

MINUTES

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4 The State Board of Elections Board meeting was held on Friday, April 29, 2011.
5 The meeting was held in the State Capitol, House Room Two in Richmond, Virginia. In
6 attendance, representing the State Board of Elections (SBE) was Charles Judd, Chair;
7 Kimberly Bowers, Vice-Chair; Donald Palmer, Secretary; Justin Riemer, Confidential
8 Policy Advisor; Joshua Lief, Senior Assistant Attorney General and SBE Counsel; Susan
9 Lee, Election Uniformity Manager; Peter Goldin, Policy Analyst; Martha Brissette,
10 Policy Analyst; Susan Pollard, Director of Communications; and Matthew Abell,
11 Assistant Manager, Election Services Division. Chairman Judd called the meeting to
12 order at 10:00 AM.

13 The first order of business was the approval of Minutes from the State Board of
14 Elections Board meeting held on March 9, 2011 and March 15, 2011. Senior Assistant
15 Attorney General and SBE Counsel Joshua Lief requested a slight change to the March
16 15, 2011 Minutes. In line 208, he requested the word “defendant” be changed to “person
17 subject to the complaint.” In the March 9, 2011 Minutes, Chairman Judd requested his
18 name and Vice-Chair Bowers’ name be added to line 5 under the first paragraph “In
19 attendance”. Vice-Chair Bowers then made a motion to approve the minutes after the
20 amended changes. Chairman Judd seconded the motion and the minutes were
21 unanimously approved by the Board.

22 The second order of business was the Secretary’s Report delivered by Secretary
23 Palmer. The Secretary’s Report is a new agenda item for each Board meeting describing
24 recent developments at SBE since the previous Board meeting. Secretary Palmer spoke
25 about three main issues: Help America Vote Act (HAVA) funds, US Department of
26 Health and Human Services (HHS) funds, and the printing and shipping of voter
27 information cards. Secretary Palmer reported that SBE has requested and the Assembly
28 has approved the appropriation for approximately \$350,000 in matching funds to deaw
29 down \$7,00,000 in HAVA federal funds. SBE is currently in the process of working with
30 the US Election Assistance Commission to pull down the remaining nearly \$7,000,000
31 before Congress retracts the funds. HAVA also has certain federal requirements on the

32 use of the funds and Secretary Palmer has been requested to testify in May before the
33 Senate Finance Committee about how SBE plans to use HAVA funds.

34 Secretary Palmer also reported that HHS funds have been allotted to SBE for
35 disability improvements specifically due to redistricting since there will be new precincts
36 and polling places in need of new accessibility equipment, such as ramps. SBE is
37 implementing a program to reimburse localities for their purchases and should have about
38 \$300,000 to \$500,000 available for reimbursement purposes.

39 Secretary Palmer spoke about voter cards since there is a large requirement for
40 them as a direct result of redistricting. SBE will be assisting localities in 2011 and 2012 to
41 facilitate the transition of redistricting with new voter cards for voters affected by
42 redistricting changes.

43 The next order of business was the Office of the Attorney General's (OAG)
44 lengthy and detailed report on their investigation into the November 2, 2010 election in
45 Montgomery County. Senior Assistant Attorney General and SBE Counsel Joshua Lief
46 presented OAG's findings to the Board and read from his written document (appended to
47 the Minutes) about the Montgomery County Electoral Board and General Registrar's
48 administration of the November 2, 2010 General Election. In conclusion, Mr. Lief
49 reported that it was clear that a violation of election law occurred in the county on
50 November 2, 2010. It was also evident that it was not an attempt to corrupt the election,
51 alter the results, or allow non-registered voters to vote.

52 Mr. Lief made several recommendations on the Montgomery County
53 investigation. First, he suggested that the OAG not pursue criminal action. After
54 discussions with Secretary Palmer leading up to the April 29 Board Meeting, Mr. Lief
55 recommended that the State Board issue a letter of censure to the Electoral Board
56 (EB) and General Registrar (GR) for violations of Virginia law. Moreover, he implied
57 that if there are future violations of law that are traceable to the EB and/or the GR, they
58 should be considered to be on notice that SBE will seek their removal pursuant to Va. Code
59 § 24.2-233.

60 Secretary Palmer proposed several recommendations: additional training sessions
61 and webinars, an agency visit to Montgomery County to address issues and concerns, and
62 more observers in Montgomery County to observe and possibly assist in the August

63 primary election. He also suggested drafting a letter of cooperation rather than a letter of
64 censure between the State Board and Montgomery County. He acknowledged that
65 mistakes do happen and the only way to resolve these issues is through training, as
66 opposed to punitive measures or a letter of censure. Furthermore, he recommended a
67 contingency plan to be in place during elections, which will be discussed with
68 Montgomery County. Chairman Judd agreed with Secretary Palmer in moving forward
69 rather than backwards and learning from the situation. Vice-Chair Bowers echoed the
70 recommendations of Secretary Palmer to agree on a cooperative measure moving
71 forward. However, she recommended that the Board should acknowledge that “an
72 unlawful action did take place” in Montgomery County and extend a hand of cooperation
73 to ensure this situation does not happen again. Chairman Judd agreed with Vice-Chair
74 Bowers in acknowledging for the record that there was a mistake made and it is important
75 to ensure that lessons have been learned so that the same mistake will not be happen
76 again.

77 Secretary Palmer questioned a letter of concern as opposed to a letter of censure
78 for Montgomery County. Senior Assistant Attorney General and SBE Counsel Joshua
79 Lief stated that the word “censure” was specifically used in the OAG Report because the
80 law was violated although he believed that Montgomery County did not intend to corrupt
81 the election. Mr. Lief advised the State Board that they should send a serious message to
82 localities that there will be consequences when the law is violated. Vice-Chair Bowers
83 made the motion that a letter of censure for Montgomery County from the State Board of
84 Elections should at a minimum include the following: a focus on better training, adequate
85 printed provisional ballots should be made available, and guidance should be sought from
86 SBE if problems arise and solution remains unclear. Secretary Palmer seconded the
87 motion and the Board unanimously approved a letter of censure for Montgomery County.

88 The next order of business was a report given by Policy Analyst Peter Goldin on
89 behalf of SBE on the information gathering related to the complaint by Marion
90 Werkheiser against Tammy Alexander, Vice-Chair of the Electoral Board of the City of
91 Petersburg. Mr. Goldin sent requests for Declarations from Petersburg and offered them
92 two weeks to respond in which they did. He then forwarded the received Declarations
93 from Petersburg to Ms. Alexander and offered her two weeks to respond. Ms. Alexander

94 provided the State Board with a packet including her responses to each complaint. Before
95 hearing statements from the complainants, Mr. Goldin proceeded to respond to Ms.
96 Alexander's October 28, 2010 email to former SBE Secretary Nancy Rodrigues about her
97 request for SBE support since his name was mentioned several times throughout the
98 email. Mr. Goldin advised the Board to consider the following four issues: 1) Was
99 Tammy Alexander within her right to eject Marion Werkheiser from a polling place for
100 interfering with the voting process? 2) Was Tammy Alexander within her right to eject
101 Laura Judd from polling places for mentioning a candidate's name? 3) Was Tammy
102 Alexander within her right for ejecting candidates and family members of candidates
103 from a polling place for overstaying their welcome? 4) And were campaign finance
104 penalties properly assessed against candidates from Reform Petersburg Now?

105 Lauren Barboza, former Chairwoman from the Petersburg Republican Party,
106 spoke on behalf of Tammy Alexander citing Ms. Alexander's actions as well within
107 protocol. She also advised the Board to base their decision solely on the facts provided to
108 them by Ms. Alexander.

109 Larry Haake, President of the Voter Registrars' Association of Virginia (VRAV)
110 and General Registrar of Chesterfield County spoke to the State Board to clarify a
111 statement made about election observers in a report to the Chesterfield County Attorney
112 about the presumption that observers having interactions with voters are viewed as a
113 disruption and a violation. Observers may only speak to an officer of election behind the
114 table from which they are seated. Mr. Haake cited this as the presumption upon which
115 general registrars and election officials operate in the field. Secretary Palmer then added
116 that it is out of the norm for an election protection attorney observer to be speaking with
117 voters without anyone in the vicinity since it is normally not permitted. Senior Assistant
118 Attorney General and SBE Counsel Joshua Lief clarified realms of jurisdiction for the
119 State Board about authorized representatives citing them as observers who are under the
120 authority of officers of election if they hinder, delay or appear disruptive. An officer of
121 election is given on-the-ground authority and if the authorized representative does not
122 agree, then they have the right to an immediate appeal to the Electoral Board. Policy
123 Analyst Peter Goldin explained the recent term "election protection" officials who may
124 act as observers but must stay within the provision of the Code. Mr. Lief explained that

125 discretion must be given to officers of election on Election Day to supervise the polling
126 place and at the same time, oversight must be give to the Electoral Board.

127 Tammy Alexander answered questions by the Board about the complaints made
128 against her by Marion Werkheiser, Laura Judd, Larry Smith, Jacquelyn Kidd, and Linda
129 Pittman. Chairman Judd and Vice-Chair Bowers proceeded to ask Senior Assistant
130 Attorney General and SBE Counsel Joshua Lief a series of questions for clarifications on
131 laws related to Ms. Alexander's actions towards the complainants. Ms. Alexander
132 explained that she noticed Ms. Werkheiser was interacting with a voter rather than
133 observing silently in her chair. She then instructed Ms. Werkheiser to leave and Ms.
134 Werkheiser left without disagreement. Vice-Chair Bowers asked Ms. Alexander about
135 Ms. Judd's complaint. Ms. Alexander explained that Ms. Judd appeared annoyed and
136 frustrated because so many ballots were being wasted since voters were voting for a
137 candidate that was not even on the ballot in the specified ward. Ms. Alexander did not
138 know how to react to her behavior and spoke with Petersburg General Registrar Dawn
139 Williams who told Ms. Alexander to remind Ms. Judd about her duties and that if she
140 chose not to listen than she should leave the polling place. According to Ms. Alexander,
141 Ms. Judd chose to leave and requested Ms. Alexander to walk her out of the polling
142 place.

143 Secretary Palmer asked Ms. Alexander a few questions about the campaign
144 finance fines on Ms. Kidd's campaign. Ms. Alexander explained that Ms. Kidd had
145 received a campaign contribution of \$346.00 from a single source but did not disclose the
146 contributor. Ms. Alexander decided to contact the PAC Chairman of the organization
147 who gave the contribution to clarify the campaign contribution details. Ms. Alexander
148 tried contacting Reform Petersburg Now Treasurer Linda Pittman. Ms. Alexander
149 described this as the trigger point of Ms. Pittman's harassment complaint. The Petersburg
150 Electoral Board was contacted by Ms. Alexander about Ms. Kidd's campaign finance
151 reports which were incomplete. They mailed her a couple of letters without receiving a
152 response from Ms. Kidd until December 2, 2010 and the fines began accumulating due to
153 failure of response. Secretary Palmer then asked Ms. Alexander about an elaboration on
154 the individual who was not able to take a comfort break at the polling facility. Ms.
155 Alexander declined to respond about this individual due to a pending case against her.

156 Gwen Terforte, Chief Judge at 501 Petersburg on Election Day and a poll worker
157 for 20 years, spoke to the State Board as a witness for Ms. Alexander and the City of
158 Petersburg on Election Day about the complaints made against Ms. Alexander.

159 Gregory Werkheiser, husband of Marion Werkheiser and attorney, spoke to the
160 State Board on behalf of Ms. Kidd, Ms. Werkheiser, and Ms. Judd. He discussed what he
161 termed, Ms. Alexander's misapplication and misinterpretation of the law with each
162 complainant, which resulted in their defamation of character. Senior Assistant Attorney
163 General and SBE Counsel Joshua Lief addressed Mr. Werkheiser's legal points made in
164 his statement before the Board. He also stated that Mr. Werkheiser was incorrect in his
165 assumption of guidance documents that authorized representatives are allowed to speak
166 to voters on Election Day. Mr. Lief cited Va. Code § 24.2-604, which describes specific
167 functions of authorized representatives. Mr. Werkheiser debated Secretary Palmer about
168 his perspective on the absence of explicit behavior in Virginia's Code on election law
169 about an authorized representative's functions. Secretary Palmer then stated that Ms.
170 Alexander did not exceed her authority when she contacted the Commonwealth Attorney
171 about a potential election law violation for them to determine if there was a violation. Mr.
172 Werkheiser stated that Ms. Alexander's position requires a certain discretion that should
173 have been used with each complainant before going directly to the Commonwealth
174 Attorney to determine whether a law was violated or not.

175 Confidential Policy Advisor Justin Riemer then stated to the Board about a
176 previous concern at the March 15, 2010 Board Meeting regarding Tammy Alexander's
177 absence. At the time of the March 15 Board Meeting, Mr. Riemer was unaware of a letter
178 received by the State Board explaining her advice by counsel not to attend the March 15
179 Board Meeting.

180 Dawn Williams, General Registrar of Petersburg, spoke before the Board on
181 behalf of Tammy Alexander. She explained her handout of guidance documents that is
182 given out on Election Day highlighting the functions of authorized representatives as
183 observers that are to be seen and not heard.

184 Larry Haake, President of the Voter Registrars' Association of Virginia (VRAV)
185 and General Registrar of Chesterfield County spoke to the State Board to clarify a legal
186 question Vice-Chair Bowers previously asked about the prosecution of authorized

187 representatives. Mr. Haake cited that officers of election may arrest, find guilty, and
188 commit to jail up to 24 hours anyone they deem in violation of election law. Furthermore,
189 an absence of the prohibition of law does not imply that an action is permissible.

190 Senior Assistant Attorney General and SBE Counsel Joshua Lief spoke to the
191 Board about a common theme observed in both the Montgomery and Petersburg cases: an
192 electoral board member taking an independent action without consulting the other
193 electoral board members.

194 Winifred Sowder, General Registrar of Williamsburg, spoke to the Board on her
195 opinion that authorized representatives should be seen and not heard since it can appear
196 disruptive.

197 Secretary Palmer then moved to take no action. Chairman Judd made the motion
198 to table the Petersburg issue until the next Board meeting in May before making a
199 decision. Secretary Palmer seconded the motion and the Board agreed unanimously on
200 the Petersburg matter.

201 The next order of business was Old Business from the March 15, 2010 Board
202 meeting on the Shenandoah County Democratic Women's Club's request to waive their
203 campaign finance civil penalty, presented by Assistant Manager of the Election Services
204 Division Matthew Abell. For Shenandoah County Democratic Women's Club, Mr. Abell
205 stated that attempts were made for Joan Commanor to attend the April 29 Board Meeting.
206 However, due to a scheduling conflict, she was unable to attend. Since this issue was
207 tabled at the previous Board meeting, Chairman Judd motioned to uphold SBE staff
208 recommendations on waiving the assessed civil penalty based on Ms. Commanor's letter.
209 The Board agreed unanimously and the motion was carried.

210 The next order of business included three requests for waivers of campaign
211 finance civil penalties for Friends of Ron Villanueva, Virginia Muslim PAC, and William
212 and Mary Young Democrats presented by Mr. Abell. For "Friends of Ron Villanueva",
213 he recommended that the penalty be waived because the penalty letter was sent in error
214 and reflected the campaign's report as unfiled when it was filed in a timely manner.
215 Chairman Judd moved to waive the campaign finance penalty according to SBE
216 recommendations. Secretary Palmer seconded the motion and the Board moved to
217 unanimously approve the waiver.

218 In order to expedite and improve future campaign finance actions, Mr. Abell
219 recommended a “common sense waiver procedure” decision to the State Board that
220 would delegate the adjudication to the Secretary of the State Board in instances such as
221 “Friends of Ron Villanueva” where errors are made in campaign finance civil penalties.
222 Currently, the Code grants the right to waive assessed civil penalties only to the three
223 members of the State Board. Chairman Judd made a request to SBE staff to present this
224 recommendation at the next Board meeting.

225 For “Virginia Muslim PAC,” Mr. Abell stated that the PAC has failed to file
226 campaign finance reports in 2010 and SBE recommended upholding the \$500.00 assessed
227 penalty. Secretary Palmer moved to uphold the penalty recommendation and the motion
228 was unanimously carried by the Board.

229 For “William and Mary Young Democrats,” Mr. Abell stated that SBE
230 recommends waiving the assessed civil penalty since the Committee is exempt from
231 filing as a PAC as it does not meet the definition of a political action committee. Vice-
232 Chair Bowers moved to waive the campaign finance penalty according to SBE
233 recommendations and the motion was unanimously approved by the Board.

234 The next order of business was about the proposed Absentee Ballot Readiness
235 Survey presented by Policy Analyst Martha Brissette. Federal and state law require that
236 the State Board of Elections monitor absentee readiness to prevent the previous problems
237 with localities sending absentee ballots late, which resulted in litigation. Modifications
238 have been made to the survey for this non-federal election year. A federal grant
239 opportunity is expected that would help the State Board of Elections assist localities with
240 absentee ballots. SBE staff did not request approval from the Board, but merely provided
241 an awareness of efforts about the survey. Walt Latham, General Registrar from York
242 County, made a comment to the Board about the importance of the survey and the federal
243 grants which would assist localities.

244 The next order of business was a complaint before the Board by Debra Johnson,
245 Vice-Chair of the Alleghany County Electoral Board, against her Electoral Board
246 members about their performance. Ms. Johnson’s complaint was about the failure to post
247 and record meetings and minutes, voting equipment concerns, problems with the local
248 polling place and private meetings held between the Secretary and Chairman of the

249 Alleghany Electoral Board. The Chairman and Secretary of the Alleghany Electoral
250 Board were asked to be at today's Board meeting but declined, one due to scheduled
251 work conflicts. However, it was brought to the State Board's attention that the two other
252 members of the Alleghany Electoral Board called a meeting for early that morning (April
253 29) despite their claimed inability to attend this Board meeting. Secretary Palmer
254 questioned Senior Assistant Attorney General and SBE Counsel Joshua Lief about his
255 recommendations which included a possible letter to the Commonwealth's Attorney
256 about an investigation into the matter and/or a letter from the State Board to the
257 Chairman of the Alleghany Electoral Board requiring a response to the allegations
258 brought before the Board.

259 Secretary of Goochland County Electoral Board Robin Lind spoke to the Board
260 about his outrage over the type of allegations made against the Alleghany County
261 Electoral Board. Mr. Lind recommended the Board to direct the Secretary of the State
262 Board of Elections to investigate this matter fully. Secretary Palmer spoke about his
263 concern over the type of allegations made against the Alleghany County Electoral Board.
264 The State Board agreed to direct Secretary Palmer to handle an investigation into these
265 allegations.

266 The final order of business was a recommendation made by Arnold Nye on behalf
267 of the Gloucester 40 on Guidelines and Petition Forms to Aid Citizens when requesting
268 the removal of an elected officer. Chairman Judd and Secretary Palmer commended Mr.
269 Nye for his proactiveness in creating guidelines and petition forms.

270 SBE Manager of Election Uniformity Susan Lee also thanked Mr. Nye and
271 members of the Gloucester 40 for bringing this issue before the Board and for the
272 creation of guidelines and petition forms for publication. After careful review over Mr.
273 Nye's recommendations, SBE staff recommended that the Board refer Mr. Nye's
274 documents and recommendations to the Supreme Court's Office of the Executive
275 Secretary to present to the Circuit Court Forms Advisory Committee. Chairman Judd
276 motioned the State Board to follow SBE staff's recommendations and the motion was
277 unanimously approved by the Board.

278 Walt Latham, General Registrar of York County, recommended Mr. Nye's
279 guidelines to include the right to recall elected officials in Virginia.

280 The Board shall reconvene in May for the next Board Meeting.

281 Chairman Judd asked for any further public comments. There being none, the
282 meeting was adjourned at approximately 1:00 PM.

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Secretary

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Chair

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Vice-Chair