend will be properly prepared for the presidential elections
196 in November 2016. Commissioner Cortés stated that a workgroup was formed to provide
197 feedback to the Department of the desired training to be presented at the annual event.
198 Commissioner Cortés stated that the GREB Workgroup could focus on the training
199 standards for Officers of Elections and incorporated the changes that will be mandated on
200 July 1, 2016. Vice Chair Wheeler stated that she personally called several general
201 registrars and electoral board members asking for their input on the training. Vice Chair
202 Wheeler stated that the input received would be shared with SBE and the elections
203 community.

204 The next order of business was the Voter Registration Form – Lessons Learned
205 presented by SBE Chairman, James Alcorn. Chairman Alcorn stated that SBE is
206 continuing the practice of reviewing election related issues to learn and enhance the
207 administration of elections across the Commonwealth. Commissioner Cortés reviewed
208 the development of the new Voter Registration Application form adopted at the SBE
209 meeting on April 28, 2016. Commissioner Cortés stated that a complete internal review
210 was conducted on the related regulations and outlined the input received from varying
211 members of the elections community. Commissioner Cortés reviewed the legislation that
212 was implemented that affected the application form. Commissioner Cortés stated that
213 after making various revisions in response to statutory changes and numerous public
214 comments, the Department consulted usability experts and performed usability testing to
215 assess contemplated revisions. Chairman Alcorn asked for a review of the Boards’
216 involvement of the process since June 2015 which was provided by the Commissioner.
217 Chairman Alcorn stated that SBE’s role was minimal during the development process and

218 stated that a lesson learned would be increased involvement from SBE Members. Vice
219 Chair Wheeler stated that she shared the same sentiment as the Chairman and declared
220 that she had no knowledge of the development of the form until reviewing the proposed
221 form in the Board Working Papers for the April 28, 2016 meeting. Vice Chair Wheeler
222 stated that the election community did not have adequate time to review the documents.
223 Secretary McAllister stated that the timeline for the review of materials by SBE should be
224 expanded with increase structure in the review and preparation of materials presented at
225 meetings. Secretary McAllister stated that this constructive conversation is necessary to
226 keep the Board moving forward. Commissioner Cortés stated that the Voter Registration
227 Application Form was vetted for nearly a year with input received from stakeholders and
228 the election community and ELECT welcomes the feedback regarding the processes of
229 presenting the Board Working Papers.

230 Chairman Alcorn asked if there was any other business to come before the Board
231 and there was none. Chairman Alcorn asked if there were additional public comments.
232 Public comment was provided by Katherine Hanley, Electoral Board Secretary of Fairfax
233 County.

234 Chairman Alcorn moved *that the Board adjourn*. Vice Chair Wheeler seconded
235 the motion. The Board unanimously approved the motion.

236 The meeting was adjourned at approximately 1:15PM. The Board shall
237 reconvene on June 14, 2016 at 8:00AM in Richmond, Virginia – Washington Building-
238 The Martha Brissette Conference Room.

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Secretary

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Chair

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Vice Chair

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New Business

BOARD WORKING PAPERS



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STATE BOARD *of* ELECTIONS

Certification of Election

June 14, 2016

BOARD WORKING PAPERS
Reiko Doğu
Senior Elections Administrator



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DEPARTMENT *of* ELECTIONS

Memorandum

To: Chairman Alcorn, Vice Chair Wheeler, and Secretary McAllister
 From: Reiko T. Dogu, Senior Elections Administrator
 Date: June 28, 2016
 Re: Certification of June 14, 2016 Primaries Results

Suggested motion for a Board member to make:

I move that the Board certify the results of the June 14, 2016 primaries as presented and declare the winners of each primary to be that party's nominee.

Applicable Code Section: Va. Code § 24.2-534

As soon as possible after receipt of the certified abstract and not later than fourteen days after the day of the election, the State Board shall open and tabulate the returns. Upon completion of the tabulation the Board shall declare the nominee in the manner and form as it does in general elections.

Background:

Two primary elections were held on June 14, 2016 for the purpose of selecting candidates to be the nominees of Virginia political parties for election to office on November 8, 2016.

Results:

Republican Nominations

For membership in the United States House of Representatives for Virginia's second congressional district:

Scott W. Taylor	21,406
J. Randy Forbes	16,552
C. Pat Cardwell IV	2,773

For membership in the United States House of Representatives for Virginia's fourth congressional district:

Michael L. "Mike" Wade	4,978
Jackee K. Gonzalez	2,801

For membership in the United States House of Representatives for Virginia's sixth congressional district:

Robert W. "Bob" Goodlatte	18,993
Harry Griego	5,383

Democratic Nominations

For membership in the United States House of Representatives for Virginia's fourth congressional district:

A. Donald McEachin	11,851
Ella P. Ward	3,867

For membership in the Senate of Virginia's first district:

T. Monty Mason	3,498
Shelly A. Simonds	2,590

ABSTRACT of VOTES

Cast in the 2016 June Democratic Primary Election held on 06/14/2016 for,

Member Senate of Virginia

1st District

<i>NAMES OF CANDIDATES ON THE BALLOT</i>	<i>TOTAL VOTES RECEIVED</i>
T. Monty Mason	3,498
Shelly A. Simonds	2,590
Total Number of Overvotes for Office	1
Write-in	0

We, the undersigned State Board of Elections, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on 6/14/2016, do hereby certify that the above is the true and correct Abstract of Votes cast at said election for the Member Senate of Virginia

T. Monty Mason

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

ABSTRACT of VOTES

Cast in the 2016 June Democratic Primary Election held on 06/14/2016 for,

Member House of Representatives

4th District

<i>NAMES OF CANDIDATES ON THE BALLOT</i>	<i>TOTAL VOTES RECEIVED</i>
A. Donald McEachin	11,851
Ella P. Ward	3,867
Total Number of Overvotes for Office	10
Write-in	0

We, the undersigned State Board of Elections, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on 6/14/2016, do hereby certify that the above is the true and correct Abstract of Votes cast at said election for the Member House of Representatives

A. Donald McEachin

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

ABSTRACT of VOTES

Cast in the 2016 June Republican Primary Election held on 06/14/2016 for,

Member House of Representatives

2nd District

<i>NAMES OF CANDIDATES ON THE BALLOT</i>	<i>TOTAL VOTES RECEIVED</i>
Scott W. Taylor	21,406
J. Randy Forbes	16,552
C. Pat Cardwell IV	2,773
Total Number of Overvotes for Office	6
Write-in	0

We, the undersigned State Board of Elections, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on 6/14/2016, do hereby certify that the above is the true and correct Abstract of Votes cast at said election for the Member House of Representatives

Scott W. Taylor

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

ABSTRACT of VOTES

Cast in the 2016 June Republican Primary Election held on 06/14/2016 for,

Member House of Representatives

4th District

<i>NAMES OF CANDIDATES ON THE BALLOT</i>	<i>TOTAL VOTES RECEIVED</i>
Michael L. "Mike" Wade	4,987
Jackee K. Gonzalez	2,801
Total Number of Overvotes for Office	1
Write-in	0

We, the undersigned State Board of Elections, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on 6/14/2016, do hereby certify that the above is the true and correct Abstract of Votes cast at said election for the Member House of Representatives

Michael L. "Mike" Wade

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

ABSTRACT of VOTES

Cast in the 2016 June Republican Primary Election held on 06/14/2016 for,

Member House of Representatives

6th District

<i>NAMES OF CANDIDATES ON THE BALLOT</i>	<i>TOTAL VOTES RECEIVED</i>
Robert W. "Bob" Goodlatte	18,993
Harry Griego	5,383
Total Number of Overvotes for Office	0
Write-in	0

We, the undersigned State Board of Elections, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on 6/14/2016, do hereby certify that the above is the true and correct Abstract of Votes cast at said election for the Member House of Representatives

Robert W. "Bob" Goodlatte

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary



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STATE BOARD *of* ELECTIONS

Chapters 60 & 80 Regulations Final Adoption

BOARD WORKING PAPERS
Paul Stenbjorn
Director of Elections
&
Brooks Braun
ELECT Policy Analyst



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Chapter - 60 Regulation Final Adoption

BOARD WORKING PAPERS
Paul Stenbjorn
Director of Elections
&
Brooks Braun
ELECT Policy Analyst



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DEPARTMENT *of* ELECTIONS

Memorandum

To: James Alcorn, Chairman;
ClaraBelle Wheeler, Vice Chair;
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: June 28, 2016

Re: Finalization of Regulations Resulting from Periodic Reviews of Chapter 60 (1VAC20-60)

Suggested Motion for a Board member to make: I move that the Board adopt the changes proposed by the Department of Elections as a result of periodic review of Chapter 60 of the Board's regulations in the Virginia Administrative Code.

Affected Regulations: 1VAC 20-60-30 through 20-60-50

Board Materials:

- 2016 final changes to Chapter 60
- Comments received during the 2016 periodic review comment period
- Issue matrix for comments received during the 2016 periodic review comment period

Background:

On May 15, 2013, the previous membership of the State Board of Elections announced a periodic review of all of its regulations pursuant to Regulation 20-10-120 calling for a review of all regulations after each presidential election. The objectives of this periodic review was similar to those set forth in Executive Order 14 for all executive agencies—effectiveness, efficiency, necessity, clarity and cost of compliance.

The original comment period for Chapter 60 opened June 3, 2013, and closed June 24, 2013. During this time period, only four comments from one commenter were received. These comments, and the suggested edits based thereon, were presented to the Board during its meeting held on December 2, 2013. The proposed changes addressed the use of electronic devices in the polling place, replacement of the word “precinct” with the more appropriate term “polling place,” provided parameters in the regulation defining when a ballot is cast for provisional



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ballots, and provided guidance to election officials on the process of emptying an overfull ballot container in single-party primaries. To ensure that the public fully had the opportunity to address its concerns with the suggested regulations, the Board voted to open the regulations up to a foreshortened public comment period. This second comment period opened on December 30, 2013 and closed on January 8, 2014. No comments were received during the second public comment period.

The previous Board did not take up the matter again before the expiration of its term and the current Board was left to complete the process. Due to the extended period of inaction on this item, the underlying standards upon which previous analyses were based changed considerably.

During the 2015 Session of the General Assembly a bill was passed (SB 1351) that specifically allows authorized representatives to use devices containing a camera or filming capacity so long as those functions are not used in the polling place. This concept was already contemplated in the edits suggested at the December 2, 2013 meeting, but now the statutory standard is counter to the current regulation's provisions.

The edit suggested at the December 2, 2013 meeting fully disallowed persons other than members of the media to film or take photographs in the polling place, including voters. It was determined at the Board's March 15, 2016 meeting that this standard was not tenable. The U.S. Court of Appeals for the First Circuit recently ruled in favor of voters that took photographs of their voted ballot in violation of a New Hampshire law disallowing such acts. The Court ruled that taking pictures of one's own ballot is a form of protected political speech, and thus any curtailment must be narrowly tailored to further a compelling state interest. In the opinion of the Court, protection against vote buying was not a compelling state interest without specific instances of vote buying facilitated by use of "ballot selfies." To avoid potential litigation on this matter, the proposed regulation allows the use of cameras by voters, but provides specific safeguards to protect others' privacy within the polling place, and to ensure that the voting process can proceed without unreasonable disturbance. The Board approved a 21 day comment period for the revised proposal which ended on April 25, 2016.

The Board received 33 comments during the revised proposed comment period. Several individuals providing comments pointed out that the structure and formatting of the regulation, as well as some of the language used, was confusing and potentially inconsistent. As a result of these comments the regulation has been edited with the goal of making it clearer and easier to administer. The substance of the regulation before the Board today remains largely the same as that in the revised proposed regulation. We respectfully request that the Board approve this final regulation for posting in the registrar of regulations.

1 **1VAC20-60-30. Electronic Devices in Polling Place.**

2 A. ~~[Representatives of candidates and political parties authorized to observe the election may~~
3 ~~use cell phones or other electronic devices provided that the device contains no camera or video~~
4 ~~recording capacity camera function is not used within the polling place. The officers of election~~
5 ~~are responsible authorized to monitor the use of electronic devices for observation of the election~~
6 ~~and may regulate or prohibit any use the officers determine will hinder or delay a voter or officer~~
7 ~~of election or otherwise impede the orderly conduct of the election.~~

8 ~~Whether a particular call or calls by any authorized representative is deemed to interfere or~~
9 ~~disrupt the voting process is within the discretion of the officers of election at each precinct~~
10 ~~polling place as a majority. Any authorized representative may be required to cease the call,~~
11 ~~make or receive any such calls outside the precinct polling place, or be removed from the polling~~
12 ~~precinct place. The use of electronic devices inside the polling place is generally permitted.~~
13 ~~However, representatives of candidates and political parties authorized to observe the election~~
14 ~~are prohibited from taking photos or video within the polling place.]~~

15 B. ~~[Use of cell phones and other electronic devices by other persons at polling places shall be~~
16 ~~monitored by the officers of election who may regulate or prohibit any use the officer determines~~
17 ~~will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the~~
18 ~~election. Use of electronic devices may not interfere nor disrupt the voting process, nor attempt~~
19 ~~to solicit or attempt to influence any person in casting his vote. Once a voter enters the prohibited~~
20 ~~area at the polls as designated in § 24.2-604 of the Code of Virginia, the use of a cell phone or~~
21 ~~other electronic communication device may be prohibited if deemed a violation of § 24.2-~~
22 ~~1006 of the Code of Virginia, or if otherwise deemed disruptive to the voting process.~~

23 ~~Voters are permitted to use cameras and/or audio or visual recording devices inside the polling~~
24 ~~place. Officers of election may regulate or restrict the use of these devices by voters if the use~~
25 ~~hinders, delays or disrupts the voting process, or the voter attempts to intimidate other voters~~
26 ~~through use of the device.~~

27 ~~Whether a voter's use of a device is deemed in violation of subsection B is within the discretion~~
28 ~~of the officers of election at each polling place as a majority. Any voter may be required to cease~~
29 ~~using the device, but no voter may be removed from the polling place for using a device until~~
30 ~~after the voter has cast his ballot. Officers of election are authorized to monitor the use of an~~
31 ~~electronic device by any individual in the polling place. Officers of election are authorized to~~

32 monitor the use of an electronic device by any individual in the polling place. Officers of
33 election may restrict the use of an electronic device by any individual if that use hinders, delays,
34 or disrupts the voting process; if that use attempts to solicit or in any manner attempts to
35 influence any person in casting his vote; or the individual attempts to intimidate another
36 individual through use of an electronic device. Whether use of an electronic device by an
37 individual is deemed in violation of this section is within the discretion of the majority of officers
38 of election at each polling place. Upon determination of a violation of this section, the officers of
39 election may: i) require any individual to cease the use of an electronic device, ii) require any
40 individual to limit the use of an electronic device to outside the polling place, or iii) or remove
41 any individual from the polling place.]

42

43 ~~C. [Grounds for regulating or prohibiting use of electronic devices by authorized representatives~~
44 ~~include but are not limited to (i) the making or receiving of calls that interfere with or become~~
45 ~~disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or~~
46 ~~influence any person in casting his vote; or (iii) the person using the device is conducting himself~~
47 ~~in a noisy or riotous manner at or about the polls so as to disturb the election. No voter may be~~
48 ~~removed from the polling place for the use of an electronic device until after the voter has cast~~
49 ~~his ballot.]~~

50 ~~D. [An officer of election may require any individual using an electronic device subject to~~
51 ~~regulation under subsection C of this section to cease such use, make or receive calls outside the~~
52 ~~precinct, or remove the use of the device from the polling place. No policy disallowing use of all~~
53 ~~electronic devices by all voters is allowed. The determination of the officers of election of any~~
54 ~~dispute concerning the use of electronic devices shall be subject to immediate appeal to the local~~
55 ~~electoral board.]~~

56 ~~E. Any action taken pursuant to this section is within the judgment of the officers of election as a~~
57 ~~majority. [An Electoral board may not enact any policy that disallows the use of any electronic~~
58 ~~device by all individuals]~~

59 ~~F. [The determination of the officers of election of any dispute concerning the use of electronic~~
60 ~~devices shall be subject to immediate appeal to the local electoral board.]~~

61

62 **1VAC20-60-40. When Ballot Cast.**

63 A. A voter, voting in person on election day or voting absentee in-person, has not voted until a
64 permanent record of the voter's intent is preserved.

65 B. A permanent record is preserved by a voter pressing the vote or cast button on a direct
66 recording electronic machine, inserting an optical scan ballot into an electronic counter, or
67 placing a paper ballot in an official ballot container~~[or relinquishing possession of a completed~~
68 ~~provisional ballot envelope containing the ballot to the possession of an officer of election]~~.

69 C. A vote has not been cast by the voter unless and until the voter or an officer of election or
70 assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of
71 Virginia completes these actions to preserve a permanent record of the vote.

72 D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot
73 be cast by any officer of election or other person present. Notwithstanding the previous sentence,
74 if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by
75 the scanner due to an undervote or overvote, the officer of election may cast the ballot for the
76 absent voter.

77 E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the
78 moment he personally delivers the ballot to the general registrar or electoral board or
79 relinquishes control over the ballot to the United States Postal Service or other authorized carrier
80 for returning the ballot as required by law.

81 **1VAC20-60-50. Overfull Optical Scan Ballot Container.**

82 If an optical scan reader in use in a registrar's office or a polling place malfunctions because the
83 connected ballot container includes too many ballots, election officials may open the ballot
84 container and empty the ballots with the following safeguards:

85 1. The optical scan ballot container shall be opened in plain sight of any authorized party
86 representatives or other observers and, once the ballots have been deposited into an auxiliary
87 ballot container, both ballot containers shall remain in plain sight in the polling place.

88 2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the
89 Code of Virginia.

90 3. In a general, special, or dual-party primary election, A minimum of two officers of
91 election, not representing ~~both the same political parties~~ party, shall execute such a transfer of

92 ballots. In a single-party primary election, the transfer shall be conducted by a minimum of
93 two officers of election who may ~~be members of~~ represent the same political party.

1 **1VAC20-60-30. Electronic Devices in Polling Place.**

2 A. The use of electronic devices inside the polling place is generally permitted. However,
3 representatives of candidates and political parties authorized to observe the election are
4 prohibited from taking photos or video within the polling place.

5 B. Officers of election are authorized to monitor the use of an electronic device by any individual
6 in the polling place. Officers of election may restrict the use of an electronic device by any
7 individual if that use hinders, delays, or disrupts the voting process; if that use attempts to solicit
8 or in any manner attempts to influence any person in casting his vote; or the individual attempts
9 to intimidate another individual through use of an electronic device. Whether use of an electronic
10 device by an individual is deemed in violation of this section is within the discretion of the
11 majority of officers of election at each polling place. Upon determination of a violation of this
12 section, the officers of election may: i) require any individual to cease the use of an electronic
13 device, ii) require any individual to limit the use of an electronic device to outside the polling
14 place, or iii) or remove any individual from the polling place.

15
16 C. No voter may be removed from the polling place for the use of an electronic device until after
17 the voter has cast his ballot.

18 D. The determination of the officers of election of any dispute concerning the use of electronic
19 devices shall be subject to immediate appeal to the local electoral board.

20 E. An Electoral board may not enact any policy that disallows the use of any electronic device by
21 all individuals

22 **1VAC20-60-40. When Ballot Cast.**

23 A. A voter, voting in person on election day or voting absentee in-person, has not voted until a
24 permanent record of the voter's intent is preserved.

25 B. A permanent record is preserved by a voter pressing the vote or cast button on a direct
26 recording electronic machine, inserting an optical scan ballot into an electronic counter, or
27 placing a paper ballot in an official ballot container.

28 C. A vote has not been cast by the voter unless and until the voter or an officer of election or
29 assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of
30 Virginia completes these actions to preserve a permanent record of the vote.

31 D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot
32 be cast by any officer of election or other person present. Notwithstanding the previous sentence,
33 if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by
34 the scanner due to an undervote or overvote, the officer of election may cast the ballot for the
35 absent voter.

36 E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the
37 moment he personally delivers the ballot to the general registrar or electoral board or
38 relinquishes control over the ballot to the United States Postal Service or other authorized carrier
39 for returning the ballot as required by law.

40 **1VAC20-60-50. Overfull Optical Scan Ballot Container.**

41 If an optical scan reader in use in a registrar's office or a polling place malfunctions because the
42 connected ballot container includes too many ballots, election officials may open the ballot
43 container and empty the ballots with the following safeguards:

- 44 1. The optical scan ballot container shall be opened in plain sight of any authorized party
45 representatives or other observers and, once the ballots have been deposited into an auxiliary
46 ballot container, both ballot containers shall remain in plain sight in the polling place.
- 47 2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the
48 Code of Virginia.
- 49 3. In a general, special, or dual-party primary election, a minimum of two officers of election,
50 not representing the same political-party, shall execute such a transfer of ballots. In a single-
51 party primary election, the transfer shall be conducted by a minimum of two officers of
52 election who may represent the same political party.

Chapter 60 Comments

Commenter	Comment
<p>David Bjerke, City of Falls Church Office of Voter Registration & Elections</p>	<p>I favor these proposed changes.</p> <p>As a Director of Elections and General Registrar of Voters for the City of Falls Church, I am in favor of these proposed changes.</p>
<p>Eric Goldstein, Officer of Election, Arlington County</p>	<p>Needs some changes</p> <p>A find the changed 1VAC20-60-30 to confusing and contradictory. Section A is about observers (the term I'll use to refer to "representatives of candidates and political parties authorized to observe the election"), Section B is about voters, then it switches back to being about observers again in Section C, and then back to voters again in Section D. That makes it hard to follow. Additionally, it provides no guidance on voter use of cell phones. Section B refers to "cameras or audio or visual recording devices" and section D refers to all electronic devices. It isn't clear to me whether a policy barring all use of cell phones by all voters is allowed (as long as other electronic devices are allowed).</p> <p>Also, Section C and the second paragraph of Section A seem to be on essentially the same topic: just more detail in Section C as to the standards that should be used in Section A? Why are these in separate sections? Additionally, Section A prohibits observers from using the camera function on a phone, but the clause of Section C "regulate"ing the use of a camera (old clause iii) is being removed. This seems counterintuitive if not down right contradictory. The more I read it, the more Section C seems problematic. I recommend it just be removed; Section A's grant of discretion to the majority of the officers of the election seems sufficient.</p> <p>As to the substance of the policy, assuming I am reading it right, observers are allowed to use cell phones but not allowed to use cameras. Conversely, voters can use cameras, but it isn't perfectly clear if they can use cell phones. Seems unnecessarily inconsistent, but maybe there is a good rational behind it.</p> <p>Section B used to apply to all people other than observers, now it just applies to voters. This means there does not seem to be a policy applicable to anyone else in the polling place: media, officers of the election, people assisting voters, children of voters, etc. It would seem to me there should be a policy that applies to them, too.</p> <p>Lastly, regarding 1VAC20-60-50, I believe language "who may be members of the same party" would best be replaced with "who represent the same party" to better align with the first sentence and with §24.2-115.</p>
<p>Jody D. Brown</p>	<p>Vol 32, Issue 16</p> <p>"Any voter may be required to cease using the device, but no voter may be removed from the polling place for using a device until after the voter has cast his ballot." Consider changing the sexist language in this paragraph and any other places similar language occurs. The easiest way to avoid this problem is to use plural constructions. This sentence would become: Voters may be required to cease using such devices, but voters may not be removed from the polling place until after they have cast their ballots."</p> <p>C. has three subsections. Those subsections should use parallel construction to improve the readability of the section.</p> <p>Current C</p>

	<p>Grounds for regulating [or prohibiting the] use of electronic devices [by authorized representatives of candidates and political parties] include [but are not limited to] (i) the making or receiving of calls that interfere with or become disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or influence any person in casting his vote; [or] (iii) the [usage of the camera function to film within the polling place or beyond the 40-foot prohibited area; or (iv) the] person using the device is conducting himself in a noisy or riotous manner at or about the polls so as to disturb the election.</p> <p>More readable C</p> <p>Grounds for regulating [or prohibiting the] use of electronic devices [by authorized representatives of candidates and political parties] include [but are not limited to] (i) making or receiving of calls that interfere with or become disruptive to the voting process; (ii) making or receiving of calls in an attempt to solicit or influence any person in casting his vote; for(iii) [using the camera function to film within the polling place or beyond the 40-foot prohibited area; or (iv) using the device in a noisy or riotous manner at or about the polls so as to disturb the election.</p> <p>D3 is different from 24.2-802 C although I suspect the intend was not to change it. In 24 2-802 C, "each candidate or petitioner and governing body or chief executive officer", recommends to the Court "an equal number of the officers of election to be recount officials." The proposed D3 contains the sentence, "Such list shall note recommended recount officials who the court may appoint if the officials and alternates recommended by the parties to the recount are not of sufficient number to conduct the recount within a reasonable period." The D3 language seems to me ambiguous about whether the parties could recommend recount officials to the Court who had not been election officials in the election. If my reading is a possible interpretation, then I think we could have chaos trying to incorporate people who have had no training as officers of elections.</p> <p>Section E seems to take away from the Court the possibility of asking for information directly from the localities. This assertion of control over the Court is easily remedied by adding a phrase to the last sentence in E. The electoral board of each county or city in which the recount is to be held shall provide the requested information to the Secretary Commissioner of the State Board Department of Elections or directly to the Court if so requested.</p> <p>Finally, in G, in every other location in this revision paper ballot is changed to printed ballot. I'm not entirely sure why printed is better than paper, but if it is, shouldn't it be changed here?</p>
Philip Schetrompf	<p>Good changes but needs some editing</p> <p>I support the changes proposed but Goldstein and Brown have made some good points that should be addressed concerning the new wording.</p>
Stephen Hunt, Fairfax County Electoral Board	<p>1VAC20-60-40. When ballot cast - Provisional ballots</p> <p>The change to paragraph B regarding the provisional ballot is not correct. The permanent record does not occur when a provisional ballot is submitted by the voter. It occurs when the electoral board accepts it and it is counted. If the electoral board rejects the provisional ballot, it is as though the voter never voted. Consequently it is as though there was never a permanent record. I recommend that the language be changed to include the acceptance by the local electoral board</p> <p>"or (iv) relinquishing possession of a completed provisional ballot envelope containing</p>

	the ballot to the possession of an officer of election <i>and the subsequent approval of that provisional ballot by the local electoral board.</i> "
G S Riddlemoser, Director of Elections and General Registrar, Stafford County	1VAC20-60-40 change para D to read: "D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present. Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an undervote, or overvote or equipment malfunction , the officer of election may MUST cast the ballot for the absent voter."
G S Riddlemoser, Director of Elections and General Registrar, Stafford County	1VAC20-60-50 Change para 2 to read: "2. Any such auxiliary ballot container used shall (A) meet the requirements of § 24.2-623 of the Code of Virginia, or (B) meet the requirements for the sealing and transportation of Envelope or Box 3 as contemplated in the PROCEDURES CONCERNING ELECTION RECORDS FOR CLERK OF CIRCUIT COURT issued by the Department immediately prior to each election." ... or something similar because... <ul style="list-style-type: none"> • There is no reason not to prepare ballots that were removed under this rule to be ready to be transported to the clerk at the close of polls. In other words, remove the ballots, box them up, seal them with tamper tape, and have all officers of election present sign the box label - just like they would do after 7pm except that they are doing so immediately after solving the overfull problem. • Localities can easily afford good cardboard boxes - they may or may not be able to afford lockable containers to be used once every four to eight years. • In addition to the cost issue is one of storage. Few localities have extra storage space and would find it hard to find a place to store something that is used so infrequently.
Bruce Brown, Chair – City of Alexandria EB	Use of cameras I do not think that cameras, other than by official media or designated public officials, should be allowed in a polling station.
Brenda Cabrera	Clarification for Curbside Voter 1VAC20-60-40. When ballot cast Where does the curbside voter fit into this scenario related to "when the vote is cast"? In current practice, the vote is cast when the voter hands the ballot to the Election Officer at the curb. The procedure described in Part D has been the procedure with a curbside ballot, "if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an undervote or overvote, the officer of election MUST (I agree with Mr. Riddlemoser's recommended change) cast the ballot for the absent voter." The ballot is cast as-is, or placed in an emergency bin to be

	<p>hand counted. B(ii), states that a ballot is technically “cast” when it is inserted into a scanner and B(iv) speaks strictly to relinquishing a provisional ballot to the election officer. As written, this could mean that an officer would have to ask the curbside voter to remain until the ballot is inserted into the scanner and would then require the officer to return to the voter to either make a correction or advise the voter that the ballot was accepted by the scanner.</p> <p>Please clarify by either adopting the same procedure in Part D for the curbside voter or stating at what point the ballot of a curbside voter is considered cast.</p>
Patricia Brendel	<p>camera</p> <p>I worry that a voter will take a picture of the way they voted and then go out to sell their vote. I have no problem with media taking a picture as long as the vote is protected.</p>
Penny R. Limburg, General Registrar	<p>1 VAC 20-60-30 voter using cell phone</p> <p>In regard to the following, "Voters are permitted to use cameras or audio or visual recording devices inside the polling place. Officers of election may regulate or restrict the use of these devices by voters if the use hinders, delays, or disrupts the voting process, or the voter attempts to intimidate other voters through use of the device."</p> <p>I understand the culture of voters desiring to take a "selfie" with thier own ballot, however, I think it would be wise to include taking a picture of another person's ballot is prohibited without the other voter's expressed permission in order to protect the privacy of the ballot.</p>
Judy Flaig, Election Manager, Fairfax County	<p>Voters are permitted to use cameras or audio or visual recording devices inside the polling place. O</p>
Judy Flaig, Election Manager, Fairfax County	<p>Edit to previous comment (submitted to quickly) - Please add "or to intimidate officers of election"</p> <p>Voters are permitted to use cameras or audio or visual recording devices inside the polling place. Officers of election may regulate or restrict the use of these devices by voters if the use hinders, delays, or disrupts the voting process, or the voter attempts to intimidate other voters <u>or officers of election</u> through use of the device.</p>
David Plunkett	<p>Use of Cameras or other recording devices</p> <p>I do not like the use of cameras or other recording devices inside the polling place.</p> <p>I think they may intimidate voters, some feel it is a breach of privacy or Confidentiality.</p> <p>Having polling places that allow cameras or other recording devices just add to the work load of monitoring what is going on by the Officers of Election, and trying to keep the voting process moving and the polling place secure.</p>
Therese Martin	<p>Voters use of cell phones</p> <p>Elimination of "cellphones" -- as distinct from cameras and recording devices--in 1VAC20-60-30, Section B effectively eliminates cell phones as one of the devices to be monitored by the election officers or covered for voters by this regulation. Was this</p>

	<p>your intention? If so, what steps can be taken by an election officer when a voter is holding up the check-in line by engaging in a distracting phone conversation simultaneously with check-in? Could the voter be asked to step aside until their call is completed?</p>
<p>Michael Jukes</p>	<p>town hall</p> <p>Any voter may be required to cease using the device, but no voter may be removed from the polling place for using a device until after the voter has cast his ballot." Consider changing the sexist language in this paragraph and any other places similar language occurs. The easiest way to avoid this problem is to use plural constructions. This sentence would become: Voters may be required to cease using such devices, but voters may not be removed from the polling place until after they have cast their ballots."</p> <p>C. has three subsections. Those subsections should use parallel construction to improve the readability of the section.</p> <p>Current C</p> <p>Grounds for regulating [or prohibiting the] use of electronic devices [by authorized representatives of candidates and political parties] include [but are not limited to] (i) the making or receiving of calls that interfere with or become disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or influence any person in casting his vote; [or] (iii) the [usage of the camera function to film within the polling place or beyond the 40-foot prohibited area; or (iv) the] person using the device is conducting himself in a noisy or riotous manner at or about the polls so as to disturb the election.</p> <p>More readable C</p> <p>Grounds for regulating [or prohibiting the] use of electronic devices [by authorized representatives of candidates and political parties] include [but are not limited to] (i) making or receiving of calls that interfere with or become disruptive to the voting process; (ii) making [or receiving of calls in an attempt to solicit or influence any person in casting his vote; for(iii) [using the camera function to film within the polling place or beyond the 40-foot prohibited area; or (iv) using the device in a noisy or riotous manner at or about the polls so as to disturb the election.</p> <p>D3 is different from 24.2-802 C although I suspect the intend was not to change it. In 24 2-802 C, "each candidate or petitioner and governing body or chief executive officer", recommends to the Court "an equal number of the officers of election to be recount officials." The proposed D3 contains the sentence, "Such list shall note recommended recount officials who the court may appoint if the officials and alternates recommended by the parties to the recount are not of sufficient number to conduct the recount within a reasonable period." The D3 language seems to me ambiguous about whether the parties could recommend recount officials to the Court who had not been election officials in the election. If my reading is a possible interpretation, then I think we could have chaos trying to incorporate people who have had no training as officers of elections.</p> <p>Section E seems to take away from the Court the possibility of asking for information directly from the localities. This assertion of control over the Court is easily remedied by adding a phrase to the last sentence in E. The electoral board of each county or city in which the recount is to be held shall provide the requested information to the Secretary Commissioner of the State Board Department of Elections or directly to the Court if so requested.</p> <p>town hall</p>

	<p>Finally, in G, in every other location in this revision paper ballot is changed to printed ballot. I'm not entirely sure why printed is better than paper, but if it is, shouldn't it be changed here?</p>
<p>Rick Miller, General Registrar, Frederick County</p>	<p>1VAC 20-60-30, 1VAC 20-60-40, 1VAC 20-60-50, 1VAC 20-80-20</p> <p>1VAC 20-60-30 in its new format is very confusing. The Officers of Election are extremely busy on Election Day trying to take care of their number one concern - qualifying the voters and having the voters vote. For the Officers to have to try and regulate whether the person in the polls taking pictures is a voter or an authorized representative is asking them to be distracted from their top priority again - qualifying and voting. I would ask that any electronic devices with a camera function, the camera function cannot be used in the polling place by anyone.</p> <p>1VAC 20-60-40 the proposed change are good.</p> <p>1VAC 20-60-50 the proposed changes are good.</p> <p>1VAC 20-80-20 the proposed changes are good.</p>
<p>Susan Jett, Lancaster County GR</p>	<p>Cameras in the polls</p> <p>The Officers of Election are extremely busy on Election Day trying to take care of their number one concern - qualifying the voters and having the voters vote. Officers should not have to try and regulate whether the person in the polls taking pictures is a voter or an authorized representative.</p> <p>I also worry that voters could be intimidated with cameras inside the polling place. No cameras in the polling place period.</p>
<p>Susan Jett, Lancaster Co. GR</p>	<p>NO to cameras in the polling place</p> <p>Officers of Election are extremely busy on Election Day trying to take care of their number one concern - qualifying the voters and having the voters vote. Officers should not have to try and regulate who is taking pictures of what. I think this is just creating chaos where it should not be. Plus what about voter intimidation? NO to cameras in the polling place period.</p>
<p>Susan Jett, Lancaster Co</p>	<p>sorry for the duplicate comments / 1st set didn't seem to post</p> <p>The first set did not seem to post and then suddenly i had 2!</p>
<p>Mike Ziegenfuss Chairman Norfolk Electoral Board</p>	<p>No to rule change</p> <p>We foresee potential lawsuits with accusations from voters regarding freedom of speech vs. the ability to vote without being intimidated. Additionally, the Electoral Board's hands are tied as, Under Section D, "No policy disallowing use of all electronic devices by all voters is allowed." Voters should be permitted to vote in peace with no fear of intimidation or reprisal and as little disruption as possible. The proposed loosening of the current policies in place under Chapter 60 will, effectively, be the first step in creating chaos in the voting place. People will be able to take the few minutes necessary to vote their ballot and update their Snapchat story, Instagram or Facebook status at another time or place. Additionally, no one should be recorded without express permission just to wind up on the local or national news, or worse yet, the</p>

	worldwide web.
Karen Alexander	<p>Cell Phone Usage</p> <p>1 VAC 20-60-30 voter using cell phone</p> <p>We can NOT begin to allow the use of cameras and cell phones in the voting precincts. Voters' freedom of confidentiality might as well be thrown out the window if this is permitted. If allowed, any authoritative figure can demand someone to vote a certain way and then insist that the voter take a picture of their vote to prove that their hierarchical will was done. The issue of buying votes, bullying, persuasion, etc... all become REAL problems if this sort of proof can legally exist now. No one needs a "selfie" holding their ballot. That is what their "I VOTED" sticker is for. Allowing for shenanigans like this will inevitably create chaos in the precincts, distracting other voters, limit the ability of Poll Workers to do their jobs, and will therefore slow down the process for everyone. I see absolutely no benefit to allowing for this change.</p>
Al Ablowich, Virginia Beach Electoral Board	<p>1VAC20-60-30</p> <p>Para. B. The disadvantages of permitting a voter to photograph anything in the polling location far exceed the benefits that might be gained from allowing it. The impact statement associated with this proposed regulation change does not state what problem is being solved by changing this policy. Voters as well as candidate representatives should be prohibited from using cameras inside the polling location as the current policy states. However, a prohibition against using cameras inside the polling location will not prevent individuals from taking pictures because there are no adverse consequences if they do..</p>
Al Ablowich, Virginia Beach Electoral Board	<p>1VAC20-60-40</p> <p>Para. B. Suggest a new (v) A curbside voter provides a permanent record when the voter relinquished possession of a ballot to the possession of an officer of election.</p>
Catherine D. Allport	<p>The use of electronic devices inside the polling precinct during an election.</p> <p>I am very concerned about any expansion of the use of electronic devices in the polling place. I am concerned about the time it takes for election officers to monitor this. Last election, new voters were taking selfies and pictures of each other in the voting booths. We offered a space near the exit, with a nice background. We suggested that they might want to get their "I voted" sticker on their shirts and then take the picture. This seemed to better suit everyone. Older voters seemed very hesitant when they observed this open use of cell phone cameras in the voting spaces. Several voters complained about an observer who was seated too closely to the check in table and was using a lap top. This becomes particularly challenging when there is a dual primary and everyone is a bit hesitant and suspicious. Our elections take place in a very nice, accessible building. However there is nothing to absorb all the expected level of noise on election day. No matter how much warning we give everyone about silencing their cell phone, noise making cell phones add to the level of noise and confusion for some voters. At our site there is a range of ages from college students to the very elderly. Frequently our observers are college students or young professionals. I understand that for the younger generation, any proposals limiting their use of electronic devices seems an infringement of their personal freedom. But given that the polling place is open to all ages, we may need a compromise that benefits all, including the election officers that are trying to make the</p>

	<p>voting experience accessible to all and in a timely fashion for the many working voters in our precinct. We will always need to educate voters on who the observers are, their roles, and what electronic devices they are using and why. Let us not add to this burden for the officers of election who in this year, 2016, have an unusually heavy workload.</p>
<p>Stephanie Iles, Norfolk Office of Elections</p>	<p>PLEASE DO NOT MODIFY THE EXISTING POLICIES & PROCEDURES RE: ELECTRONIC DEVICES</p> <p>Good morning esteemed Members of the State Board of Elections and Virginia Department of Elections -</p> <p>We have reviewed your proposed changes to the existing policies and procedures currently in place with regards to the use of electronic devices in polling places under 1VAC20-60-30. We are deeply concerned with your proposed changes and are requesting that you strongly reconsider this decision.</p> <p>Permitting voters to use cameras and/or audio or visual recording devices inside the polling place will create disruption and disorder. Voters, as well as, Officers of Election should not feel intimidated by others. If this is permitted, persons may be secretly recorded or photographed -or- knowingly recorded or photographed WITHOUT consent. No one should be recorded without his/her express permission. Who knows what would happen with this information? Persons (both voters and Officers of Election) might feel threatened and their information may appear on local or national news, or worse yet, the worldwide web and the "Cloud" where it cannot be removed.</p> <p>Furthermore, how do you protect our Protected Voters? How can you guarantee their safety and privacy in the polling place from being compromised? These are members of Law Enforcement and Judges, those under Court or Protective Order who may be stalked or threatened. If this law is changed, then you cannot guarantee that one of these protected voters would not be photographed or recorded. This is a violation of their protected rights. We cannot guarantee their right to privacy if these policies are modified as indicated. Additionally, those protected members of Law Enforcement should have their identities protected given their profession. If photographs or recordings of these persons end up in the wrong hands, they might be targeted.</p> <p>Officers of Election volunteer to serve at the polls as a matter of civic duty. They certainly do not do it for the compensation. They should be able to serve in this civic capacity without further complications in their life, accusations of impropriety or fear of reprisal. To enact these proposed changes would result in our Officers of Election essentially "policing" Authorized Observers and voters on Election Day. It is difficult enough to recruit volunteers to work without adding these additional duties and impositions to them.</p> <p>We foresee potential lawsuits with accusations from voters regarding freedom of speech versus the ability to vote without being intimidated. This is really opening Pandora's box for accusations of misconduct and lawsuits. Additionally, the Electoral Board's hands are tied as proposed, Under Section D, "No policy disallowing use of all electronic devices by all voters is allowed."</p> <p>Voters should be permitted to vote in peace without fear of intimidation or reprisal and as little disruption as possible. The proposed loosening of the current policies in place under Chapter 60 will, effectively, be the first step in creating chaos in the voting place. People should be able to take the few minutes necessary to vote their ballot. For individuals who have a problem detaching from their electronic device(s), take the few minutes to vote in peace, without fear or intimidation. A person's Snap chat story, Instagram or Facebook status can always be</p>

	<p>updated after they leave the building.</p> <p>Thank you for your consideration.</p>
<p>Carol Gaunt, Director of Elections/General Registrar, Page County</p>	<p>1VAC20-60-30, 1VAC20-60-40</p> <p>(60-30) There is no valid reason for a cell phone and/or camera to be used in the polling place by a voter or observer; our Officers of Election have enough to do without policing the voters for violations of privacy, which will be a concern of others in the polling place. The media is indicated in 24.2-604(J) Code of Virginia, as approved with stipulations. This should be sufficient for a orderly, well conducted election process.</p> <p>(60-40) Not a permanent record until the canvass is complete, adjust the language accordingly.</p>
<p>Marlene Watson</p>	<p>electronic devices in polling place</p> <p>please do not modify the existing policies & proceduresthank u</p>
<p>W.T. Latham</p>	<p>overfull ballot containers</p> <p>1 VAC 20-60-50 needs to be revised to allow storage of ballots from an overfull ballot container in a sealed storage box instead of another ballot container, at least as "ballot container" is defined in the Code.</p> <p>Placing the ballots in a "ballot container" is less secure than placing the ballots in a sealed storage box. It is also less practical and less efficient.</p>
<p>Cameron Sasnett/ Fairfax County Office of Elections</p>	<p>1VAC20-60-40</p> <p>Seconding a comment made by Stephen Hunt:</p> <p>The change to paragraph B regarding the provisional ballot is not correct. The permanent record does not occur when a provisional ballot is submitted by the voter. It occurs when the electoral board accepts it and it is counted. If the electoral board rejects the provisional ballot, it is as though the voter never voted. Consequently it is as though there was never a permanent record. I recommend that the language be changed to include the acceptance by the local electoral board</p> <p>"or (iv) relinquishing possession of a completed provisional ballot envelope containing the ballot to the possession of an officer of election <i>and the subsequent approval of that provisional ballot by the local electoral board.</i>"</p>
<p>Cameron Sasnett/ Fairfax County Office of Elections</p>	<p>Cameras In the Polling Place</p> <p>I support the alterations to the regulations to allow voters to use electronic devices with imaging devices within the polling place. I believe that this provides voters with an opportunity to digitally capture and even share a memento of their voting experience; something which (other than a sticker) election administrators cannot provide. Additionally, should a voter choose to film an interaction within the precinct, it will provide election administrators access to evidence to support or refute claims of</p>

disenfranchisement or even a positive and efficient voting experience.

I would caution though, that the State Board incorporate identical guidelines as established for the media. These guidelines should include the prohibition of filming or photography of: A) other voters without their permission, B) the ballot of any other voter, and C) any voter lists.

Issue Matrix for Comments Received for Revisions to Chapter 60

Issue	# of Comments
In favor of the proposed changes	2
Problems with structure and regulation formatting	4
1VAC 20-60-30 does not adequately provide guidance on use of cell phones	1
It is inconsistent for voters to be able to use cameras but authorized reps cannot	1
The use of the word "voters" limits the cell phone guidance, and does not provide guidance for others in the polling place	1
Take issue with use of gender term "his"	2
Provisional ballots should not be considered "cast" until the electoral board accepts them	2
Language should be added to 20-60-40 addressing equipment malfunctions	1
Language regarding ballot containers should be expanded	2
Voters should not be allowed to use cameras in the polling place	12
Language should be added to 20-60-40 regarding curbside voting	2
Officers of election should be able to limit voters' use of cameras in the polling place	4
No one should be recorded without their express permission	2
Protected voters should have their privacy protected	1
Camera usage will lead to intimidation	4
Voters should be allowed to photograph themselves within the polling place	1



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STATE BOARD *of* ELECTIONS

Chapter - 80 Regulation Final Adoption

BOARD WORKING PAPERS
Paul Stenbjorn
Director of Elections
&
Brooks Braun
ELECT Policy Analyst



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DEPARTMENT *of* ELECTIONS

Memorandum

To: James Alcorn, Chairman;
ClaraBelle Wheeler, Vice Chair;
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: June 28, 2016

Re: Finalization of Regulations Resulting from Periodic Reviews of Chapter 80 (1VAC20-80)

Suggested Motion for a Board member to make: I move that the Board adopt the changes proposed by the Department of Elections as a result of periodic review of Chapter 80 of the Board's regulations in the Virginia Administrative Code.

Affected Regulations: 1VAC 20-80-10 through 20-80-20

Board Materials:

- 2016 final changes to Chapter 80
- Comments received during 2016 periodic review comment period

Background:

On May 15, 2013, the previous membership of the State Board of Elections announced a periodic review of all of its regulations pursuant to Regulation 20-10-120 calling for a review of all regulations after each presidential election. The objectives of this periodic review was similar to those set forth in Executive Order 14 for all executive agencies—effectiveness, efficiency, necessity, clarity and cost of compliance.

The original comment period for Chapter 80 opened June 3, 2013, and closed June 24, 2013. During this time period, only one comment from one commenter was received. The one comment asked that the term “paper ballot” be used properly in regulation 1VAC 20-80-20. However, this comment, nor any suggestions from the agency, was ever officially provided to the State Board of Elections for adoption.

The previous Board did not take up the matter again before the expiration of its term and the current Board was left to complete the process. Due to the extended period of inaction on this



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item, the underlying standards upon which previous analyses were based have changed. It is for this reason that additional edits have been made that were not derived from the public comments received in the initial proposal stage.

The definitions of “paper ballot,” “printed ballot,” and “ballot scanner machine” were codified in Virginia Code § 24.2-101 during the 2014 session of the General Assembly. The revised proposal of the regulation reflects usage consistent with statute. In the intervening period since the Department of Elections was established as a separate entity from the State Board of Elections. The Department of Elections is headed by its Commissioner. Edits in the revised proposal reflect this organizational change. In their March 15, 2016 meeting the Board approved a 21 day comment period for the revised proposal which ended on April 25, 2016.

The Board received 4 comments during the revised proposed comment period. An additional comment on the revised proposed regulation for 1VAC20-60 referred to the proposal for 1VAC20-80 and has been included, in relevant part, in the comments for Chapter 80 prepared for the Board today. Based on those comments a few minor edits for clarification have been made. The substance of the regulation before the Board today remains largely the same as that in the revised proposed regulation. We respectfully request that the Board approve this final regulation for posting in the registrar of regulations.

1 **1VAC20-80-20. Recounts and Contested Elections.**

2 A. Standards for any recounts or contests requested in the Commonwealth of Virginia
3 shall be governed by Chapter 8 (§ 24.2-800 et seq.) of Title 24.2 of the Code of
4 Virginia.

5 B. Upon notification by the court that a recount request has been filed pursuant to
6 § 24.2-801 of the Code of Virginia, the ~~State Board~~ Department of Elections shall
7 promptly transmit to the appropriate court and electoral board or boards copies of the
8 instructions corresponding to the types of ballots and equipment used in each county
9 or city involved in the recount.

10 C. In preparation for the recount and pursuant to § 24.2-802 A of the Code of
11 Virginia, the clerks of the circuit courts shall:

12 1. Secure all ~~paper~~ printed ballots and other election materials in sealed boxes;

13 2. Place all of the sealed boxes in a vault or room not open to the public or to
14 anyone other than the clerk and his staff;

15 3. Cause such vault or room to be securely locked except when access is necessary
16 for the clerk and his staff; and

17 4. Certify that these security measures have been taken in whatever form is deemed
18 appropriate by the chief judge.

19 D. After a recount has been requested pursuant to § 24.2-801 of the Code of Virginia,
20 and prior to the preliminary hearing specified in § 24.2-802 B of the Code of Virginia,
21 the electoral board of each county or city in which the recount is to be held shall
22 provide the court and all parties to the recount with:

23 1. The recommended location and number of recount teams needed to recount ~~paper~~
24 printed ballots and to redetermine the votes cast on direct recording electronic
25 devices of the type that prints returns for the election district at large in which the
26 recount is being held.

27 2. The recommended location and number of recount teams needed to insert the
28 ballots read by ~~an electronic counting device~~ a ballot scanner machine into one or
29 more ~~counting devices~~ scanners that have been programmed to count only votes
30 cast for parties to the recount or for or against the question in a referendum recount.

31 Such machines shall also be programmed to reject all undervoted and overvoted
32 ballots as required by § 24.2-802 D of the Code of Virginia. The examination of
33 undervoted and overvoted ballots may take place at the same location before the
34 votes are totaled for that precinct, if so directed by the court. If a different team of
35 officers would be used to examine the undervoted and overvoted ballots, such teams
36 shall be included in the total number recommended for this item.

37 3. A complete list of all officers of election who served at the election to be
38 recounted, with the political party they represented at that election listed beside
39 their names, the precinct where each officer served, each officer's address and
40 phone number or numbers, and an indication of which officers served as chief or
41 assistant chief officers. Such list shall note recommended recount officials who the
42 court may appoint if the officials and alternates recommended by the parties to the
43 recount are not of sufficient number to conduct the recount within a reasonable
44 period. Such list shall be provided by the local electoral boards for both parties to
45 the recount, or by the ~~Secretary~~ Commissioner of the ~~State Board~~ Department of
46 Elections in the case of a recount for federal or statewide office or a statewide ballot
47 issue, prior to the preliminary hearing, or as soon thereafter as possible, to assist
48 them in preparing their selections of officers to be recount officials or alternates.

49 4. A list of the members of the electoral board and the political parties they
50 represent. Such list shall be provided by the local electoral boards to both parties to
51 the recount or by the ~~Secretary~~ Commissioner of the ~~State Board~~ Department of
52 Elections in the case of a recount for federal or statewide office or a statewide ballot
53 issue.

54 E. To facilitate the conduct of any pending or expected recount for a federal or
55 statewide office or statewide ballot issue, the ~~Secretary~~ Commissioner of the ~~State~~
56 ~~Board~~ Department of Elections may coordinate the gathering of the recommendations
57 and information from the electoral boards and provide such recommendations and
58 information to the court prior to the preliminary hearing specified in § 24.2-802 B of
59 the Code of Virginia on behalf of the electoral boards. The electoral board of each
60 county or city in which the recount is to be held shall provide the requested
61 information to the ~~Secretary~~ Commissioner of the ~~State Board~~ Department of Elections
62 [or directly to the court if so requested].

63 F. Pursuant to § 24.2-802 A of the Code of Virginia, the procedures issued by the
64 State Board of Elections, and any other procedures directed by the court, shall be as
65 uniform as possible throughout the entire district in which the recount is being
66 conducted, given the differences in types of equipment and ballots used in the
67 election.

68 G. For any [~~paper printed~~] ballot that is to be counted manually and can be counted
69 manually, the guidelines adopted by the State Board of Elections for hand-counting
70 shall be used in determining the voter's intent ("Ballot Examples for Handcounting
71 Paper or Paper-Based Ballots for Virginia Elections or Recounts").

72 H. The State Board of Elections, Department of Elections, and the appropriate
73 electoral boards shall provide any other assistance requested by the court.

74

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29 programmed to count only votes cast for parties to the recount or for or against the
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41 assistant chief officers. Such list shall note recommended recount officials who the
42 court may appoint if the officials and alternates recommended by the parties to the
43 recount are not of sufficient number to conduct the recount within a reasonable
44 period. Such list shall be provided by the local electoral boards for both parties to
45 the recount, or by the Commissioner of the Department of Elections in the case of a
46 recount for federal or statewide office or a statewide ballot issue, prior to the
47 preliminary hearing, or as soon thereafter as possible, to assist them in preparing
48 their selections of officers to be recount officials or alternates.

49 4. A list of the members of the electoral board and the political parties they
50 represent. Such list shall be provided by the local electoral boards to both parties to
51 the recount or by the Commissioner of the Department of Elections in the case of a
52 recount for federal or statewide office or a statewide ballot issue.

53 E. To facilitate the conduct of any pending or expected recount for a federal or
54 statewide office or statewide ballot issue, the Commissioner of the Department of
55 Elections may coordinate the gathering of the recommendations and information from
56 the electoral boards and provide such recommendations and information to the court
57 prior to the preliminary hearing specified in § 24.2-802 B of the Code of Virginia on
58 behalf of the electoral boards. The electoral board of each county or city in which the
59 recount is to be held shall provide the requested information to the Commissioner of
60 the Department of Elections or directly to the court if so requested.

61 F. Pursuant to § 24.2-802 A of the Code of Virginia, the procedures issued by the
62 State Board of Elections, and any other procedures directed by the court, shall be as

63 uniform as possible throughout the entire district in which the recount is being
64 conducted, given the differences in types of equipment and ballots used in the
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69 Based Ballots for Virginia Elections or Recounts").

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71 electoral boards shall provide any other assistance requested by the court.

Chapter 80 Received Comments

Commenter	Comment
David Bjerke, City of Falls Church Office of Voter Registration & Elections	<p>I favor these proposed changes.</p> <p>As a General Registrar of Voters and Director of Elections for the City of Falls Church, I am in favor of these proposed changes.</p> <p>Sincerely,</p> <p>Dave Bjerke</p>
Philip Schetrompf	<p>Proposed changes are acceptable</p> <p>The proposed changes appear to be sensible and I support them.</p>
G S Riddlemoser, Director of Elections & General Registrar, Stafford County	<p>concur</p> <p>I concur that this is adequate and appropriate for the task at hand</p>
Therese Martin	<p>define election materials</p> <p>Section C.1. requires that "other election materials" be secured in sealed boxes. This is a pretty broad statement unless "other election materials" is defined elsewhere, which should then be noted here. Those responsible for carrying out the provision may have differing notions of what these materials are.</p>
Jody D. Brown	<p>D3 is different from 24.2-802 C although I suspect the intend was not to change it. In 24 2-802 C, "each candidate or petitioner and governing body or chief executive officer", recommends to the Court "an equal number of the officers of election to be recount officials." The proposed D3 contains the sentence, "Such list shall note recommended recount officials who the court may appoint if the officials and alternates recommended by the parties to the recount are not of sufficient number to conduct the recount within a reasonable period." The D3 language seems to me ambiguous about whether the parties could recommend recount officials to the Court who had not been election officials in the election. If my reading is a possible interpretation, then I think we could have chaos trying to incorporate people who have had no training as officers of elections.</p> <p>Section E seems to take away from the Court the possibility of asking for information directly from the localities. This assertion of control over the Court is easily remedied by adding a phrase to the last sentence in E. The electoral board of each county or city in which the recount is to be held shall provide the requested information to the Secretary Commissioner of the State Board Department of Elections or directly to the Court if so requested.</p> <p>Finally, in G, in every other location in this revision paper ballot is changed to printed ballot. I'm not entirely sure why printed is better than paper, but if it is, shouldn't it be changed here?</p>



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Election Day Project

BOARD WORKING PAPERS
James Alcorn
SBE Chairman



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Adjournment

BOARD WORKING PAPERS



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BOARD MEETING

Tuesday, June 28, 2016
Double Tree by Hilton Hotel
Richmond-Midlothian
James River Room
8:00AM

SBE Board Working Papers
Prepared by Rose Mansfield
SBE Clerk