

1 MINUTES

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3 The State Board of Elections Board Meeting was held on Wednesday, August 6,  
4 2014. The meeting was held in the General Assembly Building – Room C, Richmond,  
5 Virginia. In attendance, representing the State Board of Elections (SBE) was Charles  
6 Judd, Chair; Don Palmer, Secretary; Kristina Perry Stoney, Senior Assistant Attorney  
7 General and SBE Counsel and Anna Birkenheier, Assistant Attorney General. In  
8 attendance, representing the Department of Elections (ELECT) was Edgardo Cortés,  
9 Commissioner; Susan Lee, Elections Uniformity Manager; Chris Piper, Elections  
10 Services Manager; Myron McClees, ELECT Policy Analyst and Rose Mansfield,  
11 Executive Assistant. Chairman Judd called the meeting to order at 1:00PM.

12 The first order of business was the approval of the Minutes from the State Board  
13 of Elections Board Meeting held on June 24, 2014. Chairman Judd asked if Board  
14 Members had any additions or corrections to the June 24, 2014 Board Minutes and there  
15 were none. Secretary Palmer moved *to adopt the Minutes for the June 24, 2014, Board*  
16 *Meeting*. Chairman Judd seconded the motion and the Board unanimously approved the  
17 Minutes. Chairman Judd asked if Board Members had any additions or corrections to the  
18 July 15, 2014 Board Minutes and there were none. Chairman Judd moved *to adopt the*  
19 *Minutes for the July 15, 2014, Board Meeting*. Secretary Palmer seconded the motion and  
20 the Board unanimously approved the Minutes. Chairman Judd asked if Board Members  
21 had any additions or corrections to the July 22, 2014 Board Minutes and there were none.  
22 Secretary Palmer moved *to adopt the Minutes for the July 22, 2014, Board Meeting*.  
23 Chairman Judd seconded the motion and the Board unanimously approved the Minutes.

24 The second order of business was the Commissioner’s Report delivered by  
25 Commissioner Cortés. Commissioner Cortés reported that a mailing was delivered to  
26 voters in the commonwealth erroneously. The Department of Elections has been in the  
27 process of sending mailings to voters to confirm information when crosscheck with  
28 information received from other states. The mailing process “What’s your status?” was  
29 meant to be delivered to individuals who ELECT believed moved out-of-state based on  
30 information received from other states participating in the Crosscheck program and in the  
31 Electronic Registration Information Center (ERIC) program. There were 113,000 voters

32 who were sent, in addition to the confirmation mailing, out-of-state mailers. The problem  
33 was identified on July 29, 2014, and the ELECT team initiated a plan of action. On  
34 August 5, 2014, all 113,000 voters were sent letters containing an apology from ELECT  
35 for the error. Commissioner Cortés stated that those voters were not cancelled or  
36 removed from the rolls of the commonwealth.

37 Commissioner Cortés stated that the annual training concluded successfully with  
38 over 500 election officials from across the commonwealth attending. Commissioner  
39 Cortés reported that the voter photo identification system has the capability to be utilized  
40 in a mobile environment in a secure on-line manner. General Registrar's throughout the  
41 commonwealth have conducted community events or have planned community events  
42 with the voter photo identification equipment. ELECT is in the final stages of planning  
43 the off-line software that supports the voter photo identification program. ELECT has  
44 recently signed a contract with an agency that will assist in community outreach and will  
45 provide materials for the program. ELECT has hired a community outreach coordinator.  
46 Commissioner Cortés reported that 320 identifications have been issued since July 1,  
47 2014.

48 The next order of business was the Legal Report presented by Kristina Perry  
49 Stoney, Senior Assistant Attorney General. Ms. Stoney reported that ELECT was sent a  
50 memorandum in response to the proposed amendment to define the meaning of "valid".  
51 Ms. Stoney stated that the letter is not an assessment of the legality of the voter  
52 identification law rather an assessment of the proposed amendment. Chairman Judd  
53 stated: "I see this assessment as a position paper not an opinion." Ms. Stoney stated: "I do  
54 not; this paper was provided under the normal course of review of proposed regulations  
55 to ensure they are in compliance with applicable laws. At the June 24, 2014, Board  
56 Meeting there was a request to review regulations." Chairman Judd stated: "The Board  
57 (SBE) requested the review but you responded to the Commissioner of ELECT. Can the  
58 Board expect that the answers be provided to the Board?" Ms. Stoney stated: "Previously,  
59 memorandums have been addressed to the agency head." Chairman Judd stated: "In the  
60 future, SBE members should receive their requested reports and the commissioner should  
61 receive their requested reports."

62 The next order of business was an update on the workgroup that will be reviewing  
63 the duties and responsibilities of electoral boards and general registrars presented by  
64 Commissioner Cortés. Commissioner Cortés stated that the working group would be an  
65 official group comprised of electoral board members and general registrars reporting the  
66 results of their study to SBE. Commissioner Cortés stated that the Virginia Electoral  
67 Boards Association (VEBA) and Voter Registrars Association of Virginia (VRAV) have  
68 reviewed the membership nominations and the basic outline of the workgroup parameters  
69 as submitted. There will be two ELECT staff members available to assist with technical  
70 and administrative tasking. SBE will request agencies of the commonwealth to provide  
71 assistance to the workgroup for this study, as needed. The workgroup will meet at least  
72 three times and submit a report to SBE on or before December 31, 2014. Secretary  
73 Palmer moved *that SBE adopt the recommended plan and accept members of the*  
74 *workgroup as presented involving the review of duties and responsibilities of electoral*  
75 *boards and general registrars.* Chairman Judd seconded the motion and asked if there  
76 were comments and there were none. The Board unanimously approved the motion.

77 The next order of business was the Voter Photo ID Regulation-Valid Definition  
78 presented by Myron McClees, ELECT Policy Analyst. Mr. McClees stated that at the  
79 June 10, 2014 Board Meeting two regulations were presented for consideration.  
80 Consideration of 1VAC 20-40-10 regarding the definition of “valid” was adopted during  
81 that meeting. The Board voted to amend the definition and place the language on  
82 Townhall for public comment which began on July 7, 2014 and ended on August 4, 2014.  
83 There were 588 comments submitted through Townhall and ELECT received additional  
84 comments via email and other sources which were made available for Board Members to  
85 review.

86 Secretary Palmer stated that he had reviewed the comments and drafted proposed  
87 language to define the meaning of “valid”. Secretary Palmer presented several versions of  
88 suggested language regarding the meaning of “valid”. Secretary Palmer stated: “I feel  
89 that 12 months is the proper grace period for the expiration of identification. The case of  
90 *Shreve v. Virginia* supports this suggested grace period of 12 months as well as the  
91 actions of other states, federal and state agencies. I do not believe the law is  
92 unconstitutional; however, this is a clearer definition for the reasons I have suggested.

93 Additionally, I suggest adding a sentence that says: “The officer of elections shall  
94 determine whether the document is officially acceptable based on its face.””

95 Chairman Judd stated: “The reason that photo identification is required in the  
96 polling place is so that the officer of election can determine if that is the person telling us  
97 who they say they are. We want this to be uniform across the commonwealth. In our  
98 culture, identification is required for everything from purchasing some over the counter  
99 medications to boarding a plane and ... to showing up for a medical appointment. Most  
100 individuals have photo identification. You have to have photo identification to get  
101 benefits from the government and ... I contend and will continue to contend that most of  
102 the citizens of the commonwealth have photo identification. SBE has the desire that  
103 everyone who is eligible to vote, vote! We need to protect the integrity of the voter list. ”.

104 Chairman Judd stated: “I would remove the word “valid” from the list of  
105 definitions in the regulations.” Mr. McClees stated: “I would suggest, that guidance was  
106 requested from the attorneys general office and what authority the Board possesses to  
107 complete this action would need further research.” Chairman Judd directed the clerk,  
108 Rose Mansfield, to introduce and read the statement letter from Vice Chair Bowers  
109 regarding the issue and definition of “valid”.

110 Secretary Palmer moved *that “Valid” for purposes related to voter identification*  
111 *shall mean: (i) the document appears to be genuinely issued by the agency or issuing*  
112 *entity appearing upon the document, (ii) the beater of the document reasonably appears*  
113 *to be the person whose photograph is contained thereon, and (iii) the document shall be*  
114 *current or have expired within the preceding twelve (12) months. The officer of election*  
115 *shall determine whether the document is officially acceptable based on its face.* Chairman  
116 Judd seconded the motion and asked if there were any public comments.

117 Public comments were provided by Delegate Vivian Watts, D-39<sup>th</sup> District;  
118 Therese Martin, Virginia League of Women Voters; Tram Nguyen, Director Virginia  
119 New Majority, Donna Miller Rostant, Chair Fairfax County Democrats; Maggi Luca,  
120 Past Electoral Board Secretary Fairfax County; Courtney Mills, Fair Elections Legal  
121 Network and Hope Amezquita, ACLU of Virginia provided comment.

122 Chairman Judd asked Secretary Palmer to repeat the motion. Secretary Palmer  
123 stated: “Valid” for purposes related to voter identification shall mean: (i) the document

124 appears to be genuinely issued by the agency or issuing entity appearing upon the  
125 document, (ii) the beater of the document reasonably appears to be the person whose  
126 photograph is contained thereon, and (iii) the document shall be current or have expired  
127 within the preceding twelve (12) months. The officer of election shall determine whether  
128 the document is officially acceptable based on its face. Chairman Judd asked for a final  
129 vote. The motion carried 2-0 in favor of the presented motion.

130 The next order of business was the ballot Standards presented by Cris Piper,  
131 Elections Services Manager. Mr. Piper stated the changes presented in the revised version  
132 of the “Ballot Standards and Verification Procedures” document are necessary to  
133 properly reflect the law changes that went into effect on July 1, 2014. Board Members  
134 were provided the updated procedures. In particular noting the changes; “Vote for not  
135 more than one” to “Vote for only one” and change “State Board of Elections/SBE” to  
136 Department of Elections/ELECT”. Secretary Palmer moved *that the Board approve*  
137 *staff’s suggested changes to the “Ballot Standards and Verification Procedures”*  
138 *document*. Chairman Judd seconded the motion and asked if there were public comments  
139 and there were none. The Board unanimously passed the motion.

140 Chairman Judd opened the floor to other business and public comment. Maggi  
141 Luca, Past Electoral Board Secretary Fairfax County approached the podium. Ms. Luca  
142 asked if the motion passed on the voter identification needed to be placed on Townhall  
143 for public comment. Secretary Palmer stated: “The only change that occurred was  
144 moving the time frame from 30 days to a year and this is not significant enough to place  
145 back on Townhall for comment. I based the changes on the comments provided.”

146 Hope Amezquita, ACLU of Virginia approached the podium. Ms. Amezquita  
147 stated that a letter was submitted to the Department of Elections that contained four  
148 specific requests for response on the voter identification law. Ms. Amezquita asked for a  
149 response from the Board.

150 Donna Miller Rostant, Fairfax County Democrats approached the podium. Ms.  
151 Rostant asked which particular comments posted to Townhall aided in the decision made  
152 at this Board Meeting by Board Members regarding the voter identification interpretation  
153 of “valid”. Chairman Judd stated that if an item is posted on Townhall it is because the

154 Board Members motion and approve the item for public comment. The decision made by  
155 Board Members was based on those previously submitted comments.

156 Robin Lind, Goochland County Electoral Board Secretary approached the  
157 podium. Mr. Lind asked for guidance on the November, 2014 election regarding multiple  
158 ballots. Commissioner Cortés stated that ELECT is working on this issue and as a result  
159 the single ballot will contain two separate races. Chairman Judd asked if there were  
160 additional public comments and there were none.

161 Chairman Judd asked if there were comments for the Good of the Order.  
162 Chairman Judd stated that legal counsel has notified SBE that the executive session listed  
163 on the agenda would not be required. Chairman Judd stated: “The spirit of what SBE is  
164 trying to do with photo identification is: “We have the authority or we do not have the  
165 authority to define valid.” The action SBE took at this Board Meeting clears it for now,  
166 and our purpose is to protect the integrity of the process and as part of this SBE wants  
167 everybody to have access to their ballot so that they may cast their vote. I intend to clarify  
168 in the future what is SBE authority when comes to defining regulations. For us, our  
169 purpose is to determine is that person out there the person they present as and the  
170 expiration date really doesn’t matter but, when it comes to defining “valid” it does. We  
171 were asked to define “valid” and SBE did just that.”

172 Chairman Judd moved *that the Board adjourn*. Secretary Palmer seconded the  
173 motion and without further comment the Board voted to adjourn. The meeting was  
174 adjourned at approximately 2:55PM.

175 The Board shall reconvene on August 27, 2014 at 10:00AM in the General  
176 Assembly Building – Room C, Richmond, Virginia.

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Secretary

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Chair

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Vice Chair

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