

1           MINUTES

2

3           The State Board of Elections Board Meeting was held on Wednesday, May 13,  
4 2015. The meeting was held in the Washington Building, Richmond, Virginia – Room  
5 B27. In attendance, representing the State Board of Elections (SBE) was James Alcorn,  
6 Chairman; Clara Belle Wheeler, Vice Chair; and Singleton McAllister, Secretary. Also in  
7 attendance, representing the Department of Elections (ELECT) was Edgardo Cortés,  
8 Commissioner; Elizabeth Howard, Deputy Commissioner; and Rose Mansfield, Clerk.  
9 Kristina Stoney, Senior Assistant Attorney General and Anna Birkenheier, Assistant  
10 Attorney General both Counsel to SBE and ELECT attended. Chairman Alcorn called the  
11 meeting to order at 2:00PM.

12           The first order of business was the approval of the Minutes from the State Board  
13 of Elections Board Meetings held on April 1, 2015, April 14, 2015, and April 17, 2015.  
14 Chairman Alcorn asked if Board Members had any additions or corrections to the Board  
15 Meeting Minutes presented and there were none. Secretary McAllister moved to adopt  
16 the Minutes for the April 1, 2015, April 14, 2015, and April 17, 2015 Board Meetings.  
17 Vice Chair Wheeler seconded the motion and the Board unanimously approved the  
18 Minutes.

19           The second order of business was the Commissioner Report delivered by  
20 Commissioner Cortés. Commissioner Cortés stated that ELECT will continue their  
21 education efforts and outreach program in support of the photo identification program by  
22 utilizing media outlets prior the June 2015, primaries. Commissioner Cortés stated that  
23 the goal is to refresh the voters on the requirements of the voter photo identification  
24 program and to remind voters that they are eligible for a free voter identification card if  
25 they do not have an acceptable form of identification on Election Day. Commissioner  
26 Cortés stated that ELECT is focusing on the preparations for the annual training  
27 workshop. Over 500 participants are scheduled to attend the three day workshop. The  
28 annual training is attended by general registrars and electoral board members and will  
29 include the return of “Boot Camp” for recently sworn-in general registrars and electoral  
30 board members. Commissioner Cortés thanked Terry Wagoner, Registrar Liaison, for her  
31 efforts in preparing for the workshop. Commissioner Cortés stated that ELECT Staff will

32 be presenting informational classes on various election related subjects and thanked the  
33 group for their tireless efforts preparing for the workshop that will be conducted July 27-  
34 29, 2015.

35 The second order of business was the Legal Report presented by Kristina Stoney,  
36 Senior Assistant Attorney General. Ms. Stoney stated that there were no updates to  
37 provide to the Board Members.

38 The next order of business listed under “Old Business” was the WinVote Locality  
39 Update presented by Commissioner Cortés. Commissioner Cortés stated that there were  
40 30 localities across the Commonwealth utilizing the WinVote equipment that is now  
41 decertified with ten of those localities preparing for the June, 2015 primary.  
42 Commissioner Cortés stated that funding is not available to those localities to replace  
43 their equipment however; ELECT will be providing support in the transition process by  
44 offering the assistance of Rokey Suleman, former General Registrar from Fairfax and  
45 Prince William County, who has experience in equipment transitions. Mr. Suleman will  
46 be assisting in the review of voting security plans, voter outreach, voting equipment  
47 storage, and election officer training with local administrators in those localities affected  
48 by the decertification of the WinVote voting equipment systems. Commissioner Cortés  
49 stated that the ten localities with June primaries have a voting equipment plan and briefly  
50 outlined the plans of each of the ten localities. Chairman Alcorn inquired if the  
51 equipment vendors had submitted the requested updates, as requested by SBE, to  
52 ELECT. Commissioner Cortés stated that the vendors were going to issue their reports  
53 immediately after the June primaries. Commissioner Cortés stated that the Board would  
54 receive a complete report on the equipment utilized during the June 2015 primary during  
55 the certification meeting on June 22, 2015. Vice Chair Wheeler requested that ELECT  
56 provide a copy of the questionnaire that the localities will be submitting that details their  
57 voting equipment. Commissioner Cortés stated that the questionnaire would be provided  
58 to Board Members.

59 The next order of business listed under “Old Business” was the Complaint against  
60 Mike McHugh presented by Brooks Braun, ELECT Policy Analyst. Mr. Braun stated that  
61 on September 23, 2013 the Board heard a matter alleging violations of Chapter 9.3 and  
62 Chapter 9.5 of Title 24.2 of the *Code of Virginia* relating to campaign finance disclosure

63 and disclaimer requirements. The former Election Services Division Manager, Chris  
64 Piper, presented the relevant information to the Board and concluded that it was likely  
65 that Mr. McHugh was in violation of Chapter 9.3 for failure to file as a political action  
66 committee and that the Board should refer the matter to the Commonwealth's Attorney in  
67 the County of Warren, where Mr. McHugh resided. The Board tabled the matter for  
68 discussion at the next meeting; however, the matter was not subsequently raised until  
69 today. Mr. McHugh died on October 14, 2014. Subsequently, the lawyer for Mr.  
70 McHugh's estate contacted the Department of Elections to inquire into the status of the  
71 complaint against Mr. McHugh and asked that the matter be settled by the Board.

72 Mr. Braun stated that ELECT agrees with Mr. Piper's prior analysis that, with the  
73 current information available, there is insufficient information to conclude that Mr.  
74 McHugh violated Chapter 9.5 for failure to include specific disclaimers on his website or  
75 the advertisements he sponsored. Disclaimer requirements only apply to individuals when  
76 an individual makes personal expenditures in excess of \$200. ELECT has no information  
77 regarding the actual amount spent by Mr. Hugh on communications containing express  
78 advocacy. Mr. McHugh also stated that these were personal expenditures. Absent the  
79 intervention of Commonwealth's Attorney's office to determine whether Mr. McHugh  
80 actions resulted in political action committee status or the requirement to file an  
81 independent expenditure report, the Department is unable to determine whether specific  
82 disclaimer requirements apply to the communications distributed by Mr. McHugh. Mr.  
83 Braun stated that since Mr. Piper found evidence that suggests a violation of Chapter 9.3  
84 for failure to file as a PAC, in accordance with the duty of the Board under § 24.2-946.3,  
85 the Department recommends that the Board refer the matter of Mike McHugh to the  
86 Commonwealth's Attorney for the County of Warren, for further investigation and/or  
87 prosecution. ELECT suggests that the Board table any discussion of whether Mr.  
88 McHugh violated any portion of Chapter 9.5 until after a decision is made by the  
89 Commonwealth's Attorney regarding Mr. McHugh's status under Chapter 9.3.

90 Mr. Braun stated that ELECT would also like to take this opportunity to  
91 communicate with the Board its long standing practices regarding how complaints about  
92 violations of chapters 9.3 and 9.5 are handled and to explain the rationales behind those  
93 practices. Stating that it is a longstanding practice of the Department to not accept

94 complaints that are not related to the Board's authority under § 24.2-955.3(D) relating to  
95 political advertisement disclaimers. The reason for this is that neither the Department nor  
96 the Board has any investigative nor enforcement authority related to violations of  
97 Chapters 9.3 and 9.5. As such, the Board has little to no authority to handle or address a  
98 complaint not related to Chapter 9.5. Accordingly, it is the Department's practice to  
99 redirect any complainants alleging violations outside of Chapter 9.5 to the appropriate  
100 attorney for the Commonwealth. It is also the longstanding practice of the Department to  
101 not accept anonymous complaints of any kind. Mr. Braun stated that there are several  
102 reasons for this practice, including the practice's reduction in the number of frivolous  
103 complaints filed. Chairman Alcorn asked Ms. Stoney if there was a statute of limitation  
104 regarding this case. Ms. Stoney stated that the determination of statute rests with the local  
105 Commonwealth Attorney's Office. Chairman Alcorn moved *that the Board refer Mike*  
106 *McHugh's failure to properly register as a political action committee and failure to file*  
107 *proper campaign finance reports to the Commonwealth's Attorney for the County of*  
108 *Warren*. Vice Chair Wheeler seconded the motion. Chairman Alcorn asked if there were  
109 any public comment and there was none. The Board unanimously approved the motion.

110 The next order of business under "New Business" was the Request for Full-Time  
111 Status-Charles City County presented by Elizabeth Howard, Deputy Commissioner. Ms.  
112 Howard stated that the Virginia Budget authorizes and funds general registrars with a  
113 population in most counties under 10,000 and cities under 7,500 to work on a part-time  
114 basis for most of the year. The budget does provide funding for the registrars to be  
115 compensated to work full-time for the months surrounding each year's May General  
116 Election (March through May), the Budget does not account for other elections, including  
117 local elections and primaries. The request from the Charles City County Electoral Board  
118 is that the general registrar work full-time for the period of May 1, 2015 through June 12,  
119 2015 to handle the June, 2015 primary. Chairman Alcorn moved *that the Board approve*  
120 *the request from the Electoral Board of the County of Charles City County for the period*  
121 *of May 1, 2015 through June 12, 2015*. Vice Chair Wheeler seconded the motion.  
122 Chairman Alcorn asked if there were any public comment and there was none. The Board  
123 unanimously approved the motion.

124           The next order of business was the Electronic Poll Books (EPB), Certification  
125 Requirements presented by Cameron Sasnett, ELECT Systems Support Specialist. Mr.  
126 Sasnett stated that the EPB certification requirements were presented at the April 1, 2015,  
127 SBE Board Meeting. Mr. Sasnett stated the guidelines are similar to those used for voting  
128 equipment. Mr. Sasnett stated that §24.2-611(D) of the Code of Virginia allows all  
129 localities to expend their own funds to purchase electronic pollbooks that have been  
130 approved for use in elections by SBE. ELECT staff redeveloped the certification  
131 document(s) to better incorporate specific requirements for enhanced security and  
132 encryption methodologies. The document provides the framework for EPB Vendors to  
133 bring their systems to SBE for certification testing were prohibited due to contradictions  
134 in the certification requirements and the *Code of Virginia*. Mr. Sasnett noted that the  
135 EPB guidelines are reflective of the voting equipment guidelines developed by Gary Fox,  
136 Elections Services Supervisor. Mr. Sasnett reviewed the changes to the previously  
137 presented document with the Board Members. Chairman Alcorn moved *that the Board*  
138 *strike the current standing EPB certifications documents and approve and adopt the*  
139 *document VAEPB Certification Procedures and System Requirements REV-0515 as the*  
140 *Board's official certification guidance document*. Vice Chair Wheeler seconded the  
141 motion. Commissioner Cortés stated that Virginia is a national leader in producing these  
142 guidelines and thanked Mr. Sasnett for his efforts in developing the new EPB  
143 certification requirements and guidelines. Chairman Alcorn asked if there were any  
144 public comment and there was none. The Board unanimously approved the motion.

145           The next order of business was the Voter Registration Form & Regulations  
146 presented by Edgardo Cortés, ELECT Commissioner. Commissioner Cortés stated that  
147 ELECT is requesting that the Voter Registration Form and the Regulations be made  
148 available for public comment through Regulatory Town Hall. Commissioner Cortés  
149 stated that a workgroup established in 2013, reviewed the form and regulations and  
150 submitted suggested changes. Commissioner Cortés reviewed the suggested changes and  
151 supplied a mock-up of the revised form to the Board Members. Commissioner Cortés  
152 noted that a significant savings would occur with the change to formatting and printing  
153 on standard size paper and the removal of color on the printed form. Commissioner  
154 Cortés stated that federal and state requirements were reviewed before considering

155 changes to the voter registration form. Commissioner Cortés reviewed each of the  
156 changes and the applicability to either the citizen completing the document and or the  
157 general registrar who will be processing the document. Commissioner Cortés stated that  
158 the revisions will decrease the frequency of applications being rejected due to  
159 administrative reasons, i.e. simply neglecting to place a checkmark in a box.  
160 Commissioner Cortés stated that the registration regulations changes are required to  
161 support the changes to registration form.

162 Secretary McAllister stated that streamlining the appearance of the document will  
163 lead to ease in completion and asked: “Have the federal and state requirements been  
164 completely satisfied?” Commissioner Cortés stated: “Yes, when the document was  
165 reduced in the number of pages the federal and state mandated items were incorporated  
166 into the remaining document and one page of the previous document consisted solely of  
167 the addresses of the general registrars. Additionally, the photo identification  
168 requirements were added to the form.” Commissioner Cortés stated that ELECT  
169 recommends that the regulation be made available for public comment for 21 - 30 days.  
170 Commissioner Cortés stated a presentation would be made to Board Members at the July,  
171 2015 meeting. Commissioner Cortés reviewed each of the changes submitted in the voter  
172 registration regulations. Chairman Alcorn noted that on lines 16 and 24 the need to strike  
173 the word “Department” and insert the word “Board” before submitting for comments.  
174 Chairman Alcorn moved *that lines 16 and 24 of the proposed revisions to Voter*  
175 *Registration Application Regulations reflect the insertion of “Board” rather than*  
176 *“Department”*. Secretary McAllister seconded the motion and without public comment  
177 the Board unanimously approved the motion. Chairman Alcorn asked if there were any  
178 public comments on the amended regulation before the Board and there were none.  
179 Chairman Alcorn moved *that the proposed Virginia Voter Registration Application and*  
180 *the proposed amendments to IVAC 20-40-70 on the Virginia Regulatory Town Hall and*  
181 *publishing in the Virginia Registrar of Regulations for a period of 30 days to commence*  
182 *at the publication of the next issue in 2015*. Vice Chair Wheeler seconded the motion.  
183 Chairman Alcorn asked if there were any public comments and there were none. The  
184 Board unanimously approved the motion.

185 Commissioner Cortés thanked Rob Vance, ELECT Web Developer & Designer,  
186 for his expertise and skills in redeveloping the existing form. Commissioner Cortés stated  
187 that ELECT is grateful for his skill-set and having this talent in-house was both a cost and  
188 time savings to the agency.

189 The next order of business was the Absentee Ballot Applications-Electronic  
190 Signatures present by Elizabeth Howard, Deputy Commissioner. Ms. Howard stated that  
191 this agenda item was requested by Speaker Howell. The Department of Elections  
192 recommends that the Board direct general registrars to accept and process absentee ballot  
193 applications containing electronic signatures when the electronic signature requires the  
194 signer to affirmatively check a box confirming acknowledgment of the Affirmation  
195 Statement which appears on the Absentee Ballot Application and the completed Absentee  
196 Ballot Application includes a disclaimer indicating that it includes an electronic  
197 signature. Authorizing electronic signatures on this form is recommended because the  
198 General Assembly has recognized this particular step in the absentee ballot process as a  
199 proper area for increasing voter convenience through the use of technology for over  
200 twenty years, and accepting electronic signatures on this application will make it easier  
201 for currently registered voters who are qualified to cast an absentee ballot to vote.

202 Chairman Alcorn asked Ms. Stoney if the use of electronic signatures on  
203 Absentee Ballot Applications was acceptable. Ms. Stoney stated that a Virginia Attorney  
204 General Opinion issued on September 26, 2014 stated that State Board of Elections is  
205 authorized to require the acceptance of electronic signatures, giving them “legal  
206 consequence” when affixed to an absentee ballot application. Chairman Alcorn asked:  
207 “Will the Absentee Ballot Form require changes to support the acceptance of electronic  
208 signatures?” Ms. Howard replied: “No”. Chairman Alcorn moved *that the Board direct*  
209 *registrars to accept electronic signatures on Absentee Ballot Applications so long as the*  
210 *applicant was required to affirmatively check a box confirming acknowledgment of the*  
211 *Affirmation Statement which appears on the Absentee Ballot Application and the*  
212 *completed Absentee Ballot Application includes a disclaimer indicating that it includes*  
213 *an electronic signature.* Vice Chair Wheeler seconded the motion. Chairman Alcorn  
214 asked if there were any public comments and there were none. The Board unanimously  
215 approved the motion.

216 The next order of business was the Other Business and Public Comment period.  
217 Commissioner Cortés stated that ELECT received a letter from the Virginia State Police  
218 regarding WinVote Voting Equipment Systems stating that they have concluded their  
219 inquiry into Stafford County and that there is no indication of criminal activity or issues  
220 related to the November, 2014 elections and their investigation is considered closed.  
221 Chairman Alcorn asked if there were any public comments.

222 Carol Noggle, League of Women Voters, approached the podium. Ms. Noggle  
223 stated that the league was very pleased with changes drafted for public comment to the  
224 voter registration form. Ms. Noggle stated that she supported the use of electronic  
225 signatures and believed that official documents permit such signatures. Chairman Alcorn  
226 asked if there were any additional public comments.

227 Dennis Fusaro, Front Royal, Virginia, approached the podium. Mr. Fusaro  
228 presented a letter to the Clerk for introduction into the official documents of the Board.  
229 Mr. Fusaro stated that he had concerns about the process of which citizens of the  
230 Commonwealth of Virginia are able to access the voter registration lists. Mr. Fusaro  
231 stated that he believed that the process and the procedures established are  
232 unconstitutional and immoral. Mr. Fusaro stated that the process is being applied  
233 unequally to different classes of people, with no rational basis, and the specific statement  
234 that individuals may not make mailings or communications using pressure and  
235 intimidation is constitutional vague and dangerous to the right of free speech, free  
236 association, and the right to issue grievances with your government. Mr. Fusaro stated  
237 that he wanted his thoughts on official record. Mr. Fusaro thanked the Board Members  
238 for their time. Chairman Alcorn asked if there were any additional public comments and  
239 there were none.

240 Vice Chair Wheeler moved *that the Board adjourn*. Secretary McAllister  
241 seconded the motion and without further comment the Board voted unanimously to  
242 adjourn. The meeting was adjourned at approximately 4:00PM.

243 The Board shall reconvene on June 9, 2015 at 8:00AM in the Washington  
244 Building, 1100 Bank Street, Room B27, in Richmond, Virginia.

245



246

247

248

---

Secretary

249

250

251

---

Chair

252

253

254

---

Vice Chair

255

256