MINUTES

The State Board of Elections Board Meeting was held on Wednesday, August 10, 2016. The meeting was held at the General Assembly Building – Room C, Richmond, Virginia. In attendance, representing the State Board of Elections (SBE) was James Alcorn, Chairman; Clara Belle Wheeler, Vice Chair; and Singleton McAllister, Secretary. Also in attendance, representing the Department of Elections (ELECT) was Edgardo Cortés, Commissioner; and Rose Mansfield, Clerk. Anna Birkenheier, Assistant Attorney General and Counsel to SBE and ELECT attended. Chairman Alcorn called the meeting to order at 10:35AM.

The order of business was the Commissioner Report on the Department of Elections compliance with the Order of the Supreme Court of Virginia in *Howell v. McAuliffe* presented by Edgardo Cortés, ELECT Commissioner. Commissioner Cortés stated that the working papers contained a copy of the Court order and related communications sent to the field. Commissioner Cortés stated that The Supreme Court of Virginia issued an opinion and associated writ of mandamus in the matter of *Howell v. McAuliffe* on July 22, 2016. The Commissioner of Elections, the Department of Elections, the State Board of Elections were named respondents in the suit, which challenged the Governor's authority to issue a single order restoring civil rights to an entire class of individuals with felony convictions. The Supreme Court, in a 4-3 vote, found the Governor's Executive Orders issued on April 22, 2016, May 31, 2016, and June 24, 2016 unconstitutional and directed the Respondents to take five remedial actions in its order:

(1) The Department of Elections and Commissioner Edgardo Cortés, on or before August 25, 2016, consistent with his duty to "[r]equire the general registrars to delete from the record of registered voters the name of any voter who…has been convicted of a felony. " Code § 24.2-404(A)(3), shall cancel the registration of all felons who have invalidly registered under Executive Orders issued on April 22, 2016, May 31, 2016, and June 24, 2016.

(2) The Department of Elections and Commissioner Cortés, on or before August 25, 2016, shall "[r]equire the general registrars to enter the names of all

registered voters into the [voter registration] system and to change or correct registration records as necessary," Code § 24.2 -404 (A)(2), by refusing to register anyone whose political rights have purportedly been restored by Executive Orders issued on April 22, 2016, May 31, 2016, and June 24, 2016, and by canceling the registration of anyone wo has registered pursuant to such orders.

(3) The Department of Elections and Commissioner Cortés, on or before August 25, 2016, shall "[r]etain…information received regarding…felony convictions." Code §24.2-404 (A)(6),by returning to the list of prohibited voters the name of any felon whose political rights have purportedly been restored by Executive Orders issued on April 22, 2016, May 31, 2016, and June 24, 2016.

(4) The State Board of Elections and Chairman James B. Alcorn, Vice Chair Clara Bell Wheeler, and Secretary Singleton B. McAllister, on or before August 25, 2016 "shall institute procedures to ensure that" the Department of Elections and Commissioner Cortés carry out their duties under this Court's order, Code § 24.2-404(C).

(5) Secretary Kelly Thomasson, on or before August 25, 2016, shall maintain and provide to the Department of Elections accurate records of individuals whose political rights have been lawfully restored, by deleting and omitting from the records any felons who political rights were purportedly restored by Executive Orders issued on April 22, 2016, May 31, 2016, and June 24, 2016: Code §§ 24.2-404 (A)(9), 53.1-231.1.

Commissioner Cortés stated that the Department of Elections moved expeditiously to comply with the requirements of the Court order in a transparent manner, while minimizing the impact to local election office operations. Commissioner Cortés stated that the Department of Elections completed carrying out the duties specified in the Court order on August 8, 2016 and provided a timeline of compliance:

- ✓ Friday, July 22, 2016: Supreme Court of Virginia issues order.

61 ✓ Saturday, July 23, 2016: Commissioner Cortés sent a statewide email to
62 registrars indicating the Department was reviewing the Court order and
63 would provide guidance as soon as possible.
64 ✓ Tuesday, July 26, 2016: Commissioner Cortés sent a statewide guidance to
65 registrars, including notice that the Department of Elections would send
66 cancellation letters to impacted individuals.
67 ✓ Wednesday, July 27, 2016: Commissioner Cortés received notice from the
68 Secretary of the Commonwealth that she had complied with her
69 requirements under the Court order and that appropriate records were
70 transferred to the Department of Elections.
71 ✓ Friday, July 29, 2016: The Department of Elections completed the process
72 of returning a total of 213,874 individuals to the list of prohibited voters.
73 The Department of Elections provided guidance to registrars on how to
74 properly process pending registrations for individuals impacted by the
75 Court's order. The communication from the Commissioner also indicated
76 the Department of Elections was processing the appropriate cancellations
77 and would complete the process by August 8, 2016.
78 ✓ Thursday, August 4, 2016: The Department of Elections completed
79 cancelling the voter registration records of 12,832 individuals, as directed
80 by the Court order. Data was sent to the printer for preparation of
81 cancellation letters. Commissioner Cortés sent a statewide email to
82 registrars reiterating guidance provided on July 26th and 29, 2016. Notice
83 was posted on the Virginia Townhall website that a State Board of
84 Elections meeting was scheduled for Wednesday, August 10, 2016 and
85 Commissioner Cortés provided additional notice via statewide email to
86 registrars.
87 ✓ Friday, August 5, 2016: Commissioner Cortés sent a statewide guidance
88 email to registrars containing direction on processing information
89 provided to localities via the Virginia Election and Registration
90 Information System (VERIS) and cancelling pending absentee ballot
91 requests. The email also provided information on the department of

92 Elections' compliance with the Court order. Cancellation letters were
93 delivered to the U.S. Postal Service for first-class mailing. Commissioner
94 Cortés sent a statewide email on behalf of the Secretary of the
95 Commonwealth to provide information to registrars regarding the rights
96 restoration process.

97 ✓ Saturday, August 6, 2016: The Department of Elections resumes regular
98 processing of felon data provided to registrars via VERIS. Commissioner
99 Cortés and the Department of Elections complete compliance with the
100 three Supreme Court Order directives which apply to Commissioner
101 Cortés and the Department of Elections.

102 Commissioner Cortés asked if there were any questions. Chairman Alcorn
103 thanked ELECT for their efforts and asked if there were any issues with compliance of
104 the Court order. Commissioner Cortés stated that ELECT was compliant and there were
105 no issues at the Department or with the General Registrar's following the Departments'
106 guidance and being in compliance.

107 Secretary McAllister stated that the tasking on ELECT was handled expediently
108 and appropriately. Secretary McAllister asked if the Commissioner was confident that the
109 registrars understood the process and that there is transparency in the process.
110 Commissioner Cortés stated that ELECT has received questions on the appropriate
111 handling of situations that occurred as unanticipated consequences of this action, i.e.
112 candidate filling and petitions-parts of the election process; and ELECT is currently
113 working on guidance on those situations to provide to the elections community.
114 Commissioner Cortés stated in reference to the Court order directions were clear to the
115 field and the registrar's should be back to their normal processing.

116 Vice Chair Wheeler asked when the Court order was imposed that the General
117 Registrars' keep a list of those affected for reference, and that hasn't happened. Vice
118 Chair Wheeler asked if there was a list of the 213,000 individuals for the registrars to
119 utilize. Commissioner Cortés stated that the registrars have access to all felony conviction
120 data through the statewide registration system which has been a fundamental part of their
121 toolbox. Vice Chair Wheeler asked if the list contains both federal and state felony
122 conviction data. Commissioner Cortés stated that the list contains both data bases. Vice

123 Chair Wheeler asked if the 13,000 restorations have been sent notice that they are no
124 longer registered and is there a master list of names to show the names of those names
125 removed. Commissioner Cortés stated that the Department is making a public list of the
126 12,832 individuals who were cancelled as a result of the Court order, which is public
127 record under the National Registration Voter Act, to expedite the information; although
128 available in the statewide registration system, for the registrars to utilize in an effort to
129 assist the registrars and the list will be available for view by days end. Vice Chair
130 Wheeler asked if there had been any individual restorations by the Governor since the
131 Court order and is there a list available. Commissioner Cortés stated that the Governor
132 has not signed any individual restoration orders since the Court order.

133 Vice Chair Wheeler asked if a list of individuals who had their cancellation letter
134 returned as undeliverable will be maintained by the Department. Commissioner Cortés
135 stated that there are no plans, to create such a list, as the information would service no
136 purpose. Vice Chair Wheeler asked that a list be maintained. Commissioner Cortés stated
137 that the registration system maintains the list of the address and the Department does not
138 maintain a list of returned mail and often it is years: if at all that the mail returns to
139 ELECT. Vice Chair Wheeler asked the Commissioner to create a list and the
140 Commissioner stated that he would take it under consideration but, the Department only
141 maintains data that serves a specific purpose. Chairman Alcorn asked if the registrars
142 keep record of the undeliverable mail received during the annual cancellation process.
143 Commissioner Cortés stated that to his knowledge they do not and there is no place in the
144 statewide registration for that information. Chairman Alcorn asked if there were
145 additional questions from the Board and there were none.

146 Secretary McAllister offered a resolution for SBE members and read such
147 resolution:

148

149 Resolution of the State Board of Elections

150 Regarding the July 22, 2016 Supreme Court of Virginia Order

151

152 WHEARAS, on April 22, 2016, May 31, 2016, and June 24,2016, Governor
153 McAuliffe issued Executive Orders to restore the voting rights of 213,874 individuals

154 who had been convicted of a felony but who had completed their sentences of
155 incarceration and periods of supervised release; and

156 WHEREAS, while those Executive Orders were in effect, 12,832 individuals
157 whose rights had been restored registered to vote in the Commonwealth; and

158 WHEREAS, on July 22, 2016 the Supreme Court of Virginia in the Virginia, in
159 the matter of *Howell v. McAuliffe,* issued and Order granting the Writ of Mandamus
160 requested by the Petitioners, invalidating the Governor's Executive Orders any
161 restoration of rights they granted, and setting forth five remedial actions to be taken by
162 the Respondents; and

163 WHEREAS, the Court's order requires that "[t]he State Board of Elections and
164 Chairman B. Alcorn, Vice Chair Clara Bell[e] Wheeler, and Secretary Singleton B.
165 McAllister, on or before August 25, 2016, "shall institute procedures to ensure that the
166 Department of Elections and Commissioner Cortés carry out their duties under this
167 Court's order, Code § 24.2-404 (C) " and

168 WHEREAS, Commissioner Cortés has reported to this Board on the steps taken
169 by the Department of Elections to comply with the Order and the Board finds that such
170 actions are fully compliant with the Order and provide the requisite and necessary
171 procedures to continue compliance, now, therefore,

172 BE IT RESOLVED that based on the report of the commissioner, the Board is
173 satisfied that the Department and the Commissioner have carried out their duties to
174 comply with the Supreme Court's Order, and

175 BE IT RESOLVED FURTHER that the Department shall continue to advise the
176 Board on this matter on issues that may arise with implementation of the Order.

177 Secretary McAllister *moved that SBE adopt the resolution as presented.*
178 Chairman Alcorn seconded the motion. Chairman Alcorn asked if there was any public
179 comment on the motion and there were none. Chairman Alcorn asked if there were
180 comments or questions from the Board members.

181 Vice Chair Wheeler stated that since the Commissioner has informed SBE that a
182 list is not currently available of the names "I don't think we, SBE, have completely
183 complied with the Court Order." Chairman Alcorn asked for a clarification on the
184 missing list. Vice Chair Wheeler stated: "there is not a list of all the felons who rights

have been restored under the Governor's order." Commissioner Cortés stated that the list is not currently available publically; but is available in the statewide registration system to the registrars. Chairman Alcorn asked if the Vice Chair is interpreting that the Court order declares that the list be publically available for viewing. Vice Chair Wheeler stated: "the Board cannot say we have a list if the Board cannot see the list". Chairman Alcorn stated that he did not interpret the Court order to say a public list. The statewide registration list has been updated. Commissioner Cortés confirmed that on July 22, 2016 the Secretary of the Commonwealth stated that she had fully complied with the Court order. Commissioner Cortés confirmed that ELECT has fully complied with the Court order. Vice Chair Wheeler stated that: "she did not believe that SBE should take a vote on something that the general registrars are not clear on…" Chairman Alcorn stated: "that general registrars have processed voter registration applications for decades in Virginia and all the systems are in place that were in place prior to the Governor's Executive Order". Vice Chair Wheeler stated that: "I am not sure what they (general registrars) need or don't need but: I think it would behoove us to not pass judgement on something we can't verify." Chairman Alcorn asked if there were any further questions or public comment and there were none.

The motion passed two to one by roll call vote: Chairman Alcorn, Yea; Secretary McAllister, Yea, and Vice Chair Wheeler, Nay.

Chairman Alcorn moved *that the Board adjourn.* Secretary McAllister seconded the motion. The Board unanimously approved the motion.

The meeting was adjourned at approximately 11:40AM. The Board shall reconvene on August 30, 2016 at 1:00PM in Richmond, Virginia – General Assembly Building – Room C.

Secretary

Chair

Vice Chair