

MINUTES

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3 The State Board of Elections Board Meeting was held on Monday, November 28,
4 2011. The meeting was held in the General Assembly Building, Room C, E. 910 Broad
5 Street, Richmond, Virginia. In attendance, representing the State Board of Elections
6 (SBE) was Charles Judd, Chair; Kimberly Bowers, Vice-Chair; Donald Palmer,
7 Secretary; Joshua Lief, Senior Assistant Attorney General and SBE Counsel; and Justin
8 Riemer, Deputy Secretary. Chairman Judd called the meeting to order at 10:00AM.

9 The first order of business was the approval of minutes from the State Board of
10 Election Board Meetings held on October 18, 2011 and November 8, 2011. After careful
11 review of the Minutes Vice-Chair Bowers noted changes to the minutes. Chairman Judd
12 moved to accept the suggested changes and the Board unanimously approved the revised
13 minutes.

14 The second order of business was the Secretary's Report delivered by Secretary
15 Palmer. The Secretary's Report is an agenda item for each Board Meeting describing
16 recent developments at SBE. Secretary Palmer reported that SBE received full funding
17 for the Federal Voting Assistance Program grant. Secretary Palmer noted that the grant
18 total of 1.8 million dollars would improve the ability to process ballots to the military and
19 overseas absentee voters. Secretary Palmer noted that this is a result of collaborating with
20 Microsoft & Democracy Live. Secretary Palmer noted that the grant monies would also
21 allow SBE to partner with Open Source Digital Voting Foundation to build a new citizen
22 portal to enable citizens to complete registration and absentee forms via the internet.
23 Secretary Palmer noted that there would also be a partnership with Scytl to research
24 various voting assistance technologies and secure electronic ballot returns. This pilot
25 project would target voters in the Wounded Warriors Program. Secretary Palmer noted
26 that program goals would be achieved if these systems were in place prior to the
27 Presidential Primary. Secretary Palmer introduced David Blackwood, SBE Policy
28 Analyst, as a new addition to the SBE team. Secretary Palmer discussed the recent reports
29 on the Virginia State Budget. Secretary Palmer conveyed that SBE would not be
30 excluded from the overall state budget cuts that are pending and SBE staff had to propose
31 2%, 4%, and 6% budget reductions. Secretary Palmer noted that they would be targeting

32 the costs associated with paper ballots and mailings and would task technology to
33 perform those functions. Secretary Palmer noted that SBE would try to reduce costs by
34 holding personnel positions open and bring services provided by outside sources inside
35 when lower costs are apparent. Secretary Palmer noted that over the last five years SBE's
36 budget has been cut by more than fifty percent. Secretary Palmer stated that some of the
37 reductions have been passed down to the localities and that SBE was tasked with cutting
38 \$482,000 for the current budget. Secretary Palmer thanked the Board Members for being
39 actively present on Election Day, November 2011. Chairman Judd commented that
40 Election Day was without incident which reflects the quality of the individuals who are
41 working within the election community. Chairman Judd also welcomed David
42 Blackwood to the SBE team. Chairman Judd expressed concern that the SBE budget
43 continues to be reduced, especially with the mandates from the federal government on
44 how to conduct elections. Chairman Judd expressed his gratitude to Secretary Palmer and
45 the SBE staff for pursuing the grant. Secretary Palmer noted that when the federal funds
46 are depleted that the federal mandates will be still be required.

47 The third order of business was the presentation of the resolution honoring the life
48 and work of Pat Harrington, former General Registrar of Virginia Beach, who passed
49 away on September 30, 2011. Chairman Judd invited the attending representatives of the
50 Harrington family to the podium for the presentation. Vice-Chair Bowers recited the
51 resolution to the family, the attending audience and presented the resolution to Frank
52 Harrington, Pat Harrington's surviving spouse.

53 The next order of business was to Ascertain the Results of the November 8, 2011
54 General Election pursuant to § 24.2-534 of the Code of Virginia. Matt Abell, Assistant
55 Manager of Election Services, explained the certification process to the Board and SBE
56 staff members. Chairman Judd stated that comments would be taken after the certification
57 process was complete. Terry Ellen Carter, a Montgomery County voter, approached the
58 podium and requested that the election results in Districts A, D, F, and G in Montgomery
59 County be considered void. Ms. Carter expressed that her requests be validated on the
60 basis that it is unknown how many Montgomery County voters received the wrong ballot
61 on Election Day. Chairman Judd inquired if there was sufficient evidence to withhold
62 certification of the results in the House of Delegates, District 12 and Senate District 21.

63 Joshua Lief, Senior Assistant Attorney General and SBE Counsel, informed SBE Board
64 Members that if a candidate felt that there was an improper handling of the election
65 process that the candidate should have taken this matter into court. Joshua Lief noted
66 that it is the responsibility of the candidate to bring complaints to the attention of the
67 State Board of Elections. Joshua Lief added that Montgomery County is under censure
68 from the SBE and that on Election Day the problem was identified and quickly resolved.
69 Chairman Judd, Vice-Chair Bowers, Secretary Palmer, Chris Piper, Matt Abell, and Rose
70 Mansfield partnered to complete the certification for the November 8, 2011 General
71 Election. Chairman Judd, Vice-Chair Bowers, and Secretary Palmer concluded the
72 process by signing the Certificates of Election and Chairman Judd declared that the
73 results of the November 8, 2011 and General Election were certified.

74 The next order of business was Requests for Temporary Full-Time Status for the
75 General Registrars in Surry and Mathews Counties and for the City of Covington.
76 Deputy Riemer informed Board Members that the Electoral Boards have submitted the
77 required requests that are authorized under Chapter 890, 2011 Acts of Assembly Item
78 80(C). Deputy Riemer noted that these acts authorize the State Board of Elections to
79 approve Temporary Full-Time Status to General Registrars who, because of the size of
80 the locality's population, are only funded to work on a part-time status. Deputy Riemer
81 asked the Board Members approve these submitted requests, with one small modification.
82 Deputy Riemer noted the exception of Surry County request for full-time status through
83 July 31, 2012 which should be modified for full-time status through June 30, 2012.
84 Chairman Judd move that the Board approve the requests from the Electoral Board of
85 Mathews County for funding for the General Registrar for temporary full-time status for
86 the months of February and March of 2012, for the City of Covington for the months of
87 January through May 2012, and for Surry County for the period of January 2, 2012
88 through June 30, 2012. Vice-Chair Bowers seconded the motion and the Board
89 unanimously approved the motion. Chairman Judd asked if there were any comments
90 and Robin Lind, General Electoral Board Association, offered his support of this
91 approved motion.

92 The next order of business was the proposed revision to the Virginia Voter
93 Registration Application Form. Jennifer Thomas, SBE Director of Training, explained

94 that with Fairfax County meeting the Voting Rights Act, Section 203 coverage, and in
95 compliance with Virginia Code § 24.2-105, it was necessary to make some minor
96 changes to the Virginia Voter Registration Application Form. s. Thomas explained that
97 the proposed changes included adding an explanation and disclaimer to page one, second
98 paragraph of the Virginia Voter Registration Application Form. Ms. Thomas expressed
99 that additional changes included adding a box, “Check if you need assistance in Spanish”
100 on page 3 and rewording the “Check if you have a disability that requires someone to
101 assist you in order to vote” and deleting the line where a voter describes such disability
102 on that same page. Chairman Judd asked if there were any questions and Vice-Chair
103 Bowers inquired about the location of the changes in section 6. Ms. Thomas directed
104 Vice-Chair Bowers to the print at the bottom of page 3. Joshua Lief, SBE Counsel, noted
105 the proposed change relating to the disability was a positive change and suggested that
106 this change be incorporated into the absentee ballot upon its next revision. Chairman Judd
107 asked if there were any questions or comments from the audience relating to the proposed
108 changes and with there being none Chairman Judd sought a motion to accept the
109 proposed changes to the Virginia Voter Registration Application Form. Vice-Chair
110 Bowers moved to accept the changes to the Virginia Voter Registration Form and
111 Secretary Palmer seconded the motion and the Board unanimously approved the motion.

112 The next order of business was the complaint by Don Assaid and Mark Tyson
113 against State Board of Elections and Botetourt County General Registrar Phyllis Booze.
114 Chairman Judd asked if there was any member of the audience that would like to address
115 the Board and Mark Tyson, Virginia voter and supporter of Don Assaid, expressed
116 gratitude for the time allowed to address the Board. Mr. Tyson stated that he felt that the
117 State Board of Elections had failed in its charter during this election cycle citing Virginia
118 Code § 24.2-103. Mr. Tyson expressed that he believed that the Board failed Mr. Don
119 Assaid, candidate for Board of Supervisors in the Valley District of Botetourt County.
120 Mr. Tyson expressed that he believed that SBE failed to provide accurate voter status
121 information. Mr. Tyson expressed that Virginia Code § 24.2-504 states that persons are
122 entitled to have their name printed on the ballot as independent candidates and he
123 believes that Don Assaid fulfilled all of those requirements and was denied access to the
124 ballot. Mr. Tyson expressed that the State Board of Elections had failed to respond to all

125 inquiries and pleas for assistance and ignored the problem. Chairman Judd asked Mr.
126 Tyson to detail what he was seeking from the State Board of Elections while the Board
127 was in session on this date. Mr. Tyson stated that he would like some of the problems to
128 be addressed and be corrected so that future elections do not have the same problems.
129 Secretary Palmer addressed Mr. Tyson with the question: “How many members of the
130 SBE staff had he communicated with about this issue?” Mr. Tyson stated that he had
131 talked with Deputy Riemer, Martha Brissette, Andrea Keeles, and Rose Mansfield. Mr.
132 Tyson further stated that, although he had spoken with these SBE staff members, there
133 has yet to be a response. Chairman Judd reemphasized that the responses Mr. Tyson and
134 Mr. Assaid received from SBE staff members are indications that the issues presented
135 were not ignored. Mr. Tyson stated that the Assaid voter petitions were based on of the
136 data presented in the VERIS system on the morning of August 23, 2011. Secretary
137 Palmer informed Mr. Tyson that Botetourt County was complete in the redistricting
138 process on August 17, 2011. Secretary Palmer informed Mr. Tyson that there is
139 supporting documentation regarding the completion of redistricting in Botetourt County.
140 Mr. Tyson asked when the disclaimer was added. Secretary Palmer noted that the
141 disclaimer was added at the request of Don Assaid. Secretary Palmer noted that Don
142 Assaid was the only independent candidate who had any issue getting on the ballot
143 utilizing the SBE process. Mr. Tyson stated that the registrar’s office approved Mr.
144 Assaid’s petition submissions and the circulator of the petitions as a qualified voter.
145 Secretary Palmer informed Mr. Tyson that he was challenging the State Board of
146 Elections to perform a duty that is not within its power and it is the local General
147 Registrar and Electoral Board’s duty to place a candidate on the ballot. Mr. Assaid stated
148 that the General Registrar altered the petitions with White Out and that they have brought
149 this to SBE’s attention and it has been ignored. Secretary Palmer assured Mr. Tyson that
150 SBE is not a part of a conspiracy and that SBE did complete redistricting on August 17,
151 2011. Secretary Palmer added that each locality within the Commonwealth has completed
152 redistricting in a timely manner and on schedule. Secretary Palmer noted that there is an
153 investigation into this matter and offered to provide the documentary evidence. Joshua
154 Lief, SBE Counsel, stated to Mr. Tyson that he is welcome to his opinion but to state that
155 the situation was ignored is inaccurate. Mr. Lief further explained that the situation was

156 looked into at great detail. Mr. Don Assaid approached the Board and stated that, “This is
157 a formal complaint of election tampering and election fraud”. Mr. Assaid stated that the
158 General Registrar approved Doug Gimbert, my circulator, as a qualified circulator and a
159 qualified voter on August 23, 2011. Mr. Assaid stated, “She then, very suspiciously, went
160 back and used White Out on the original documents and those documents were altered
161 which is clearly an illegal act”. Mr. Assaid stated that “somebody went to the Electoral
162 Board, which we believe was the Republican Committee Chair, and then went to the
163 General Registrar and approved me as a candidate and qualified as a candidate and then it
164 was released to the press”. Mr. Assaid stated that over the next two days the local
165 Committee Chair went to them and stated that this could not stand and the General
166 Registrar took a registration form from Mr. Gimbert. Mr. Assaid then stated that he took
167 the minutes from the Electoral Board mass meeting. Mr. Assaid stated that Mr. Gimbert
168 then went to register and he was told by “Suzy Somebody” that he was in the Valley
169 District and that he saw the computer screen showing Mr. Gimbert in the Valley District.
170 Mr. Assaid stated that he asked the General Registrar if they had looked at the other
171 candidates’ petitions from two years ago and presented Board Members of the petitions
172 of a rival stating that there were eight signatures added a week after the petition was
173 notarized. Mr. Assaid stated that this is clearly a case of fraud. Mr. Assaid stated that
174 instead of disqualifying the petitions they choose to falsify the document and launch an
175 investigation trying to put my circulator in prison. Mr. Assaid stated that this candidate’s
176 personal and corporate attorney is the Chairman of the Electoral Board and the Electoral
177 Board Secretary is his Treasurer. Mr. Assaid asked SBE Board Members to censure the
178 General Registrar and the Electoral Board and turn this matter over to the Attorney
179 General for an investigation for election tampering and election fraud. Secretary Palmer
180 asked Joshua Lief about the assertion of voter fraud and irregularities in this case and the
181 proper place for this to be handled would be in the Commonwealth Attorney’s Office.
182 Joshua Leif stated that this assumption was correct and that the local Commonwealth’s
183 Attorney would handle these allegations. Mr. Assaid stated that the local Commonwealth
184 Attorney was compromised and that he went to him on this matter and he was told that
185 this was not viable. Joshua Lief inquired of Mr. Assaid if he was referring to Mr. Joel
186 Branscom and Mr. Assaid stated that this was correct. Mr. Assaid stated that Mr.

187 Branscom is compromised in this matter which is why we are asking the Attorney
188 General to investigate this matter. Secretary Palmer stated that he understood that there is
189 an investigation into this matter. Mr. Assaid reputed this stating that the investigation was
190 to see if they could charge Doug Gimbert into falsifying a signed affidavit. Joshua Lief
191 commented that since Mr. Assaid was aware of the investigation then he should also be
192 aware of the names of the individuals conducting this investigation. Mr. Assaid stated
193 that he knew the name of the investigator to be Dick Trodden and that he was meeting
194 with Mr. Trodden tomorrow. Mr. Lief advised Mr. Assaid that he should speak to Mr.
195 Trodden about this matter. Mr. Assaid stated that Mr. Trodden had informed him that this
196 was not the scope of his investigation. Chairman Judd asked counsel to give the Code
197 citation that would support giving the Board the power to conduct the investigation. Mr.
198 Lief stated that under Virginia Code § 24.2-104 this Board could make a request to open
199 an investigation into this matter. Mr. Lief inquired of Mr. Assaid if a lawsuit had been
200 filed. Mr. Assaid stated that they were going to file and then decided to withdraw the
201 lawsuit. Mr. Assaid further explained that he and Mr. Tyson drove to Richmond, SBE, on
202 October 31, 2011, without an appointment. Mr. Assaid stated that he understood that
203 meetings were occurring and they informed Rose Mansfield that they would be
204 unavailable all day. Mr. Lief then asked for a clarification that Mr. Assaid's attorney was
205 Mr. Williams. Mr. Assaid stated that was correct. Secretary Palmer responded by stating
206 that at least five members of the SBE staff discussed this Mr. Assaid and that Mr.
207 Assaid's visit was unannounced and without an appointment while SBE was preparing
208 for an election. Secretary Palmer noted that after Mr. Assaid was informed that there
209 would not be an opportunity to meet on that date that Mr. Assaid stayed in the building.
210 Secretary Palmer informed Mr. Assaid that he contacted Mr. Assaid's lawyer to inform
211 him of the situation and that legal counsel apologized for Mr. Assaid and stated that they
212 were not aware of Mr. Assaid's visit. Mr. Assaid thanked the Board Members for their
213 time.

214 Chairman Judd then asked if there was any other business to come before the
215 Board. Mr. John Roger McCauley, resident of Christiansburg, informed the Board that he
216 had previously spoken previously to past SBE Board Members regarding an investigation
217 regarding the Montgomery County General Registrar's Office. Mr. McCauley expressed

218 his belief that there is a serious non-performance issue with the General Registrar in
219 Montgomery County and would like this Board to follow the recommendations of
220 previous Boards and send a team into the General Registrar's office to investigate its
221 activities. Chairman Judd stated that Mr. Lief, SBE Counsel, has advised the Board
222 Members on actions required. Chairman Judd stated that the current SBE Board has
223 issued a letter of censure to the Montgomery County Electoral Board and to the General
224 Registrar. Secretary Palmer expressed gratitude to Mr. McCauley for taking an active part
225 in the electoral process and for taking the time to attend local and state meetings.
226 Chairman Judd then asked if there was any other business to come before the Board.

227 Terry Ellen Carter, a Montgomery County voter, expressed concerns regarding
228 the recent performance of Randy Wertz, Montgomery County General Registrar, in
229 carrying out his assigned duties. Ms. Carter provided several incidents that she said were
230 cause for concern during the recent elections. Ms. Carter stated that as a voter in Virginia
231 she is concerned that the results of the election are distorted due to the mishandling of
232 ballots and the general election laws. Ms. Carter stated that Mr. Wertz and the
233 Montgomery County Electoral Board are incompetent. Secretary Palmer suggested that
234 SBE staff would meet to ascertain the issues and to develop a training protocol. Secretary
235 Palmer stated that he did not see any evidence of fraud or election tampering. Ms. Carter
236 appealed to the Board to vote on additional sanctions. Vice-Chair Bowers stated that we
237 did vote on this issue in the past. Vice-Chair Bowers further stated that the appropriate
238 actions have been taken and have been heard by all current SBE Board Members.
239 Chairman Judd expressed his gratitude to Ms. Carter for taking the time to attend the
240 Board Meeting to share her concerns. Chairman Judd stated that he wanted to thank the
241 gentlemen from Botetourt County and assured them that everything that was said will be
242 taken under advisement and placed in the hands of the proper authorities.

243 Chairman Judd then asked if there was any business to come before the Board for
244 the Good of the Order. Joshua Lief informed the Board Members that there was a lawsuit
245 in connection with a House of Delegates race, *Osborne vs. Palmer*, and that that the suit
246 has been filed and is in the public record. Mr. Lief stated that the Attorney General's
247 Office was preparing a response and filing the papers today saying that the case is moot.
248 Chairman Judd announced that they would begin signing the Certificates of Elections.

249 Chairman Judd then asked if there was any business to come before the Board for
250 the Good of the Order and with there being none Chairman Judd then made a motion to
251 adjourn. Secretary Palmer seconded the motion and the Board unanimously approved the
252 motion. The Board shall reconvene on December 28, 2011 at 10:00AM. Chairman Judd
253 asked for any public comments. There being none, the meeting adjourned at
254 approximately 12:45PM.

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Secretary

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Chair

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Vice-Chair

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