MINUTES

The State Board of Elections Board meeting was held on Tuesday, March 15 2011. The meeting was held in the State Capitol, House Room Two in Richmond, Virginia. In attendance, representing the State Board of Elections was Charles Judd, Chair; Kimberly Bowers, Vice-Chair; Donald Palmer, Secretary; Justin Riemer, Confidential Policy Advisor; Joshua Lief, Senior Assistant Attorney General and SBE Counsel; Susan Lee, Election Uniformity Manager; Peter Goldin, Policy Analyst; Martha Brissette, Policy Analyst; Susan Pollard, Director of Communications; and Alfred Giles, Voting Technology Coordinator. Chairman Judd called the meeting to order at 9:02 AM.

The first order of business was the approval of Minutes from the State Board of Elections Board Meeting held on February 18, 2011. Vice-Chair Bowers made a motion to approve the minutes. Chairman Judd seconded the motion and the minutes were unanimously approved by the Board.

Chairman Judd then called for the meeting to go into Executive Session, to discuss actual and probable litigation matters requiring the provision of legal advice by agency counsel, as provided by section 2.2-3711(A) (7) of the Code of Virginia. Vice-Chair Bowers seconded the motion, and the motion was unanimously passed. The meeting moved into Executive Session.

After the Executive Session, the Board opened the meeting to the public and each Board member certified by roll call vote that, to the best of each member's knowledge, only lawfully exempt public business matters identified in the motion closing meeting were heard, discussed, or considered in the closed portion of the meeting.

Martha Brissette then informed the Board of a communication SBE staff received requesting correction of the previously approved Minutes of the January 31, 2011, Board Meeting regarding Patricia Napoleon's statement. Martha Brissette informed the Board that Virginia Code section 2.2-3806 allows individuals to submit statements of less than 200 words stating their position regarding government records about them. Pursuant to this Code section, Ms. Napoleon on March 8, 2011, emailed a statement to append to the Board minutes. Upon motion, the Board approved unanimously appending the statement

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of correction to follow the approved Minutes from the January 31, 2011, State Board of Elections Board meeting.

The next order of business was the request for approval of two updated State Board of Elections' forms on the appointment of General Registrars in Virginia. SBE Elections Uniformity Manager Susan Lee presented the updated forms for General Registrar Oath or Affirmation Form Number 120 and General Registrar Certification of Appointment Form. Upon motion, both forms were approved unanimously by the Board.

The next order of business was the request for indefinite approval of voting equipment. Al Giles requested approval of the use of AutoMARK, ADA compliant ballot marking devices, with AccuVote optical scanners. Each piece of equipment has been certified in the Commonwealth, but in different system packages. Both systems are included in Premier Election Systems Assure 1.2 package. While Assure 1.2 was completing federal certification, two previous requests for temporary approval to use the combination of equipment were submitted to the Board and approved based on the states of Iowa and Florida's independent testing and approval of the package. Virginia's state certification procedures provide for reciprocity, which allows the consideration of independent testing in conjunction with, or in lieu of, federal certification. Other than direct-recording electronic voting machines (DREs), an AutoMARK with a ballot scanner system is the only other ADA compliant accessible system available to the Commonwealth. Upon motion, the Board approved unanimously to allow all localities to use the AutoMARK with AccuVote optical scanners as long as each system is certified for use in the Commonwealth.

The next order of business was requests to waive campaign finance civil penalties presented by Peter Goldin, SBE Policy Analyst. For "Citizens First for Blacksburg", the staff recommended to uphold the $100.00 penalty for the late filing of a campaign finance report. After determining no one was present for the organization, the Board, upon motion, voted unanimously to uphold the $100.00 penalty.

Mr. Goldin informed the Board that the YR Dominion Political Action Committee (PAC) disbanded shortly after coming together and did not raise or expend any funds. Furthermore, the PAC backdated their "close" date. Mr. Herndon, Treasurer for the YR Dominion PAC was not present in the audience for questioning. Chairman Judd asked

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Mr. Goldin about the additional fines, and Mr. Goldin responded that the SBE staff has recommended the $50.00 fine because this was a first time penalty, and the Code requires a recommended penalty. Chairman Judd motioned the organization should not be fined. The Vice-Chair seconded the motion, and the motion was unanimously approved by the Board.

Justin Riemer commented about a tornado drill in the State Capitol at 9:45 AM. The Board Meeting reconvened at 9:52 AM.

Chairman Judd questioned the Shenandoah County Democratic Women's Club's expense for their honorarium. There was no one present in the audience to answer the Board's concerns. The State Board of Elections does not have further information regarding this issue. Vice-Chair Bowers had a couple questions regarding the structure of their organization, and its description. Justin Riemer, Confidential Policy Advisor, responded that oftentimes campaign committees do not incorporate. Joshua Lief, Senior Assistant Attorney General and SBE Counsel, commented that their structure does not excuse their penalty for their honorarium. The definition of a PAC was discussed at length regarding the Shenandoah County Democratic Women's Club. It appeared that the organization contributed solely to the John Lesinski campaign since they did not invite other candidates. It also remains unknown whether they paid honorariums to other speakers. Vice-Chair Bowers requested more information on this organization for clarity in order to weigh her decision. Mr. Goldin suggested making a request for their appearance at the next Board Meeting to aid their case with the Board. Therefore, until the next Board Meeting in April, the organization shall not accrue additional civil penalties. Mr. Lief added that if they are truly not a PAC and remain apolitical, than they do not need to report the contribution. The Board motioned and agreed unanimously to postpone this case until further information is gathered.

The College Republicans Federation of Virginia and the University Democrats have been accused of acting as a PAC without registering and reporting, and have thus accrued campaign finance civil penalties. However, Chairman Judd has disclosed himself as the Republican Party of Virginia Executive Director during the specified time period, and the organization bought tickets to a state function that exceeded the reporting threshold. Chairman Judd also stated the University Democrats had a similar issue of

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purchasing tickets to a state event over the reporting threshold. Mr. Goldin received a letter during the weekend of March 11, 2011, restating the facts in a Board memorandum. Thus, the SBE staff recommended waiving the penalty fee to the College Republicans Federation of Virginia and University Democrats because they did not meet the "primary purpose" test and were therefore not required to register and report as a PAC. The motions to waive for both groups were agreed to unanimously by the Board.

The final order of business included complaints by Marion Werkheiser, Jacquelyn Bailey Kidd, Laura Judd, and Linda Pittman against Tammy Alexander, Vice-Chair from the City of Petersburg Electoral Board. All plaintiffs spoke in-person directly to the Board requesting a petition for Ms. Alexander's removal as Vice-Chair. First, Marion Werkheiser, a Springfield resident who worked as a Democrat election protection volunteer attorney and a member of the Virginia State Bar, has been under a wrongful criminal investigation due to Vice-Chair Alexander's faulty understanding of election laws. Werkheiser stated Vice-Chair Alexander unlawfully ejected her from a polling place citing a non-existent law that supposedly prevented Werkheiser from illegally communicating with a voter for any reason. Vice-Chair Alexander contacted the Commonwealth Attorney to indict Werkheiser on charges, which they found to be groundless. Moreover, allegations in newspapers such as *Virginia Lawyers Weekly* during the criminal investigation have affected her reputation as a lawyer and member of the Virginia State Bar. Werkheiser made a brief statement about Vice-Chair Alexander's wrongful exercise of authority requesting a petition for her removal citing infractions made to the democratic process; damage made to reputations of good people who wish to be a part of the democratic process; and deterred future participation in the democratic process.

Next, Jacquelyn Bailey Kidd took the podium to testify before the Board. She is seventy years old and a third generation city resident of Petersburg from Leesburg, who has retired from Social Services as a National Public Policy Analyst in child welfare. Ms. Kidd stated she intended to run for Petersburg City Council and turned in her petition. Two days later, she stated she was accused of criminal misconduct. Her minister, who is her employee, was also accused of wrongdoing. After an investigation, the charges were dropped. However, her name was smeared in the newspapers for criminal prosecution

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during the investigation, and she has several thousand dollars in fines involving campaign finance disclosure forms. Ms. Kidd apologized to the Board for her emotional testimony.

Laura Judd, a Petersburg resident since 2004, was next to testify before the Board. She has served as a chief election official from Baltimore, Maryland. She volunteered her services, and when she arrived at her Ward Six precinct on November 2, 2010, Vice-Chair Alexander began asking questions about Ward Six citizens. Ms. Judd stated that everything appeared fine except that the people in Ward Six thought they could vote for Annie Mickens who is on the ballot for Ward Five. She stated to Vice-Chair Alexander that maybe this was due an illiteracy issue, which continues to plague 43% of citizens in Petersburg. Then, Vice-Chair Alexander asked Ms. Judd to leave her precinct. Ms. Judd felt that Vice-Chair Alexander did not give her proper explanations for her termination. Ms. Judd stated that the termination made her feel embarrassed and hurt. Shortly after the removal, she received a letter regarding prosecution due to abandonment of post. Ms. Judd stated that Vice-Chair Alexander lied to prosecution about her abandonment of post. Ms. Judd denied these accusations and stated that Vice-Chair Alexander had lied. Furthermore, Ms. Judd's name was smeared in the newspapers leaving her humiliated. She therefore accuses Vice-Chair Alexander of abusing her authority.

Linda Pittman, a geology professor at Richard Bland College in Petersburg, testified next to the Board about her interaction with Vice-Chair Alexander. She is a Treasurer for Reform Petersburg Now PAC. Mrs. Pittman began a petition for the removal of the entire Petersburg City Council. While Mrs. Pittman was on vacation, Vice-Chair Alexander tried contacting her by phone. When Mrs. Pittman returned, she discovered a message from the President of Richard Bland College on her voicemail. Mrs. Pittman had used her direct telephone number at Richard Bland College in error without the knowledge or permission of the college as the primary daytime contact number for Reform Petersburg Now. Since then, she has been harassed by newspapers and reporters for her misstep. One example she cited was a reporter informing her about a lawsuit filed against her by a member of the Petersburg City Council for listing the wrong number. At this point, Ms. Judd interjected and stated that her name was also smeared in the newspapers.

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Robin Lind, Secretary of the Goochland County Electoral Board and Legislative Chair for the Virginia Electoral Board Association (VEBA), spoke to the Board on behalf of VEBA. Mr. Lind inquired the Board about notification to Vice-Chair Alexander and her requested presence at the March 15, 2011, Board Meeting. Lind noted that Alexander claimed she was not notified by the State Board of Elections about the date of the Board Meeting. Secretary Palmer referred to Mr. Riemer for a report on communications with Vice-Chair Alexander. Mr. Riemer explained to the Board that he had moved the agenda to March 15, 2011 to allow Vice-Chair Alexander an opportunity to prepare her case before the Board. He explained that Vice-Chair Alexander was indeed informed of the meeting.

In conclusion of the testimonies, Greg Werkheiser, who is a resident of Petersburg and husband of Marion Werkheiser, spoke before the Board and highlighted three legal points surrounding the testimonies. First, Vice-Chair Alexander did not give uniform treatment to Jacquelyn Bailey Kidd to quietly withdraw her petition. She has shown preferential treatment to others in the same position as Ms. Kidd. Second, Laura Judd was improperly informed about her immediate termination from her precinct. Mr. Werkheiser stated that Ms. Judd's termination appeared groundless in laws and regulation. Third, Linda Pittman received disproportionate treatment from merely submitting the wrong number. Mr. Werkheiser stated Vice-Chair Alexander also made repeated and harassing calls to the Mrs. Pittman's husband's work phone number when the local electoral board does not have authority over PACs. When Mr. Werkheiser inquired about jurisdiction to Vice-Chair Alexander, he claims she acknowledged her understanding of laws regarding PACs. He also elaborated on her absence of knowledge about electoral finance laws, citing the improperly assessed $4,500 fines in Ms. Kidd's case.

Chairman Judd thanked everyone for their candid testimonies before the Board, and stated these are serious accusations that should be investigated thoroughly. He also requested legal counsel from Mr. Lief outlining potential options. Mr. Lief cited the standard procedure for removal of an electoral board member. First, there must be clear and convincing evidence, considered a quasi-criminal status. Moreover, both sides must be heard. Mr. Lief offered one option--the Board could go to Circuit Court to petition for

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removal of an elected board member if they believe there was sufficient evidence based upon these testimonies heard today. Secretary Palmer questioned the possibility of a current civil suit involving Vice-Chair Alexander and/or the involvement of attorneys, which may have ceased communications between Alexander and the Virginia State Board of Elections. Mr. Riemer indicated Vice-Chair Alexander has sought legal representation, and that she may be absent today due to advice from counsel.

Mr. Lief offered another option to the Board if they would like to continue an investigation into the matter: Under Virginia State Code section 24.2-104, the State Board has the right to make a unanimous request to the Attorney General's Office to investigate the circumstances and report back to the Board and take whatever action deemed appropriate, including prosecuting a criminal violation or seeking removal.

Mr. Lief also stated that citizens have the right to report to the Commonwealth's Attorney and make complaints or swear out warrants for violations of law. Under Virginia Code section 24.2-104, the Board also has the option of requesting assistance from the Attorney General to formulate an additional investigation and act accordingly if the results from the previous investigation do not please the Board.

Chairman Judd then questioned Mr. Riemer about correspondence with Vice-Chair Alexander. Mr. Riemer wanted Ms. Alexander to be aware of the matter, and he communicated with her by phone and email. In conclusion, Chairman Judd and Secretary Palmer decided to appoint someone in the SBE staff to interview witnesses and provide a report at the next Board Meeting. If the Board remains dissatisfied with the results at that time, then they may request assistance from the Office of the Attorney General (OAG). Mr. Lief explained to the Board the importance of hearing from a defendant when there are multiple allegations and proof is of paramount importance. One side of the story is insufficient for the removal of an election official. Vice-Chair Bowers expressed her gratitude to the individuals who shared their heartfelt accusations. Then, the Board motioned and agreed unanimously to formally investigate the matter fully and allow a 20 to 30 day process before a decision about the removal of an election official. The Board will reconvene in April for the next Board Meeting.

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Chairman Judd asked for any further public comments. There being none, the meeting was adjourned at approximately 10:42 AM.

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Secretary

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Chair

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Vice-Chair

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