

MINUTES

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3 The State Board of Elections Board Meeting was held on Thursday, May 24,
4 2012. The meeting was held in the General Assembly Building, House Room C in
5 Richmond, Virginia. In attendance, representing the State Board of Elections (SBE) was
6 Charles Judd, Chair; Donald Palmer, Secretary; Justin Riemer, Deputy Secretary; Joshua
7 Lief, Senior Assistant Attorney General and SBE Counsel; Nikki Sheridan, Confidential
8 Policy Advisor; David Blackwood, Policy Analyst; Martha Brissette, Policy Analyst and
9 Matt Abell, Election Administration Lead. Chairman Judd called the meeting to order at
10 2:00PM. Chairman Judd noted that Vice-Chair Bowers was absent from the Board
11 meeting and that a quorum was satisfied to conduct general business.

12 The first order of business was the approval of the Minutes from the State Board
13 of Elections Board Meeting held on May 3, 2012. After careful review, Secretary Palmer
14 made a motion to approve the Minutes. Chairman Judd seconded the motion and the
15 Board unanimously approved the Minutes.

16 The second order of business was the Secretary's Report delivered by Secretary
17 Palmer. The Secretary's Report is an agenda item for each Board Meeting describing
18 recent developments at SBE. Secretary Palmer introduced Nikki Sheridan who was
19 appointed as the Governor's Special Policy Advisor to the State Board of Elections
20 earlier this month. Secretary Palmer introduced summer law interns James Kimmey,
21 Lauren Sutphin, and Thomas Murray. Secretary Palmer extended a warm welcome to
22 those individuals and offered attendees the opportunity to make introductions at the
23 conclusion of the Board meeting. Secretary Palmer noted that the June Primary absentee
24 ballot deadline for UOCAVA had been met and the election community is prepared.
25 Secretary Palmer noted that Governor McDonnell signed the voter identification
26 legislation and that as a result SBE was preparing forms and supporting guidance
27 documents, a voter education plan, and draft regulations to bring before the Board for
28 approval in the near future. Secretary Palmer noted that SBE was focusing on the public
29 education campaigns. Secretary Palmer noted that the: "Are You Election Ready?"
30 campaign which is intended to be a general preparedness message and a poll worker
31 recruitment campaign which now allows volunteers to work the polls due to legislation
32 that was passed by the General Assembly and is effective July 1, 2012. Secretary Palmer

33 noted that list maintenance and data sharing efforts will be enhanced by participating in
34 the Electronic Registration Information Center (ERIC). Chairman Judd inquired if ERIC
35 would be in place in time for the November General Election. Secretary Palmer stated
36 that it would be and that the plan was to work with the general registrars and on
37 formatting the data received. Secretary Palmer noted that the Help America Vote Act
38 (HAVA) required databases to share information between agencies within a state.

39 The third order of business was the Board approval of Ballot Standards and
40 Verification Procedures. Matt Abell, Election Services Lead, provided a summary of the
41 suggested staff changes being proposed to the Board members. Chairman Judd asked if
42 there were any public comments and there was none. Secretary Palmer added that the
43 approval of these changes would provide corrective measures to the procedures and SBE
44 staff was being proactive in presenting these changes. Chairman Judd motioned to
45 approve the staff suggested changes to the “Ballot Standards and Verification
46 Procedures” document. Secretary Palmer seconded the motion and the Board
47 unanimously passed the motion.

48 The next order of business was the approval of form SBE-643(PC), a new Petition
49 of Qualified Vote for Electors for President and Vice-President. Matt Abell, Election
50 Services Lead, explained the changes that were proposed to the Board. Matt Abell stated
51 that recent legislation permits a non-resident of Virginia and constitutionally qualified
52 presidential candidate to circulate his/her own petitions in the Commonwealth. Matt
53 Abell stated that SBE staff created a new Petition of Qualified Voter form that was
54 uniquely suited for this permission. Secretary Palmer motioned that the Board approve
55 the use of SBE-543(PC). Chairman Judd seconded the motion and the Board
56 unanimously passed the motion. Chairman Judd inquired if there were any public
57 comments and there were none.

58 The next order of business was the “Stand by your Ad Complaints” presented by
59 David Blackwood, SBE Policy Analyst. Mr. Blackwood identified the first matter for
60 Board consideration as the complaint against candidate Catherine Read. David
61 Blackwood informed the Board that on or about April 30, 2012, the State Board of
62 Elections received a complaint concerning a “door hanger” that was distributed on behalf
63 of candidate Catherine Read. David Blackwood stated that the advertisement advocates
64 for the election of Ms. Read, but did not contain the disclaimer of authorization. David

65 Blackwood stated that the candidate has been formally notified about the violation and a
66 response was received that included an apology from Catherine Read with an explanation
67 that it was an oversight on her behalf. David Blackwood informed the Board that staff
68 recommends assessing a civil penalty of two hundred dollars which represents a first time
69 violation that occurred within 14 days of an election. Secretary Palmer noted that the
70 letter and the apology provided gave foundation to assessing a civil penalty of one
71 hundred dollars. Secretary Palmer moved to reduce the civil penalty to one hundred
72 dollars and Chairman Judd seconded the motion. Chairman Judd asked if there were any
73 public comments and with there being none the Board unanimously passed the motion.

74 David Blackwood identified the second matter for Board consideration as the
75 complaint against Michael DeMarco. David Blackwood informed the Board that on or
76 about April 25, 2012, the State Board of Elections received a complaint concerning a
77 postcard that was distributed on behalf of candidate Michael DeMarco. David Blackwood
78 stated that the advertisement contained the required disclosure statement, but that the
79 statement was in small print that failed the requirement that “[a]ny disclosure statement
80 required by this section shall be displayed in a conspicuous manner”. David Blackwood
81 stated that the candidate has been formally notified about the violation and a response
82 was received that included an apology and acknowledgment from Michael DeMarco with
83 an explanation that it was an oversight. David Blackwood informed the Board that staff
84 recommended assessing a civil penalty of two hundred dollars which represents a first
85 time violation that occurred within 14 days of an election. Chairman Judd inquired if staff
86 was in possession of an original postcard verses the copy provided to Board members.
87 David Blackwood informed the Board that only a copy of the postcard was received.
88 Chairman Judd inquired if the candidate was present and Michael DeMarco approached
89 the podium. Michael DeMarco provided a background on the campaign postcard and
90 explained that 4,700 households received this card, including the Fairfax City General
91 Registrar. Michael DeMarco stated that he is at fault and took full responsibility for the
92 reduced size of the print. Chairman Judd inquired if Michael DeMarco had a copy and
93 noted that the copy received by SBE is smaller than the original postcard. Michael
94 DeMarco explained that he did not have an original and offered an apology. Chairman
95 Judd noted that the font size of the print had been reduced as a byproduct of the copying
96 process and that he believed that the original postcard would be sufficient in meeting the

97 requirement that the disclaimer “be displayed in a conspicuous manner”. Secretary
98 Palmer noted that he was capable of reading the disclaimer on the copy of the postcard in
99 question and moved that the penalty be dismissed. Chairman Judd seconded the motion
100 and asked if there were any public comments and with there being none the Board
101 unanimously passed the motion.

102 David Blackwood identified the third matter for Board consideration as the
103 complaint against Raystine Johnson. David Blackwood informed the Board that on or
104 about April 24, 2012, the State Board of Elections received a complaint concerning a
105 newspaper advertisement that ran on behalf of candidate Raystine Johnson. David
106 Blackwood stated that the advertisement included photos of both Raystine Johnson as
107 well as her opponents. David Blackwood stated that the complaint also alleged that
108 Raystine Johnson indicated that her campaign paid for the advertisement but there was no
109 statement of authorization. David Blackwood stated that the candidate was formally
110 notified about the violation. David Blackwood stated that the advertisement did not
111 violate Chapter 9.5 of Title 24.2 of the Code of Virginia. David Blackwood noted that the
112 statement of authorization is not required “if the sponsor of the advertisement is the
113 candidate the advertisement supports or that candidate’s campaign committee”. David
114 Blackwood informed the Board that the staff recommendation was to not assess the civil
115 penalty as the candidate was not in violation of the requirements. Chairman Judd moved
116 to accept the staff recommendations and not impose a civil penalty. Secretary Palmer
117 seconded the motion. Chairman Judd asked if there were any public comments. Jim
118 Rainey, attorney for Raystine Johnson, approached the podium and expressed agreement
119 with the Board’s decision and staff recommendation not to assess a civil penalty.
120 Chairman Judd asked if there were any other comments. Donald Blythe, Franklin City
121 Councilmember, approached the podium and expressed concern that the Johnson
122 campaign used his picture in their materials even though he was not a candidate for
123 office. Donald Blythe noted that the campaign materials also tied him to a coalition and
124 that he is not a member of any coalition. David Blythe thanked the Board for their time
125 and asked the Board to consider the details he provided. Chairman Judd clarified that the
126 Board was not responding to the content of the campaign materials rather the statement of
127 authorization. Chairman Judd inquired if there were any other comments. Earl Blythe,
128 candidate for Franklin City Councilmember, approached the podium and stated that he

129 believed the interpretation of the applicable Code section had be misinterpreted and that
130 the staff and Board interpretation of the applicable Code section was contrary to the
131 intent of the General Assembly when passing the legislation. Chairman Judd inquired if
132 there were any other comments. Jim Councill, Franklin City Mayor, approached the
133 podium and informed the Board that he was in support of Earl Blythe's statement and
134 that he had spoken with Virginia General Assembly Delegates on the matter. Jim
135 Councill conveyed that the Commonwealth's Attorney had been consulted on this matter
136 as well as the Franklin County Electoral Board. Chairman Judd inquired if there were any
137 other comments. Greg MeLemoe, Franklin City Councilmember, expressed disagreement
138 with the interpretation of the Board and staff recommendations and believed that the
139 interpretation of the Code violated the intent of the legislators. Chairman Judd inquired if
140 there were any other comments. Chairman Judd noted that working under the current
141 Code language that there was no violation and Secretary Palmer concurred with that
142 analysis. Chairman Judd moved that the Board find no violation by the Johnson campaign
143 and a civil penalty should not be assessed. Secretary Palmer seconded the motion and
144 Chairman Judd asked if there was any further public comment and with there being none
145 the Board unanimously passed the motion.

146 David Blackwood identified the second portion of the complaint against Raystine
147 Johnson that involved two flyers distributed on behalf of the candidate. David Blackwood
148 stated that both flyers advertised a campaign fundraiser on behalf of Raystine Johnson:
149 one scheduled for March 31, 2012 and the other for April 21, 2012. David Blackwood
150 stated that neither document contained the required finance disclosure statement. David
151 Blackwood stated that staff recommended assessing a civil penalty totaling three hundred
152 dollars which would represent a first time violation taking place within fourteen days of
153 an election. David Blackwood stated that the candidate had been formally notified about
154 the violation. Chairman Judd asked if there were any public comments. Jim Rainey,
155 attorney for Raystine Johnson, approached the podium and stated that the Board had been
156 presented with two affidavits that state that the two flyers were distributed without
157 Raystine Johnson's support or knowledge. Jim Rainey stated that the Code allowed for
158 independent expenditures if the candidate is neither coordinating nor an active agent of
159 the events. Jim Rainey stated that neither Raystine Johnson nor anyone acting in her
160 behalf participated in the preparation or dissemination of the flyers. Jim Rainey added

161 that Raystine Johnson would be exempt from the disclosure statement. Chairman Judd
162 asked if there were any other public comments. Greg McLemore, Franklin City
163 Councilmember, stated this was done on her behalf and that Raystine Johnson was
164 involved. Greg McLemore stated that the candidate participated in the events and was
165 aware and should be responsible for what was distributed on her behalf. Jim Council
166 approached the podium and stated that there were financial disclosures that did not occur
167 relating to the expenses for the event. Chairman Judd explained that the concern
168 presented by Jim Council was not encompassed in the complaint being considered by the
169 Board. Secretary Palmer asked Jim Rainey if anyone called Raystine Johnson since her
170 phone number was on the flyer. Jim Rainey stated that the question was not a part of the
171 complaint. Chairman Judd stated to Jim Rainey that he desired a response to the question
172 presented by Secretary Palmer. Jim Rainey stated that the question was not a part of the
173 complaint. Joshua Lief, Senior Assistant Attorney General and SBE Counsel, stated that
174 the affidavits were sworn statements addressing the activities of the event and that under
175 the Code there was not a violation. Raystine Johnson approached the podium and asked
176 the Board if they desired an explanation of the telephone number being placed on the
177 flyer. Raystine Johnson stated that Angelia Artiz was in charge of the event. Chairman
178 Judd inquired if she had received any phone calls about the event. Raystine Johnson
179 informed the Board that she had not. Mr. Lief asked Raystine Johnson if she had viewed
180 the flyer before the event. Raystine Johnson stated that she had seen the flyer and was
181 unsure of the timing of when she was exposed to the flyer. Raystine Johnson further
182 stated that she did not see the flyer until after they were distributed. Secretary Palmer
183 stated that he felt that the decision should be made based on the affidavits. Mr. Lief
184 supported that the facts under the affidavits would not involve material involvement on
185 the part of Raystine Johnson. Secretary Palmer moved to dismiss the fine against
186 Raystine Johnson and Chairman Judd seconded the motion. Chairman Judd asked if there
187 were any further public comments and there being none, the Board unanimously passed
188 the motion.

189 The next order of business was the belated certification to the Director of the
190 Department of Conservation and Recreation of the November 8, 2011 Soil and Water
191 Conservation Districts. Matt Abell stated that the State Board of Elections' staff reviewed
192 the official November 8, 2011 Soil and Water Conservation Director Election results

193 certified by each locality. Matt Abell explained that a list of Soil and Water Director
194 Districts winners was presented to the Board. Matt Abell stated that staff had prepared a
195 certification statement for each Board member to sign. Matt Abell stated that the
196 certification statement, winners list and cover letter would be sent to the Director of the
197 Department of Conservation and Recreation. Matt Abell noted that the package of
198 materials before the Board is consistent with State Board's certification to the Director of
199 Conservation and Recreation from 2007. Secretary Palmer moved that the Board sign the
200 certification statement prepared by staff. Chairman Judd seconded the motion, asked if
201 there were any public comments and there being none the Board unanimously passed the
202 motion.

203 The next order of business was the Delegation to the Secretary to certify Soil and
204 Water Conservation Director winners. Matt Abell stated that the State Board of
205 Elections' staff thoroughly reviews the official results certified by each locality before
206 preparing the documents for certification and signature. Matt Abell stated that the time
207 and care taken in preparation of these documents weighed against the Board's actual
208 involvement with the verification effort lended itself to the delegation of this Code
209 requirement to the Secretary of the State Board of Elections. Matt Abell stated that the
210 Secretary could then delegate this function to staff for the next certification event in
211 2015. Chairman Judd moved that the Board retain this function of certifying candidates
212 for the Soil and Water Conservation Directors. Secretary Palmer seconded the motion,
213 asked if there were any public comments, and there being none, the Board unanimously
214 passed the motion.

215 The next order of business was the consideration of the proposed regulations on
216 Material Omissions from Candidate Petitions and Material Omissions from Referendum
217 Petitions. David Blackwood stated that there had been changes to the two regulations
218 1VAC20-50-20 and 1VAC20-60-20 from the version presented to the Board at the
219 previous meeting. David Blackwood explained the changes to the two documents to the
220 Board members. David Blackwood stated that in the course of reviewing the regulations
221 as a result of the Lux decision, questions arouse as to whether the regulations properly
222 identified which omissions should be viewed as material. David Blackwood stated that
223 the changes involved, including removing the electoral board from the review process,
224 changed the numbering on the document and several punctuation errors. David

225 Blackwood recommended to the Board members that the changes be adopted in the
226 format that was presented. Chairman Judd inquired if there were any public comment on
227 the proposed changes and there were none. Secretary Palmer extended his gratitude to
228 SBE staff for their efforts in bringing these forms into compliance. Secretary Palmer
229 moved that all suggested amendments brought before the Board be adopted by the Board
230 as presented. Chairman Judd seconded the motion and inquired if there were any public
231 comments and there were none and the Board unanimously passed the motion.

232 The next order of business was the Board approval of the Voter Registration
233 Application. Martha Brissette, SBE Policy Analyst, explained the changes to the voter
234 registration form to the Board. The changes included moving the voter identification
235 instructions to the same page as the actual application, adding instructions on protected
236 voter address requirements, and conforming the warning required in Va. Code § 24.2-
237 416.2. Secretary Palmer stated that the changes increase the readability and visibility
238 level to the voter. Chairman Judd asked Martha Brissette to further explain the changes to
239 the warning statement on the first page that references voting more than once. Martha
240 Brissette explained that the language in the warning statement must match the Code
241 language in § 24.2-416.2. Secretary Palmer explained that this change was being made to
242 confirm the warning with the language required by the Code. Chairman Judd moved that
243 the Board approve staff's proposed changes to the Virginia Voter Registration
244 Application and Secretary Palmer seconded the motion. Chairman Judd inquired if there
245 were any public comments and there being none, the Board unanimously approved the
246 motion.

247 Chairman Judd then moved to close the meeting to discuss actual and probable
248 litigation matters and specific legal matters requiring the provision of legal advice by
249 legal counsel as authorized by § 2.2-3711(A) (7) of the Code of Virginia. Secretary
250 Palmer seconded the motion and the Board went into Executive Session at 3:35PM.

251 At 3:58PM Chairman Judd moved to reconvene in open session and a roll call
252 vote was taken as required by § 2.2-3712 (D) of the Code of Virginia, unanimously
253 certifying that during the closed meeting (i) only public business matters lawfully
254 exempted from open meeting requirements under this chapter, and (ii) only such public
255 business matters as were identified in the motion by which the closed meeting was
256 convened were heard, were discussed or considered.

257 Chairman Judd asked if there was any other business to come before the Board for
258 the Good of the Order and with there being none Secretary Palmer made a motion to
259 adjourn. Chairman Judd seconded the motion and the Board unanimously passed the
260 motion. The Board shall reconvene on June 5, 2012 at 2:00 PM in the General Assembly
261 Building, House Room C. Chairman Judd asked for any further public comments. There
262 being none, the meeting was adjourned at approximately 4:10PM.

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269 Chair

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Secretary