

MINUTES

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2 The State Board of Elections (SBE) meeting was held on Tuesday, June 22, 2010,
3 in the State Capitol in House Room 2. In attendance representing SBE were The
4 Honorable Jean Cunningham, Chair; Harold Pyon, Vice-Chair; Nancy Rodrigues,
5 Secretary; Martha Brissette, Policy, James Alcorn, Deputy Secretary; Matt Abell,
6 Election Services; Barbara Cockrell, Voter Services; Rebecca Reynolds, Election
7 Uniformity; Peter Goldin, Policy and Jim Hopper, Special Assignment Attorney for the
8 Attorney General.

9 Ms. Cunningham called the meeting to order at 10:10 AM.

10 The first order of business was approval of the May 20, 2010 minutes. Vice-
11 Chairman Pyon moved to approve the minutes. The motion was seconded and
12 unanimously approved.

13 The next order of business was the Proposed State Board of Elections Regulatory
14 Process. Ms. Brissette asked the board to accept the Proposed Public Participation
15 Guidelines with the minor typographical changes discussed. Secretary Rodrigues moved
16 to approve the Proposed Public Participation Guidelines. The motion was seconded and
17 unanimously approved. A copy of the guidelines are on file at SBE and available via the
18 SBE website.

19 Under new business, the first order of business was the ascertainment of the
20 results of the June 8, 2010 Republican Primaries. On examination of the official
21 statements contained in its record books and verified by the certified abstracts on file in
22 its office of the votes cast in the various primaries, the Board certified the following
23 persons as the nominees of the Party indicated for the offices and districts indicated:

24

REPUBLICAN PRIMARY

25

CANDIDATE

OFFICE

TOTAL VOTES

26

Robert J. "Rob" Wittman

Member House of Representatives
1st Congressional District

28,956

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E. Scott Rigell

Member House of Representatives
2nd Congressional District

14,396

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31

32 Robert Hurt Member House of Representatives 17,120
33 5th Congressional District

34

35 J. Patrick Murray Member House of Representatives 7,136
36 8th Congressional District

37

38 Keith S. Fimian Member House of Representatives 20,075
39 11th Congressional District

40

41 The first order of business was the Ascertainment of the June 15, 2010, Special
42 Election in the Twenty-Sixth and Twenty-Seventh Districts of the House of Delegates.
43 On examination of official statements contained in its record books and verified by the
44 certified abstracts on file in its office of the votes cast in the Special Election, the Board
45 certified the following persons to be elected to the office indicated, issued Certificates of
46 Election for each, and directed the Secretary to deliver them to each successful candidate
47 upon ascertaining in accordance with Section 24.2-679 of the *Code of Virginia*. The
48 results of the canvass are as follows:

49

50 **CANDIDATE** **OFFICE** **TOTAL**

51 Tony O. Wilt Member House of Delegates 6,239
52 26th Legislative District

53

54 Roxann L. Robinson Member House of Delegates 3,429
55 27th Legislative District

56

57 The next order of business was the drawing for the recognized parties' ballot
58 positions for the November 2, 2010 election. Vice-Chairman Pyon drew the positions
59 and the results were as follows:

59

- 1st Position – Republican Party

60

- 2nd Position – Democratic Party

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62 The next order of business was the drawing for the non-recognized political
63 parties. Vice-Chairman Pyon also drew these positions and the results were as follows:

63

64

- 3rd Position – Independent Green Party

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- 4th Position – Libertarian Party

66 The next order of business was New Officer of Election Training Certifications.
67 Mrs. Reynolds asked the board to approve a new form, SBE-115 Certification of Training
68 of Officers of Election, required for annual and quadrennial certifications. The only
69 change made to the form was the insertion of (Secretary may sign on behalf of board if
70 delegated). Vice-Chairman Pyon moved to approve the Certification of Training of
71 Officers of Election, to be required for annual and quadrennial certifications. The motion
72 was seconded and unanimously approved.

73 The next order of was a request for approval of an update to the Virginia
74 Absentee Application. Ms. Cockrell informed the board that there were two changes
75 made to the Virginia Absentee Application:

- 76 • Changes made to be in compliance with the 2010 General Assembly
 - 77 ○ Under Attention Voters – [Added] “Ballots are available 45 days
78 before Primary and General Elections and most Special Elections.”
 - 79 ○ 8A – Verbiage change requested by general registrars

80 Ms. Cunningham asked for a motion. Vice-Chair Pyon moved to approve the
81 changes made to the Virginia Absentee Application. The motion was seconded and
82 unanimously approved.

83 Secretary Rodrigues recognized Mrs. Cockrell for all of her hard work at SBE and
84 informed the board that Mrs. Cockrell is retiring from state services as of September 1,
85 2010.

86 Ms. Cunningham thanked Mrs. Cockrell for her service on behalf of the entire
87 board.

88 The next order of business was a request for approval of updated SBE forms.
89 Mrs. Brissette advised the board that changes have been made to several SBE forms due
90 to the 2010 General Assembly changes to the law.

91 Form SBE-643B – Affirmation of Identity.

92 Vice-Chairman Pyon moved to accept the changes made to form SBE-643A. The
93 motion was seconded a unanimously approved.

94 Mrs. Brissette stated that changes to form SBE-651 are due to new changes to the
95 law. SBE can no longer require that voters list their full social security.

96 Form – SBE-651 - Affirmation of Eligibility

97 Mr. Bill Jenkins, General Registrar in Sussex County stated that the social
98 security number is the only way to verify a voter's identity and is needed.

99 Ms. Cunningham stated that the board was sympathetic to the registrar's need for
100 the social security number and the move date on this form and suggested that the general
101 registrars go back to the General Assembly to seek a law change.

102 Mr. Larry Haake, General Registrar in Chesterfield County stated that the General
103 Registrars will go to the General Assembly next year in order to remedy the problem.
104 They will also advise the General Assembly that knowing the date a voter moved is
105 important in determining the eligibility of a voter.

106 Secretary Rodrigues moved to approve the changes to the Affirmation of
107 Eligibility – SBE-651. The motion was seconded and unanimously approved.

108 Form – SBE-310 – Emergency Polling Place Relocation Approval Request –
109 County/City &

110 Form – SBE-310 – Emergency Polling Place Relocation Approval Request –
111 Town

112 • Added – Description of Emergency Circumstances that Make Polling
113 Place “Unusable” or “Inaccessible” - §24.2-304(D) of the Code of
114 Virginia

115 • Added – Candidates – Describe Method of Notice to all Candidates on
116 Ballot in Precinct. - §24.2-304(D) of the Code of Virginia

117 Secretary Rodrigues moved to approve the changes to the Emergency Polling
118 Place Relocation Approval Request County/City & Towns – Form SBE-310. The motion
119 was seconded and unanimously approved.

120 Form – SBE-506/521 – Petition of Qualified Voters

121 Vice-Chairman Pyon stated the law needs to change because the General
122 Registrars need social security number to be able to verify who voters are. It is not
123 possible to ensure the integrity of the vote if the ability to verify the identity of voters or
124 petitioners is taken away. The General Registrars need to convince the legislators to
125 change the law.

126 Secretary Rodrigues moved to approve the changes to form SBE-310 –
127 Emergency Polling Place Relocation Approval Request –County/City & Town. The

128 motion was seconded, Mr. Cunningham and Secretary Rodrigues voted to approved the
129 motion and Vice-Chairman Pyon abstained. The motion was approved.

130 The next order of business was the assessment of penalties for “Stand by Your
131 Ad” violations. Mr. Peter Goldin advised the board that he was seeking final approval of
132 penalties assessed against several groups for violating the “Stand by Your Ad”
133 regulations set forth in §24.2-955 of the Code of Virginia. The penalties were as follows:

134 • W. Bill Bestpitch, Bestpitch for Council failed to include a disclaimer on
135 their candidate’s email as required by §§§§24.2-955-1, 24.2-956, 24.2-
136 955-3 & 24.2-955(D) of the Code of Virginia staff recommended a civil
137 penalty of \$100.

138 Secretary Rodrigues moved to assess a civil penalty of \$100. The motion was
139 seconded and unanimously approved.

140 • Samuel Boone for School Board failed to include a disclaimer on their
141 candidate’s website as required by §§§§24.2-955-1, 24.2-956, 24.2-955-3
142 & 24.2-955(D) of the Code of Virginia staff recommended a civil penalty
143 of \$100.

144 Vice-Chairman Pyon moved to assess a civil penalty of \$100. The motion was
145 seconded and unanimously approved.

146 • Hunsdon “H” Cary, III for City Council, failed to include a disclaimer;
147 “Paid for By” and “Authorized by” or “Not Authorized by” on a
148 newspaper advertisement shared with candidate’s Don Good and Ted
149 Hannon for City Council, Lynchburg as required by §§§§24.2-955-1,
150 24.2-956, 24.2-955-3 & 24.2-955(D) of the Code of Virginia staff
151 recommended a civil penalty of \$50 per candidate.

152 Mr. Cary advised the board that he neither approved of or paid for the ad and
153 didn’t feel he should have been fined at all.

154 Vice-Chairman Pyon stated candidates are ultimately responsible for
155 advertisements supporting their candidacy and moved to assess a \$50 penalty for each
156 candidate for a total penalty of \$150. The motion was seconded and unanimously
157 approved.

158 • Ryan Cooper for Norfolk failed to include a disclaimer on their
159 candidate's website as required by §§§§24.2-955-1, 24.2-956, 24.2-955-3
160 & 24.2-955(D) of the Code of Virginia staff recommended a civil penalty
161 of \$50.

162 Mr. Goldin stated the candidate raised very little money and was requesting a
163 reduced penalty.

164 Vice-Chairman Pyon moved to assess a penalty of \$50. The motion was
165 seconded and unanimously approved.

166 • Ray Ferris for Council – SBE received a complaint that the required
167 disclaimer was not included on the candidate's website as required by
168 §§§§24.2-955-1, 24.2-956, 24.2-955-3 & 24.2-955(D) of the Code of
169 Virginia. An investigation showed that on May 5, 2010 the website did
170 have the required disclosure/disclaimer statement posted. Staff
171 recommended that the State Board not assess a civil penalty; against
172 candidate Raphael Ferris.

173 Vice-Chairman Pyon moved dismiss the allegations against Mr. Ferris due to staff
174 findings that no violation occurred. The motion was seconded and unanimously
175 approved.

176 • Bonita Harris for Chesapeake School Board displayed no disclaimer on
177 the candidate's website as required by §§§§24.2-955-1, 24.2-956, 24.2-
178 955-3 & 24.2-955(D) of the Code of Virginia. Staff recommended a civil
179 penalty of \$100.

180 Secretary Rodrigues moved to assess a penalty of \$100. The motion was
181 seconded and unanimously approved.

182 • Rick Jones for School Board displayed no disclaimer on the candidate's
183 website and failed to place a disclaimer on email as required by §§§§24.2-
184 955-1, 24.2-956, 24.2-955-3 & 24.2-955(D) of the Code of Virginia. Staff
185 recommended a civil penalty not to exceed \$1,000 for each violation.

186 Vice-Chairman Pyon moved to assess a penalty of \$50 for each violation for a
187 total of \$100. The motion was seconded and unanimously approved.

188 • Scott Matheson for City Council displayed no disclaimer on the
189 candidate’s website as required by §§§§24.2-955-1, 24.2-956, 24.2-955-3
190 & 24.2-955(D) of the Code of Virginia. Staff recommended a civil
191 penalty of \$100.

192 Vice-Chairman Pyon moved to assess a penalty of \$100. The motion was
193 seconded and unanimously approved.

194 • Claude Parent for School displayed no disclaimer on the candidate’s
195 website as required by §§§§24.2-955-1, 24.2-956, 24.2-955-3 & 24.2-
196 955(D) of the Code of Virginia. Staff recommended a civil penalty of
197 \$50.

198 Mr. Claude Parent advised the board that he tried to abide by the regulations in
199 the Code of Virginia. When working on the website he thought the disclaimer had been
200 included. He asked that the board reduce the civil penalty.

201 Vice-Chairman Pyon moved to assess a penalty of \$50. The motion was
202 seconded and unanimously approved.

203 • Paul R. Riddick for Norfolk City Council displayed no disclaimer on the
204 candidate’s website as required by §§§§24.2-955-1, 24.2-956, 24.2-955-3
205 & 24.2-955(D) of the Code of Virginia. Staff recommended a civil
206 penalty of \$100.

207 Vice-Chairman Pyon moved to assess a penalty of \$100. The motion was
208 seconded and unanimously approved.

209 • Doug Smith for Portsmouth City Council displayed no disclaimer on the
210 candidate’s website as required by §§§§24.2-955-1, 24.2-956, 24.2-955-3
211 & 24.2-955(D) of the Code of Virginia. Staff recommended a civil
212 penalty of \$100.

213 Vice-Chairman Pyon moved to assess a penalty of \$100. The motion was
214 seconded and unanimously approved.

215 • Delegate Onzlee Ware – A complaint was filed that the required
216 disclaimer was not included on a newspaper advertisement. Staff
217 reviewed the advertisement and found that the advertisement was a
218 business card. No violation occurred.

219 Vice-Chairman Pyon moved that no penalty be assessed. The motion was
220 seconded and unanimously approved.

- 221 • Paige Washington for City Council/Hampton displayed no disclaimer on
222 the candidate's website as required by §§§§24.2-955-1, 24.2-956, 24.2-
223 955-3 & 24.2-955(D) of the Code of Virginia. Staff recommended a civil
224 penalty of \$100.

225 Vice-Chairman Pyon moved to assess a penalty of \$100. The motion was
226 seconded and approved with two votes with one abstention by Ms. Cunningham.

- 227 • Randy Wright for Norfolk City Council displayed no disclaimer on the
228 candidate's website as required by §§§§24.2-955-1, 24.2-956, 24.2-955-3
229 & 24.2-955(D) of the Code of Virginia. Staff recommended a civil
230 penalty not to exceed \$1000.

231 Vice-Chairman Pyon moved to assess a penalty of \$50. The motion was
232 seconded and unanimously approved.

233 The next order of business was requests for waiver of civil penalties from the
234 following:

- 235 • Friends for Lacey Putney are requesting a waiver of the civil penalty for
236 failure to file a timely report. The Treasurer Betty Lou Layne thought she
237 filed a final report on Jan. 8, 2010. The report was accidentally filed as a
238 regular report and she incurred problems and error messages while trying
239 to make the correction. Staff recommended that the civil penalty be
240 waived.

241 Secretary Rodrigues moved to waive the civil penalty assessed of \$100. The
242 motion was seconded and unanimously approved.

- 243 • National Association of Social Workers, Virginia Chapter was assessed a
244 civil penalty of \$1000 for failure to file a timely report on ten occasions.
245 Ms. Debra Regis stated that she thought the reports had been filed
246 properly and there was no excuse for the past ten reports being filed late
247 but asked the board to reduce the penalty.

248 Secretary Rodrigues moved to assess a civil penalty of \$500. The motion was
249 seconded and unanimously approved.

250 • GILpac was assessed a penalty of \$100 for failure to file a timely report.
251 Mr. Richard Neel stated that he experienced problems downloading the
252 report codes due to computer problems. Mr. Neel was advised that had he
253 contacted staff at the time of the problem he may have been allowed an
254 extension. SBE was never contacted.

255 Secretary Rodrigues moved to uphold the assessed penalty of \$100. Vice-
256 Chairman Pyon abstained due to friendship with Mr. Neel. The motion was seconded
257 and approved with two votes.

258 • Newport News Republican City Committee was assessed a penalty of
259 \$100 for failure to file a timely report. Mr. Phil Bomersheim stated the
260 report was filed late because he had the incorrect version of the software
261 and couldn't download the report codes for 2010. He failed to contact
262 SBE and request an extension prior to the deadline.

263 Vice-Chairman Pyon moved to waive the penalty. The motion was seconded and
264 unanimously approved.

265 • Citizens for Non Partisan King George was assessed a penalty of \$100 for
266 failure to file a required report – §24.2-953(B) of the Code of Virginia.
267 The committee treasurer did not request an extension as permitted by
268 §24.2-946.4. Staff recommended that the board uphold the penalty.

269 Vice-Chairman Pyon moved to uphold the assessed penalty of \$100. The motion
270 was seconded and unanimously approved.

271 • The Virginia Committee for Good Government was assessed a penalty of
272 \$100 for failure to file a timely report - §24.2-953(B) of the Code of
273 Virginia. The committee treasurer did not request an extension as
274 permitted by §24.2-946.4. Staff recommended that the board uphold the
275 penalty.

276 Vice-Chairman Pyon moved to uphold the assessed penalty of \$100. The motion
277 was seconded and unanimously approved.

278 The next order of business was a complaint received by SBE asking for the
279 removal of Emory R. Wertz as General Registrar of Montgomery County.

280 James Alcorn, Deputy Secretary stated the complaint charged that there were
281 irregularities in the processing of Petitions of Qualified Voters: [1] failure to detect
282 forged signatures, [2] incorrect notations in the "Office Use Only" column, [3] failure to
283 disqualify signatures obtained prior to the January 1, 2010 deadline, [4] allowing the
284 usage of outdated petition forms, and improperly coping petitions, failing to prevent the
285 copying of social security numbers. Staff found there were mistakes made however;
286 these mistakes did not affect the candidates on the ballots.

287 Mr. Alcorn further stated any allegations of fraud need to be forwarded to the
288 Montgomery County Commonwealth Attorney because SBE and its board do not have
289 investigatory authority.

290 Mr. Wertz stated he would be more than happy to answer any questions from the
291 board members and any persons in attendance may have had regarding the complaint
292 filed against him and his office. No questions were asked.

293 Ms. Terry Carter stated that SBE should exercise the authority it has been given to
294 ensure that the elections are uniformed across the Commonwealth and should enforce all
295 regulations when it comes to protecting voters from those persons seeking to steal their
296 identity. The board should when necessary, be able to remove general registrars and
297 election officials not properly performing their duties. Ms. Carter felt that fraud had been
298 committed and the board should pursue this matter.

299 Ms. Cunningham stated the board has no authority to remove a general registrar
300 or investigate legal matters. The only authorization the board has is to refer matters to
301 the appropriate Commonwealth Attorney. Ms. Cunningham suggested those with
302 concerns should contact their legislators and seek a patron that would support a bill
303 giving the State Board of Elections more authority.

304 Vice-Chairman Pyon expressed his concern that the board did not have enough
305 authority to pursue these types of matters and the laws should in fact be changed.

306 Secretary Rodrigues moved to refer the allegations of fraud to the Montgomery
307 County Commonwealth Attorney. The motion was seconded and unanimously approved.

308 The next order of business was a presentation by Mr. David Becker, Project
309 Director, Election Initiatives, representing The Pew Center on the States. Mr. Becker
310 stated that Pew's Election Initiatives aims to improve the nation's system of election

311 administration by examining options that are more efficient and accurate, while reducing
312 costs and administrative burdens.

- 313 • Three priority areas:
- 314 – Military and Overseas Voting
 - 315 – Voting Information Project
 - 316 – Voter Registration Modernization

317 Having conducted exhaustive research in this area, Pew has concluded that it is
318 now past time to use current, available technology to bring the voter registration systems
319 into the 21st century, to better serve voters, election officials, policy makers, and
320 taxpayers.

321 Mr. Becker stated the PEW Organization was asking the Commonwealth of
322 Virginia to come on board in and be a part of this effort to improve the nation's system of
323 election administration. The PEW Organization will cover the cost of testing for those
324 states wishing to participate in the test program. They are currently working with several
325 western states would welcome Virginia's participation.

326 Vice-Chairman Pyon moved to proceed with the PEW Organization's suggestions
327 that the Commonwealth of Virginia be a part of this test program. The motion was
328 seconded and unanimously approved.

329 The next order of business was a motion to move the board into an executive
330 session. Secretary Rodrigues moved to convene a closed meeting at 1:14 PM:

331 "I move to convene a closed meeting for the purpose of consultation with legal
332 counsel regarding actual litigation involving the State Board of Elections, where such
333 consultation or briefing in open meeting would adversely affect t he negotiating or
334 litigating posture of the State Board of Elections. Consultation with legal counsel
335 retained by the Attorney General to provide legal representation to the State Board of
336 Elections regarding specific legal matters requires discussions in a closed meeting to
337 receive legal advice and recommendation. The applicable exemption is 2.2-3711(A)(7)
338 of the Code of Virginia."

339 The motion was seconded and unanimously approved. The Board convened a close
340 meeting.

341 At the conclusion of the closed meeting Secretary Rodrigues moved to reconvene
342 in open session at 1:28 PM; by certifying that to the best of the knowledge of each
343 individual member of the State Board of Elections only the following matters were
344 discussed:

- 345 1. Matters regarding consultation with legal counsel regarding the results of actual
346 litigation, where such consultation in open meeting would adversely affect the
347 negotiating or litigating posture of the State Board of Elections; and consultation
348 with said legal counsel specifically employed and retained as legal counsel by the
349 Attorney General to provide legal representation to the State Board of Elections
350 regarding specific litigated legal matters arising in the United States District Court
351 requiring the provision of legal advice by said counsel., and
352 2. Only public business matters lawfully exempted from open meeting requirements
353 under the provisions of the Virginia Freedom of Information Act.

354 Secretary Rodrigues asked each member to affirmatively acknowledge the certification.

- 355 • Ms. Cunningham affirmed;
356 • Vice-Chairman Pyon affirmed
357 • Secretary Rodrigues affirmed

358 Ms. Cunningham asked for a motion to adjourn. Secretary Rodrigues moved to
359 adjourn the meeting. The motion was seconded and unanimously approve. The meeting
360 was adjourned at 1:30 PM.

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369 _____
Chair

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Vice-Chairman

Secretary