

1 MINUTES

2

3 The State Board of Elections board meeting was held on Friday, July 20, 2018, in
4 House Room 3 of the Virginia State Capitol, Richmond, Virginia.

5 In attendance: James Alcorn, Chairman, and Clara Belle Wheeler, Vice Chair
6 represented the State Board of Elections (“The Board”). On behalf of the Department of
7 Elections (“ELECT”) was Christopher E. “Chris” Piper, Commissioner, and Jessica
8 Bowman, Deputy Commissioner. In attendance, representing the Office of the Attorney
9 General (“OAG”), was Anna Birkenheier, Assistant Attorney General. Chairman Alcorn
10 called the meeting to order at 2:46 PM.

11 The only order of business was to hear an appeal on petitions of qualified voters
12 from Peter J. Wells, presented by Samantha Buckley, ELECT Policy Analyst. Mr. Wells
13 sought to qualify to have his name appear on the November 2018 general election ballot as
14 a Libertarian candidate for House of Delegates, 4th District. Mr. Wells had nine hundred
15 thirty-two (932) valid signatures on his petitions of qualified voters, which was sixty-eight
16 (68) signatures short of the 1,000 valid signatures required by the Code of Virginia §24.2-
17 506. Mr. Wells submitted two hundred ninety-nine (299) signatures for the Board’s
18 review, as required under regulation 1VAC20-50-30. In order for the Board to hear an
19 appeal of petition signatures for ballot access, 1VAC20-50-30 requires a candidate to
20 submit a sufficient number of rejected signatures for review, as well as a justification to re-
21 consider, at least two (2) business days before the date of the scheduled appeal. ELECT
22 considered one hundred twenty (120) of the two hundred ninety-nine (299). Under §24.2-
23 506, the Board’s considerations were limited to whether or not the signatures on the
24 petitions that were submitted for reconsideration were reasonably rejected according to the
25 requirements of §24.2-506 and the uniform standards approved by the Board regarding
26 petition pages and signatures under 1VAC20-50-20.

27 Of the one hundred twenty (120) signatures ELECT considered, ELECT
28 recommended that fifty-five (55) signatures should have been considered valid. The
29 signatures are broken into five categories.

30 Thirty-one (31) signatures were submitted for reconsideration due to an alleged
31 validation error; ELECT recommended that the Board validate twenty-eight (28) of these

32 signatures. Sixteen (16) signatures were submitted for reconsideration due to a failure to
33 provide the full date of signature. ELECT recommended that the Board validate none of
34 these signatures. Twenty (20) signatures were submitted for reconsideration due to voters
35 who “moved within the 4th district”; ELECT recommended that the Board validate two
36 signatures.

37 Forty-one (41) signatures were submitted for reconsideration due to being
38 originally rejected for an insufficient notarization: the notary seal was not photographically
39 reproducible. Prior to the SBE meeting the Notary Commission subsequently informed
40 ELECT that if the seal could be scanned and partially visible, the seal should be considered
41 photographically reproducible. ELECT scanned the seal on the petition signatures in
42 question, and found the seal sufficiently reproducible to validate twenty-three (23)
43 signatures.

44 One hundred ninety-one (191) signatures were submitted for reconsideration as
45 “Other.” ELECT found three of these signatures were improperly rejected under one of
46 the previous categories, and recommended that the Board validate those signatures. One
47 hundred seventy-nine (179) of the signatures in the category of “Other” were explained by
48 a statement that Mr. Wells was attempting to contact the voter in order to obtain an affidavit
49 before the Board’s hearing. ELECT did not consider this explanation as an acceptable
50 reason for reconsideration as required under the Administrative Code. ELECT informed
51 the Board that validation of these fifty-five (55) signatures review would increase Mr.
52 Wells’s signature total to nine hundred eighty-seven (987) valid signatures. If the Board
53 so moved, Mr. Wells would still be 13 signatures short of the required 1,000.

54 Vice Chair Wheeler asked how many total signatures Mr. Wells submitted by the
55 deadline. ELECT responded: one thousand six hundred and ten (1,610) signatures.
56 ELECT initially found 932 signatures valid. After examining the list of rejected signatures
57 Mr. Wells submitted in his appeal, ELECT determined that a total of nine hundred eighty-
58 seven (987) signatures were valid. Vice Chair Wheeler asked if Mr. Wells had any of the
59 signatures validated by the General Registrar, as candidates often do before the deadline,
60 before the signatures were provided to ELECT. Ms. Buckley was unable to speak to the
61 steps Mr. Wells took prior to submitting petitions to ELECT.

62 Chairman Alcorn asked Vice Chair Wheeler if there were any concerns with
63 accepting the fifty-five (55) signatures ELECT recommended validating. Vice Chair
64 Wheeler said no, but asked how a notary seal was deemed photographically reproducible
65 or not. Ms. Buckley said “photographically reproducible” referred to whether or not a
66 scanner could detect and reproduce the imprint of the notary stamp. Chairman Alcorn
67 clarified that the Code requires a notary seal be visible and photographically reproducible.

68 Chairman Alcorn clarified that the question before the Board was whether or not
69 the signatures listed under “Other,” with the explanation that Mr. Wells was attempting to
70 contact signers in order to obtain an affidavit, was a reasonable and acceptable excuse.
71 Vice Chair Wheeler asked whether Mr. Wells submitted the signatures for contest in a
72 timely matter for the appeal. Ms. Buckley said yes, but said that the Board could decide
73 whether Mr. Wells’s explanation regarding contacting signers was an acceptable
74 justification for reconsideration. If the Board agreed that “Other” was acceptable, it could
75 then consider those remaining signatures under appeal.

76 Commissioner Piper asked the Board to review the regulation regarding appeals
77 and signatures. Chairman Alcorn addressed 1VAC20-50-30(G), which reads: “The
78 candidate bears the burden of proof in establishing that a sufficient number of signatures
79 from qualified voters were timely provided [...] The candidate must submit a list
80 containing the rejected signatures to be reviewed and the specific reason for each
81 signature’s reconsideration at least two business days prior to the date on which the appeal
82 will be heard.” The Chairman stated the question was if waiting for response for an
83 affidavit from the voter was an acceptable justification for reconsideration. Vice Chair
84 Wheeler re-stated the Chair’s comment, postulating that Mr. Wells did not have a reason
85 as to why those signatures should be reconsidered, and that without an affidavit, the
86 signatures should not be reconsidered. Ms. Buckley said it was the Board’s decision
87 whether or not to use an affidavit as a way of validating signatures. Ms. Birkenheier
88 clarified that the Board was not making a decision on whether or not an affidavit was
89 usable, but rather if providing an explanation of waiting on an affidavit was. Ms.
90 Birkenheier asked if there were actually any affidavits provided as explanations by Mr.
91 Wells. Ms. Buckley said yes, but that they were affidavits from voters whose signatures
92 had already been validated by ELECT. Ms. Birkenheier asked if those affidavits had been

93 considered by ELECT already in presenting the numbers to the Board, and Ms. Buckley
94 said yes; Ms. Birkenheier clarified that the only affidavits in question were those yet to be
95 provided by the time of the meeting. Vice Chair Wheeler stated deadlines existed for a
96 reason, and acknowledged the hard work that goes into collecting petitions for candidacy.
97 Chairman Alcorn stated that an affidavit that was not received did not satisfy the regulatory
98 requirement for a reason to reconsider a signature.

99 Bo Brown, Chairman of the Libertarian Party of Virginia, said the Libertarian Party
100 had different procedures than other major parties do. Mr. Brown said that normally the
101 Party would submit a minimum of 1,400 signatures, providing a 40% gap to cover any
102 invalid signatures. Mr. Brown expressed concern that over 500 signatures were rejected
103 by one local general registrar's office. Mr. Brown said the local general registrar did not
104 provide the required notice of insufficient signatures which must be provided to a candidate
105 within ten days of the determination. He added that the Party only submitted 299
106 signatures for review to limit ELECT's work given the short timeline for review. He
107 explained the difficulties of attempting to obtain the affidavits from signatories to submit
108 as proof for reconsideration. Mr. Brown noted the signatures rejected due to an incomplete
109 date only lacked the year. Mr. Brown added that the Party did not file for the election until
110 2018, and did not (nor could have) collected signatures prior to 2018, making the
111 requirement that the year be on the petitions redundant.

112 Chairman Alcorn then examined the 16 signatures rejected due to an incomplete
113 date, and referred to 1VAC20-50-30 which states that dates are omissions to be treated as
114 non-material, provided the GR can independently and reasonably verify the validity of a
115 petition or signature. The Chairman asked ELECT if one could argue that the signatures
116 could not be counted if the date was not there. The Chairman asked if the petition
117 signatures were collected in 2018, and if the notary notarized the document in 2018, was it
118 possible to reasonably conclude that the individuals signed the petition in 2018, despite not
119 writing the year next to their signatures. Vice Chair Wheeler clarified that the signatures
120 had a month and day, but were just missing the year. Mr. Brown said that that was so, and
121 that the entire petition page was discarded because of this lack of year in the date. Vice
122 Chair Wheeler asked who made the decision to discard the entire page, and Chairman
123 Alcorn said both the local registrar and ELECT staff determined to do so.

124 Commissioner Piper said that 1VAC-20-50-20 read that the “following omissions
125 shall be treated as nonmaterial provided the general registrar can independently and
126 reasonably verify the validity of the petition or signature,” in the case that “the signer fails
127 to provide the date but a period of time that qualifies can affirmatively be established with
128 previous and subsequent dates provided by other signers upon the petition page.” The
129 Commissioner pointed out that because no signer provided a date upon the petition page,
130 that the GR could not verify the date of any signature in accordance with the language in
131 the regulation. Chairman Alcorn asked if there was something that said the Board was not
132 allowed to count those signatures, because the regulation did not clearly state that the GR
133 could or could not accept signatures based on the date, but rather left the issue in a grey
134 area. The Chairman asked if there was any question that the signatures were collected
135 outside of the proper date frame; he stated that the section of the regulation the
136 Commissioner read outlined guidance to help establish what to do with signatures that were
137 clearly within the date frame. The section did not make clear what to do with signatures
138 that are not clearly within the date frame. Chairman Alcorn asked if there was concern that
139 the signatures were collected outside of the date frame; if that was not a concern, then he
140 considered the issue not material.

141 Commissioner Piper raised concerns that the discussion was getting into the area of
142 re-writing the regulation. The Commissioner asked if the reason the Chairman was
143 providing was that the notary signed the petitions; Chairman Alcorn clarified that he was
144 stating that there were multiple indications of when the signatures were collected, including
145 the date of the notary’s signature, and that the petitions were submitted in the year 2018.
146 The Chairman said that the only question was when in 2018 the signatures were collected.
147 Chairman Alcorn asked if ELECT had the date that Mr. Wells filed for office, stating it
148 would be highly unlikely that signatures would be collected before the candidate filed for
149 office. Ms. Buckley said Mr. Wells filed for office on June 1, 2018, stating he submitted
150 his certificate of candidate qualification (SBE-501) and declaration of candidacy (SBE-
151 505). Mr. Brown informed the Board that candidates could not begin collecting signatures
152 until January 2 of the year that the candidates filed.

153 Commissioner Piper voiced concern, stating that if the Board accepted the
154 signatures without a year, there could be potential for arguing that a page submitted with

155 no date on it anywhere should be accepted. The Commissioner deferred to the Board on
156 the matter. Mr. Brown asked how many signatures had no date on them. Chairman Alcorn
157 asked if there was cause to think the signatures were collected prior to January 2. The
158 Chairman then asked if the Board could see an example of the notary section of the petition
159 page, and the Commissioner and Deputy Commissioner showed the Board an example.

160 The Board clarified that the notary was not attesting what day the signatures were
161 received, but rather notarizing the affidavit, signed by petition circulators, at the end of a
162 petition page. The affidavit is a statement, signed by petition circulators, stating that they
163 witnessed each signature on the petition page. After viewing the example page, Vice Chair
164 Wheeler clarified that no signatures could be dated after the date of notarization. The Vice
165 Chair stated that Mr. Brown was saying that the candidate did not collect signatures prior
166 to January 2, 2018 as per Code; therefore, the dates on the petition pages could not be from
167 any year other than 2018. Commissioner Piper restated his concerns.

168 Chairman Alcorn asked that whether the missing date would be a material omission
169 if the Board did not doubt that the signatures were collected in 2018. Vice Chair Wheeler
170 said she would hate for a candidate to submit more than the required number of signatures
171 only to not have access to the ballot because of a missing year that appears in other places
172 on the petitions— given that, in her estimation, it would be impossible for a voter to have
173 signed the petition prior to 2018.

174 Ms. Birkenheier stated that though the notary's signature, and inclusion of the year,
175 created an end date for when petitions were collected, that it does not create a start date.
176 The Board could not be positive that signatures were not collected before January 2, 2018,
177 and there was no marker to determine when the petition was in circulation. Chairman
178 Alcorn asked if a signer included a date, and no other signer did, if ELECT would accept
179 that date for all of the other signatures. Commissioner Piper said ELECT could make that
180 assumption if the signature was at the top, since it could be assumed that any signer after
181 that signed the petition after or on the same date as the first signer. Chairman Alcorn asked
182 whether that would apply if the signers at the bottom were the only ones to include a date.
183 Commissioner Piper replied that in his opinion, in that case only the signers at the bottom
184 that included the date should be counted.

185 The Commissioner restated his concerns in regards to the particular petition page
186 in question, which had no dates from any of the signers on it, stating it could open the door
187 to potential nefarious actions. Vice Chair Wheeler stated that the Board was not rewriting
188 or discussing Code, but discussing a regulation. The Vice Chair said the regulation had
189 grey area, and encouraged the Board to make a decision to fix that grey area and to not
190 disenfranchise people who want to vote for Mr. Wells, who gave over the required number
191 of signatures. Vice Chair Wheeler stated she did not think the missing year was an issue,
192 given the other details laid out during the meeting. The Vice Chair suggested revising the
193 petition forms to clearly state that “date” meant “day, month, year.”

194 Chairman Alcorn laid out the situation, and concluded that if the Board were to
195 decide that the date was not an issue, that ELECT staff would still have to verify the
196 signatures on the petition page in question. Vice Chair Wheeler asked if the signatures had
197 been validated besides the issue with the missing year in the date. Ms. Buckley said they
198 had not been validated. The Chairman stated that because the Code, and the petition form
199 itself, did not state that the date had to be put next to the signatures for the signatures to be
200 valid, that he did not find the missing date as a material omission. Vice Chair Wheeler
201 agreed with the Chairman’s determination. Vice Chair Wheeler moved *the Board accept*
202 *the signatures that did not have the year 2018*. Chairman Alcorn amended the motion to
203 instead move that the Board recess to allow staff to research the signatures for their validity.
204 Mr. Brown asked if there was an appeal process for signatures thrown out during the
205 meeting, and Chairman Alcorn said that the decision made during the meeting, under Code,
206 was final. Vice Chair Wheeler motion *the Board recess to allow staff to research the*
207 *petition signatures*. Chairman Alcorn seconded the motion, and the motion passed
208 unanimously. The Board began recess at 3:40 PM, to reconvene at 4:10 PM.

209 The Chairman moved *the Board reconvene*. Vice Chair Wheeler seconded the
210 motion, and the motion passed unanimously. Chairman Alcorn moved *the Board accept*
211 *the staff’s recommended signatures as presented in the materials provided to the Board;*
212 *the Chairman further moved the Board not accept the affidavits presented today because*
213 *they do not meet the requirements of IVAC20-50-30 (G), which requires a specific reason*
214 *two days before the meeting*. Vice Chair Wheeler seconded the motions and the motion
215 passed unanimously. The motion brought the official number of valid petition signatures

216 to 987. Chairman Alcorn then moved *the Board accept the new signatures that were*
217 *counted during recess by the staff that did not have the year, but that were not considered*
218 *a material omission after the conversation held earlier.* Vice Chair Wheeler seconded the
219 motion and the motion passed unanimously.

220 Ms. Buckley informed the Board that of the sixteen signatures researched by
221 ELECT staff during the recess, thirteen were valid, which would bring the total number of
222 valid petition signatures to 1,000— which is the number required by Code. Vice Chair
223 Wheeler asked how many signatures did not have the year included on the petition page.
224 ELECT did not have that number readily available, so the Vice Chair withdrew her
225 question. Chairman Alcorn moved *the Board accept the additional 13 signatures as*
226 *adjudicated by the staff, which gives Mr. Peter Wells a total of 1,000 signatures for the 4th*
227 *district.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.
228 Chairman Alcorn moved *that Peter Wells has met the petition requirements in order to be*
229 *certified for the 4th district for the November election according to the signatures counted*
230 *today and provided in the meeting materials.* Vice Chair Wheeler seconded the motion
231 and the motion passed unanimously.

232 Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler
233 seconded the motion, and the motion passed unanimously. The meeting was adjourned at
234 approximately 4:53 PM. The next Board meeting will be on August 15 at 11:30 AM.

235

236

237

238

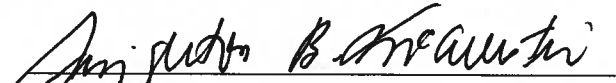
239

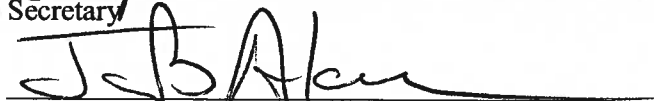
240

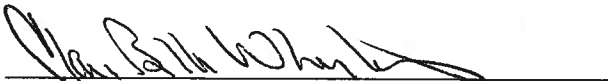
241

242

243


Secretary


Chair


Vice Chair