MINUTES

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

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

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

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

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

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

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

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

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

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

Mr. Findlay stated: "I believe you received a letter from Don Palmer in 2012 when he based the original decision. The meeting that was cancelled in early February, I believe there was on the agenda a chance for us to discuss getting access to the information, afterwards. Again, Don Palmer read the memo in 2012 and a brief for us that were very detailed and cited *codes* and cases. He went through the various reasons why we had an argument that the forms should be access to FOIA under *Virginia Code*. We obviously did speak to experts, and it was well considered, and did you receive that?" Commissioner Cortés stated that does not change the position of the Department, in consultation with legal counsel in 2012 that these forms were not subject to release. The Department did get in touch with you about the changes and informed you that it required board action and you were at the meeting. Commissioner Cortés stated: "This is an attempt to throw back on the Department, who worked with all the elections officials

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

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

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

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

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

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

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Secretary

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Chair

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Vice Chair

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