

MINUTES

1

2 The State Board of Elections Board Meeting was held on Wednesday, November
3 13, 2013. The meeting was held in the Washington Building, 1100 Bank Street, Room
4 B27 in Richmond, Virginia. In attendance, representing the State Board of Elections
5 (SBE) was Charles Judd, Chair; Kimberly Bowers, Vice Chair; Donald Palmer,
6 Secretary; Joshua Lief; Senior Assistant Attorney General & SBE Counsel; Justin
7 Riemer, Deputy Secretary; Nikki Sheridan, Confidential Policy Advisor; Chris Piper,
8 Election Services Manager; and Myron McClees, SBE Policy Analyst. Chairman Judd
9 called the meeting to order at 2:00 p.m.

10 Chairman Judd stated that the Board Meeting was called to conduct a post
11 election review. Chairman Judd requested a report from the secretary and legal counsel.

12 The first order of business was the Secretary's Report delivered by Secretary
13 Palmer. Secretary Palmer informed the Board that the election canvas was complete in
14 133 jurisdictions and that SBE is receiving abstracts which are the official reports from
15 the jurisdictions with completion of this task to take place by the end of this business day.
16 Secretary Palmer stated that hence forth until SBE certifies the abstracts on November
17 25, 2013 SBE will be reviewing those results and any error(s), mistake(s), and or
18 irregularity (ies) SBE will consult with the locality (ies). Secretary Palmer stated that
19 once the results are certified by SBE Board Members the defeated candidate will have the
20 option to request a recount. Secretary Palmer stated that if the candidate makes the
21 request, to have a recount, the request will go to the Chief Judge of the Circuit Court in
22 Richmond, Virginia. This Chief Judge will contact the Judge of the Supreme Court in
23 Virginia and two other Judges will be appointed to a recount court. This recount court
24 will then work with the jurisdiction(s) and SBE will be working with the locality (ies) on
25 the instructions. Secretary Palmer stated that each of the recount teams will have a
26 member of the electoral board and a political observer. Secretary Palmer stated that there
27 have been changes since the last recount occurred in Virginia, especially in procedures
28 involving the optical scan equipment. Chairman Judd asked if there were any questions.

29 Vice Chair Bowers asked: "With regard to the timeline for the recount can a date
30 be assigned?" Secretary Palmer replied: "There will be a date assigned to the actual

31 recount date.” Secretary Palmer stated that once the recount is conducted in each
32 jurisdiction the information will be reported to the Richmond recount courts. Secretary
33 Palmer noted that the courts will make rulings about the findings that either party
34 debates, as they arise. Vice Chair Bowers asked: “If a recount does occur is it *candidate*
35 *v. candidate* or is it *candidate v. SBE*?” Joshua Lief, SBE Counsel replied: “It is
36 *candidate v. candidate* and SBE is asked to assist in the process.” Chairman Judd asked:
37 “How many local courts are involved in the process?” Mr. Lief replied: “The only court
38 is the Richmond Court which acts as the recount court.” Chairman Judd asked: “Will the
39 local general registrars conduct the recount?” Mr. Lief replied: “The local general
40 registrars will be the ones operating the machinery under the supervision of the recount
41 officials.” Vice Chair Bowers asked: “Who will be the recount officials?” Secretary
42 Palmer replied: “one individual will be the electoral board member, at the locality, and
43 the other a representative from each of the candidates.” Myron McClees, SBE Policy
44 Analyst, stated that two electoral board members each representing different parties will
45 act as the recount coordinators overseeing the local recount. Mr. McClees stated that the
46 individuals who are actually conducting the recount are election officials and they are
47 appointed from the list of individuals who served as officers of elections on Election Day.

48 Vice Chair Bowers asked for an update on the process conducted at SBE.
49 Secretary Palmer stated that once SBE receives the abstracts and election results
50 verification occurs SBE conducts an analysis comparing voter turnout statistics and the
51 number of ballots cast to ensure there is not a variance. Secretary Palmer stated that if
52 there is an issue it will be worked out with the localities. Chris Piper, Election Services
53 Manager, explained that the abstracts are reviewed by SBE to ensure they match the
54 VERIS entry then SBE expedites several reports from the VERIS system to cross match
55 the numbers, i.e. voter turnout verses number of votes cast. Mr. Piper stated that after this
56 process is complete SBE prepares the canvas pages for board certification. Chairman
57 Judd asked if there were any other question and there were none.

58 The next order of business was the Legal Report delivered by Joshua Lief, SBE
59 Counsel. Mr. Lief stated that the FIOA case had been dismissed and concluded that from
60 a legal standpoint things have been relatively quiet. Chairman Judd asked about some
61 irregularities in one county where the provisional ballot log which was to be made

62 available for inspection only, and not to be copied or distributed, was in fact distributed.
63 Secretary Palmer stated that this was a correct statement regarding the provisional voters
64 in Fairfax County. Secretary Palmer stated that this list contained Fairfax County
65 provisional voters' addresses and phone numbers. Secretary Palmer stated that this
66 appeared to be an isolated incident primarily because it has been long standing guidance
67 by SBE. Secretary Palmer stated that on October 23, 2013 specific guidance was sent to
68 the general registrars regarding this subject. Justin Riemer, Deputy Secretary, stated that
69 the general registrar in Prince William County inadvertently disclosed information
70 provisional voter information that should not have been disclosed. Deputy Riemer stated
71 that SBE was "cc'd:" on the email that he had provided information to the political parties
72 and SBE immediately contacted the general registrar who recognized the error. Deputy
73 Riemer stated that the general registrar immediately followed up and informed the
74 recipient of the information that the information immediately required destruction.
75 Chairman Judd asked: "The other county (Fairfax County) distributed the list?" Deputy
76 Riemer replied: "Fairfax County rationale was that it was the same information in another
77 format." Chairman Judd stated that SBE Board Members should deal with them over
78 stepping their authority and they are in direct violation of guidance provided by SBE.
79 Chairman Judd stated: "My concern is that we did not have uniformity across the state".
80 Chairman Judd asked Mr. Lief what was needed to investigate. Mr. Lief stated that under
81 §24.2-104 the board has full authority to request an investigation by the attorney general
82 regarding violations in election law. Secretary Palmer asked: "Mr. Lief does it have to be
83 a formal investigation?" Mr. Lief replied: "This is the Board's decision". Vice Chair
84 Bowers stated that she would like to have more facts before requesting a formal
85 investigation.

86 In response to a question from Chairman Judd, Mr. Lief stated that the Fairfax
87 County Electoral Board voted 2-1 to disagree with the state Board's guidance that the
88 voter must present during the provisional ballot meeting to have a representative present.
89 Mr. Lief stated that under §24.2-653 the code states that the authorized representatives do
90 not participate in the provisional ballot meeting and that they are there to monitor the
91 proceedings. Mr. Lief stated that the code is clear that it is "the voter and the
92 representative". Mr. Lief stated that SBE issued guidance to all localities on how to

93 handle this particular scenario. Mr. Lief stated that the political parties are given specific
94 roles during the canvas and they are not to speak and if you allowed representatives alone
95 to attend what would result is that only one party would be speaking. Chairman Judd
96 asked: “Is there a provision in the code that allows a local electoral board to vote not to
97 follow state guidelines?” Mr. Lief replied: “My understanding is that Fairfax County did
98 follow the guidance and just voted to disagree with the guidance.” Vice Chair Bowers
99 asked if the guidance was confusing. Secretary Palmer stated: “We are dealing with a
100 general registrar who is an attorney and who is a former Secretary of SBE, electoral
101 board members who are attorneys, and SBE sent out guidance on this specific issue, and
102 personally talked to the general registrar, Cameron Quinn. Secretary Palmer stated that
103 the issue is the release of the information on the provisional logs outside of longstanding
104 guidance and a memo that was sent on October 23, 2013 to the general registrars. Mr.
105 Lief stated that the matter is complicated by the fact that Fairfax County has created their
106 guidance outside of the guidance that SBE has issued. Chairman Judd stated: “That
107 sending a list out was serious and crossing the line which caused the second problem and
108 I am concerned about uniformity across the Commonwealth and I am concerned about
109 the exposure these voter must have experienced. The voters had to (i) vote provisionally
110 (ii) then they get harassed by phone calls and (iii) offers to represent them and as a result
111 we hassle the voters.” Chairman Judd stated that the provisional voters of Fairfax County
112 were publically exposed and suggested to the Board that serious consideration be given
113 as to our next steps. Chairman Judd stated: “I think this is serious enough to investigate
114 and based on the data we receive from the investigation we should take action”.
115 Chairman Judd asked if there were any other comments from the Board.

116 Vice Chair Bowers asked how many provisional ballots were dispersed and how
117 many of those ballots were a result of the ID issues? Secretary Palmer stated that the
118 Commonwealth issued 3100 plus provisional ballots and the final numbers and
119 breakdown for each of the issuing reasons would be provided to the Board Members
120 when computation was complete. Secretary Palmer stated that approximately 290 of
121 those provisional ballots were for ID issues. Deputy Riemer stated that he would send the
122 final document to the Board Members. Chairman Judd asked: “Are the localities
123 required to share this information with the state?” Secretary Palmer replied: “SBE is

124 required to receive some information for Election Assistance Commission (EAC)
125 reporting and there is an executive order from Governor McDonnell to receive this
126 information however, the timeline for receiving this information has variances.”
127 Chairman Judd inquired if this is why the data is often incomplete on election night. Mr.
128 Lief stated that the Board has the authority to adopt a regulation that would address this
129 reporting and the time frame for which the data would be required. Chairman Judd asked
130 if there were any other comments.

131 Robin Lind, Goochland County Electoral Board, stated that in respect to reporting
132 provisional ballots it becomes extremely hectic when the election is over and the general
133 registrar is gathering information and adding an additional task like provisional ballot
134 tallying would be classified as an aggregation, yet we always try to comply. Chairman
135 Judd asked if there were any other comments and there were none.

136 Chairman Judd asked if there were any other comments and there were none.
137 Chairman Judd moved *to adjourn*. Secretary Palmer seconded the motion and the Board
138 approved the motion to adjourn. The meeting was adjourned at approximately 3:00p.m.

139 The Board shall reconvene on November 25, 2013 at 9:00a.m. in the General
140 Assembly Building, Richmond, Virginia, Room C.

141

142

143 _____
Secretary

144

145

146

147 _____
Chair

148

149

150

151 _____
Vice Chair

152

153

154