

MINUTES

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2 The State Board of Elections (SBE) meeting was held on Monday, January 31,
3 2011, in the Washington Building, Room B27. In attendance representing SBE were the
4 Honorable Jean Cunningham, Chair; Harold Pyon, Vice-Chair; Nancy Rodrigues,
5 Secretary; Martha Brissette, Policy Division; Peter Goldin, Policy Division; Justin
6 Riemer, Confidential Policy Advisor; and Joshua Lief Senior Assistant Attorney General
7 and SBE Counsel.

8 Chair Cunningham called the meeting to order at 1:05 p.m. Before the formal
9 approval of the minutes, Chair Cunningham thanked Vice-Chair Pyon and Secretary
10 Rodrigues for their service to the Board and the Commonwealth of Virginia. Vice-Chair
11 Pyon shared his appreciation for having had the opportunity to work with the Board.

12 The first order of business was the approval of the minutes from the November
13 22, 2010 and January 12, 2011, Board Meetings. Chair Cunningham shared some minor
14 typographical errors. She specifically mentioned changing “House of Representatives” to
15 “House of Delegates,” which can be changed through an amendment. Vice-Chair Pyon
16 made a motion to approve the minutes with the minor corrections. Secretary Rodrigues
17 seconded the motion, and the minutes were approved unanimously by the Board.

18 Secretary Rodrigues suggested the Board consider moving the Montgomery
19 County item forward on the agenda due to Vice-Chair Pyon’s schedule and because so
20 many people were present from Montgomery County. Chair Cunningham agreed. The
21 next order of business was the Board review of the Montgomery County Electoral Board
22 and general registrar regarding administration of the November 2, 2010, election. Ms.
23 Terry Ellen Carter from Christiansburg, Virginia came forward and addressed the Board
24 with her complaints against the Montgomery County Electoral Board and general
25 registrar.

26 Chair Cunningham called any representatives from Montgomery County to come
27 forward to speak. Montgomery County Chair Dean Dowdy came forward and introduced
28 himself and the other Montgomery Board members, Vice-Chair Helen Young and
29 Secretary Cynthia Chappelka as well as the Montgomery Registrar, Mr. Randal Wertz.
30 Chair Dowdy said that Montgomery County was in attendance, per the State Board of

31 Elections' request, to respond to any questions or discussions concerning the matter. He
32 said that Montgomery County submitted to the State Board their response to Ms. Carter's
33 written complaint on January 19, 2011.

34 Secretary Rodrigues said that after reviewing Montgomery County's response, it
35 was discovered that several voters had an "H" beside their name in the pollbook
36 indicating they were HAVA voters who required specific forms of identification if voting
37 for the first time. Secretary Rodrigues asked Chair Dowdy what forms of identification
38 were requested at the polls. Chair Dowdy responded that the standard forms of
39 identification, like a voter registration card and drivers' license, and other items that were
40 accepted in a normal polling environment were requested. In response, Secretary
41 Rodrigues explained that because some of the HAVA voters could have been voting for
42 the first time, and as a result would require a different form of ID and one of the things
43 that is not acceptable is a voter card. Secretary Rodrigues asked Chair Dowdy how they
44 handled those situations.

45 Chair Dowdy reiterated that the method used at polling place "was to request an
46 ID and take that person's name down on a list." He continued, "There was no means to
47 do that in that [sic]." Dowdy: "Now we did follow up and check all those names that
48 were taken and everyone that voted that day was on the VEBA voter registration list."
49 Secretary Chappelka then recommended that Mr. Wertz speak to the question.

50 Mr. Wertz said that he cannot respond to what the officers of election did at the
51 actual polling place that day, but he said they did provide the officers of election a list of
52 [sic] specific IDs that they can accept. He explained they had that in their materials that
53 day. Wertz explained that only 13 names were in separate precincts from where they
54 were supposed to be voting. Mr. Wertz explained that when researching a voter's
55 registration status, Montgomery does not go by addresses because there are Montgomery
56 voters who have Radford addresses and zip codes, making it necessary in many cases to
57 go by the street. Secretary Rodrigues asked if, after separately researching the issue, they
58 both can appreciate that Montgomery County is at least verifying what SBE discovered—
59 which is the fact that not every voter voted in the correct precinct. Mr. Wertz responded
60 "right". Secretary Rodrigues also stated that this is contrary to Virginia law.

61 Chair Dowdy said that given an environment in which they were using
62 provisional ballots, and given that they could not verify what precinct voters belong in

63 they would have accepted those ballots the day after anyway when reviewing the
64 provisional ballots. Chair Dowdy continued, since we could not verify that day and tell
65 the individual voters that they were in the wrong precinct, we would have let that ballot
66 count. Secretary Chappelka said that the officer of election had no way of telling the
67 voter they were in the wrong precinct and the voter didn't know they were in the wrong
68 precinct. Chappelka said to deny that vote would have added a barrier to voting.
69 Chappelka said they would have accepted the provisional votes anyway.

70 Vice-Chair Pyon said that electronic pollbooks should indicate where voters are
71 eligible to vote. Pyon said that based on what was said today, Montgomery County
72 officials had no idea whether the voter was eligible to cast a ballot in a specific precinct.
73 Secretary Chappelka said that it was because certain precincts had problems uploading
74 the electronic pollbooks. Pyon said that based on Ms. Terry Ellen Carter's statement, this
75 was a continuous occurring issue in Montgomery County Secretary Chappelka said this
76 is the first time Montgomery County used electronic pollbooks. Chappelka asked
77 surrounding counties if they had problems using their electronic pollbooks and most did
78 not use them. Chappelka said she thought perhaps they were more brave than wise. Vice-
79 Chair Pyon then asked what they did in previous elections and Mr. Wertz responded they
80 used paper pollbooks.

81 Secretary Rodrigues asked Montgomery County why they did not use provisional
82 ballots and why they allowed voters to cast their ballots on machines. Montgomery
83 County Vice-Chair Young responded that when she walked into the general registrar's
84 office at 5:03 a.m. that morning she learned that some of the precincts could not log into
85 their electronic pollbooks. Mr. Wertz asked Vice-Chair Young to go to the Christiansburg
86 Library and Saint Michael's precincts. When she arrived at the library, the officers of
87 election indicated they were having difficulty with the electronic pollbooks. Vice-Chair
88 Young she went through the opening procedure and was unable to log in. She asked the
89 Chief if there was a paper pollbook and after checking the Chief indicated there was no
90 paper pollbook. Vice-Chair Young then asked where the paper ballots were. An officer of
91 election retrieved the paper ballots. Two other officers of election sitting beside Young,
92 said "Helen, we have voting machines set up ready to go, we're not gonna have...they
93 asked me how many precincts are not able to log on." Vice-Chair Young responded that
94 she knew so far of two precincts. The officers of election said they were not going to

95 have enough provisional ballots and what should they do if they run out of ballots. Their
96 recommendation was to write down the voters' name and address and ask for their voter
97 registration first. If they did not have a voter registration card, they were to ask for their
98 drivers' license or another form of identification with their picture and address. Vice-
99 Chair Young said that she needed to call Randy Wertz, general registrar for Montgomery
100 County. She called and all the lines were busy. She called again and Mr. Wertz was on
101 the other line troubleshooting with another precinct on their pollbooks. She waited a
102 while, and someone at the registrar's office indicated that Cynthia (Secretary Chappelka)
103 was there and to talk with her. Young said she then spoke with Cynthia.

104 Secretary Chappelka approached the podium. Secretary Chappelka said that she
105 arrived at the general registrar's office at 5:15 a.m. on election morning and from the
106 moment she arrived until the time she got the phone call from Helen the phones were
107 ringing like mad, and everybody seemed to be having trouble and they could not use the
108 password, the password wouldn't work. On their call, Vice-Chair Young said [sic] the
109 precinct opens in five minutes and they have a huge line of people waiting to vote. Young
110 shared with Secretary Chappelka the suggestion of two experienced officers of election
111 and asked Chappelka for her opinion. At that time, Secretary Chappelka said that she had
112 "like 30 seconds because Randy was buried in phone calls," to go along with her or to
113 think of something else. At that point they did not know if any of the electronic
114 pollbooks were up and it seemed to be all about passwords. Secretary Chappelka said she
115 thought about passwords and if they had to go back to Datacard and alert Datacard and
116 how long would it take.

117 Secretary Chappelka said she had to think of the worst case scenario: "Are we
118 never going to get these electronic pollbooks up today." She was thinking 25,000
119 provisional ballots they were going to need and she knew around the county there were
120 around 5,000, but how they were going to print that kind of number within the day, how
121 they were going to get 25,000 envelopes because all the provisional ballots would need to
122 be put into envelopes. Secretary Chappelka said that she knew in theory the sheriffs
123 would be driving all the ballots around if they got them printed and that she knew their
124 printing machine had broken down and that it had taken a day for it to get repaired but
125 they had a powerful printer that could have done all the ballots but they would have to
126 send them to all the precincts. She knew the sheriffs would do it but would they really in

127 actuality be able to drop everything and drive out all over the county. Chappelka said
128 they have a fairly large county area-wise.

129 Chappelka continued that she remembered the Presidential Primary and that they
130 ran out of ballots and they used a substitute method and that it was not accepted and that
131 was really in her mind about running out of ballots. The other part was whether or not the
132 voters would be patiently waiting for them to deliver the ballots or would they go home.
133 Chappelka said that was not their aim, they want voters to vote. The other part was if they
134 used all provisional ballots it would take days to count all them. Secretary Chappelka also
135 explained that using the voting machines to count 25,000 votes would be more accurate
136 than hand counting. Chappelka explained that they had a situation where a supervisor that
137 was extremely upset because something wasn't done exactly as he wanted. Chappelka
138 was concerned how the supervisor would react if it took 2 days to count the ballots.
139 Secretary Chappelka then restated that voting machines are more efficient and accurate
140 than hand counting. Chappelka also said they have experienced officers of election and
141 that many but not all serve in their own precincts in which they vote. These officers know
142 the voters, the voters are their friends and neighbors, they know many of them and if they
143 are in the right precinct or not. They also were checking ID with addresses to know if
144 they were in the right precinct or not.

145 Vice-Chair Pyon determined that from what he heard, Montgomery County was
146 not ready to use electronic pollbooks. Other counties appeared to be ready. He asked
147 where the machines' vendors and troubleshooters were and if electronic pollbook training
148 had been conducted. Secretary Chappelka responded that by 6:30 a.m., when phone calls
149 were able to get through to the registrars' office and things had calmed down, over twelve
150 precincts had been able to log into their electronic pollbooks but had been unable to reach
151 the registrar's office to notify them.

152 Vice-Chair Pyon inquired about electronic pollbook training. Secretary Chappelka
153 said that there had been training and that prior to Election Day everything had seemed to
154 go well and the precincts where they thought the Chief might not be as comfortable with
155 technology, they used paper pollbooks. Secretary Rodrigues asked how many precincts
156 are in Montgomery County. Secretary Chappelka responded that Montgomery County
157 has 22 precincts and a CAP [Central Absentee Precinct]. Secretary Rodrigues asked if all
158 five precincts that had trouble with their electronic pollbooks had attended the same

159 training program. Chair Dowdy said they did. They held training in July, August and
160 October. Dowdy said they had five different nights and they broke the crews of the
161 various polling places down and spread them over the give nights. One of those nights
162 was for Chief Officers. He said that the observation during the training was that the
163 people were working in teams and were able to accomplish the process of logging on to
164 the machines multiple times and working as a team did well. He said there were a couple
165 of chief officers that expressed to the Secretary after that that they would be comfortable
166 if they had a paper pollbook also. Dowdy said that paper pollbooks were issued to eight
167 precincts and four of the eight chose to use the paper books and that four went ahead and
168 used the electronic pollbooks. Chappelka said that she worked very hard to make sure
169 every officer of election attended training and everyone did except one—an experienced
170 officer. The one chief that did not attend training used a paper pollbook.

171 Vice-Chair Pyon stated that we need to expect that something might go wrong.
172 Pyon asked what was done to prepare for such situations. Mr. Wertz responded that what
173 they did was to discuss how to restart the machines, there is a simple way to restart the
174 machines “by going to Internet Explorer and eliminating the dot pollbook” and by doing
175 that they could start the process over again and could use the correct password. Wertz
176 said they left out one step in their opening process and that is where they had to go in and
177 locate where the data for that particular election was. And it was on a thumb drive that
178 had been put into the machine and instead of going into that particular thing they took the
179 default on the window that came up and when they took that it established a different
180 pollbook. Wertz said all he had to do was to get them to eliminate that “one dot pollbook
181 thing and start the process over and we got several of them started.”

182 Secretary Rodrigues said that it worries her that provisional ballots were not used
183 and that thirteen people were able to vote at the wrong precinct that day. Rodrigues said
184 the reason for provisional ballots is situations such as these, and fortunately the race was
185 not close. Mr. Wertz said that each precinct had ten percent additional paper ballots and
186 envelopes, so they did have the capability to use them. Secretary Chappelka reiterated
187 that they did not know how long the provisional ballots would last and how fast they
188 could get hundreds, thousands of provisional ballots out to the precincts. She said they
189 did not want to happen what happened in the 2008 Presidential Primary, where a locality
190 ran out of ballots.

191 Secretary Rodrigues asked whether there was any attempt to use provisional
192 ballots. Secretary Chappelka answered that a few were used, but not for the reason being
193 discussed. The provisional ballots were used in precincts where the machines were up
194 and running. They were used for people who were not registered and for the usual
195 reasons a provisional ballot would be used. Secretary Rodrigues asked for clarification
196 on a remark made earlier in which Secretary Chappelka stated that they would have
197 counted the provisional ballots anyway. Secretary Chappelka responded that the
198 discussion was hypothetical, they decided that they would have counted the ballots for
199 the reasons discussed: because the officer of election was incapable of notifying the voter
200 they were in the wrong polling place. Therefore, not counting those votes would have
201 posed a barrier to those voters.

202 Chair Cunningham asked if the members of Montgomery County Electoral Board
203 or Mr. Wertz had anything else to say. Secretary Chappelka responded that they had
204 established a plan for what they were going to do in future elections. She said they would
205 give the Board the plan. In the future, they plan to hire an electronic pollbook specialist
206 who will set up the machines, conduct the trainings and serve as a troubleshooter. They
207 plan to have a paper pollbook backup for each of the precincts on election day. They plan
208 to improve communication by having a dedicated cell phone at the registrar's office for
209 texting purposes, and also by surveying their precincts for wireless access to use for
210 email communication. Additionally, they plan to continue to provide localities with ten
211 percent of provisional ballots.

212 Chair Cunningham asked if there were any comments from the public. Mary
213 Houska, President of the League of Women Voters in Montgomery County, came
214 forward. Ms. Houska pointed out that the problem was that additional instructions were
215 written in the registrar's office and they missed that important point. So the people that
216 followed the instructions had a problem. Ms. Houska's stated that the League is 40 years
217 old and they have worked with the registrar's office and electoral board closely for those
218 40 years. She said they feel that the registrar must resign as the registrar is the
219 administrator of voting and registration. This is not the registrar's first mistake. She said
220 in 2009, the registrar's office was unable to make a spreadsheet for ten candidates for
221 Blacksburg Town Council. For the May 2010 election, she said the registrar's office
222 allowed petitions to be gathered in December 2009. And now they have this mistake. She

223 said that the Montgomery County League of Women Voters had also heard complaints
224 from citizens. One citizen complaint was that they were given the wrong ballot on
225 election day. Another citizen had complained when voting absentee, that he was given
226 the wrong House of Delegates ballot when voting on a machine. She recognized that
227 some of these complaints could be hearsay, but what worries them is the systematic
228 nature of the mistakes. In 2011, Montgomery County will go through redistricting and
229 several state and local elections. In Montgomery County potential 22 offices will be up
230 for election. Some town elections have been won by as few as 18 votes. These
231 systematic mistakes cast doubt on the outcome of the elections.

232 Chair Dowdy said that is not uncommon for individuals to leave a polling place,
233 one or two it seems every election, and call the registrar's office and say they were given
234 the wrong ballot. Each time they respond and ask if the voter if they called the person
235 over and say they were given the wrong ballot. In some of their polling places, in certain
236 elections, the town elections have been moved to November. Some polling places have
237 county residents and some have town residents so there are two ballots in the November
238 election and you have to determine at the table where the person checks in whether they
239 live in the town or the county and they are given a different card to go to the voting
240 machine. The officer of election takes their card and gives them a ballot. The standard
241 answer when people call to complain is to ask whether the voter told the offer of election
242 at the polling place. If someone complained their ballot would be adjusted and they
243 would be given the correct ballot. Once someone has used the ballot and cast it there is no
244 way to check on it. Dowdy said he is not denying or stating whether it happened or not
245 but if the person voting is given the wrong ballot and does not correct it at the point of
246 voting, then it is pretty much a moot discussion.

247 Chair Cunningham asked Chair Dowdy to what extent does he accept
248 responsibility for some of the errors and mistakes that were made in Montgomery
249 County. Chair Cunningham clarified, that she meant the November election and other
250 issues that has diminished the confidence the public has in the Montgomery County
251 Electoral Board. Chair Cunningham asked to what extent that there is responsibility on
252 his part or the part of the registrar. Dowdy responded that they address every complaint
253 they get and try to adjust for it. He was speaking to this particular issue. Chair
254 Cunningham said she was speaking to an overarching question. Referencing the list of

255 items, Dowdy said adjustments need to be made and have been made in terms of
256 proofreading, following through and preparation need to and have been made.

257 Vice-Chair Pyon stated that he is bothered by Mr. Dowdy's statement that one or
258 two people always have a problem with the ballots. One or two people can determine the
259 outcome of an election. Vice-Chair Pyon stated that all the issues discussed are serious
260 issues. Pyon asked if all complaints or allegations mentioned today have been
261 documented. He continued that if these systematic mistakes really happened they need to
262 be removed to give someone else the chance to fulfill the duties of the job. Pyon stated
263 that the State Board is charged with uniformity of elections in Virginia and that he takes
264 this job seriously. If the statements made today are true then something must be done by
265 this Board.

266 Chair Dowdy responded that he was not trying to minimize the individual
267 comments, but if a citizen claims after the election that they were given the wrong ballot,
268 there is no way to verify this after the ballot was cast. Vice-Chair Pyon stated that when
269 complaints are received by the registrar, this information should be recorded. Mr. Wertz
270 agreed and said that if a voter felt they were given the wrong ballot they should have said
271 something at that time, but after they press the red button to vote, they have voted and it
272 cannot be taken back. If they think they got the wrong ballot they should have said
273 something to the officers of election at that time and they could have looked into it to see
274 if they could adjust it. But once they do, there is nothing we can do, we have to accept
275 that vote.

276 Mr. Wertz addressed Ms. Houska's complaints. With regards to the spreadsheet
277 error that Ms. Houska mentioned, Mr. Wertz admitted that a staff member had made an
278 error in the spreadsheet, but Mr. Wertz said he corrected the error before the information
279 was sent out. Mr. Wertz said to his knowledge, there is nothing in the Code of Virginia
280 which says he is on a time limit to get the results in. He said a Board of Supervisors
281 member got upset because the results came in later than other people. Mr. Wertz
282 explained that he told him that he wanted to make sure the results were correct. He did
283 not care if the results were on his time limit; they had to be correct before they went out.
284 They made them correct. The spreadsheet sent out was correct. Later that night, the same
285 staff member also made a mistake when entering numbers into the state system. He hit
286 the wrong numbers and added 2,000 votes to [sic] one precinct. When entering numbers

287 into the VERIS system nothing shows up for thirty minutes so you can check the number.
288 They left for the evening and the numbers they put into the system are unofficial. Mr.
289 Wertz explained that you do not get official numbers until the canvass is completed. He
290 said the stuff they are bringing up “are little picky things.”

291 Chair Cunningham asked to what extent Mr. Wertz accepted overarching
292 responsibility for things that have happened. Mr. Wertz answered that as head of the
293 department, he must accept some responsibility, but for the decision on November 2,
294 2010, he said he was not involved in the decision that was made. He was not even asked
295 what to do. He was on the phone with the people in the precincts to get the pollbooks up
296 and going.

297 Chair Cunningham asked what contingency plans were in place on November 2,
298 2010. Mr. Wertz responded that there was the ten percent provisional ballot backup at
299 every precinct along with the envelopes, electronic pollbook training, and for those chiefs
300 who felt uncomfortable with the electronic pollbooks they provided the precinct with a
301 paper pollbook backup. Mr. Wertz said that at that particular time they felt they were
302 covered with that they needed but people just forgot all the training we had used. Wertz
303 said that Secretary Chappelka called every one of the chiefs to find out what processes
304 they went through to do the electronic pollbooks and that 75% of them responded that
305 they just followed the instructions in the training. Mr. Wertz said they had the training
306 and they had the stuff but when you are dealing with new technology and you get in there
307 on election morning and you set everything up and you got people who aren't
308 comfortable with technology you can have issues like that. Mr. Wertz said he wishes he
309 would have followed doing the provisional ballots because he had extra provisional
310 ballots in the office and they had additional ballots for absentee voting, they could have
311 used those.

312 Chair Cunningham turned to the State Board's counsel from the Attorney
313 General's office, Joshua Lief, who identified what legal actions could be taken. Mr. Lief
314 read from Section 24.1-103 of the Code that the State Board could institute proceedings
315 to remove a member or the entire Electoral Board. The State Board could also petition the
316 Electoral Board to remove the general registrar if they thought that he failed to discharge
317 his duty. If the Electoral Board does not remove the registrar, the State Board could
318 institute proceedings for the court to remove the General Registrar. According to Section

319 24.2-104, if the State Board is of the opinion that the public interest will be served, it may
320 request the Attorney General to assist the Attorney for the Commonwealth of any
321 jurisdiction in which the election laws have been violated. Also in Section 24.2-104, by
322 the unanimous vote of all members of the State Board, the Attorney General could
323 exercise the authority granted to conduct an investigation, prosecute a violation, assure
324 the enforcement of the election laws, and report the results of the investigation to the
325 State Board. Lief said by unanimous vote the State Board could ask the Attorney General
326 to look into this matter. Another avenue to the State Board is to ask the Commonwealth's
327 Attorney to look into this as a criminal matter, under Section 24.2-1001 which talks about
328 a willful neglect of the Code being a misdemeanor or Class 5 felony.

329 Vice-Chair Pyon asked then, based on what Mr. Lief said, the Board has the way
330 to respond to this matter. Mr. Lief said that, yes, and explained the options more briefly.

331 Secretary Rodrigues requested to call upon the Attorney General's Office to
332 investigate the matter and pass the matter onto the successors, who will be in a better
333 position to resolve the issue. Chair Cunningham agreed and said she would feel more
334 comfortable if a full fledge investigation was conducted by the Attorney General's
335 Office. Chair Cunningham explained that the Board has looked into it but has not
336 conducted a full-fledged investigation nor would they be expected to. Vice-Chair Pyon
337 said that this is a legal matter and should be dealt with by the Attorney General's Office
338 which is better equipped to look into this issue. Secretary Rodrigues then asked Mr. Lief
339 should the Attorney General's find [sic] if they had the authority to empanel a Grand
340 Jury. Lief explained that it is a rarely used Code provision. Mr. Lief referenced an issue
341 from the previous election and referenced a multi-jurisdictional Grand Jury but says that
342 based on the plain language of the statute, in theory, does give power to the Attorney
343 General. Secretary Rodrigues made a motion to employ Section 24.2-104, to call upon
344 the Attorney General's Office to conduct an investigation, prosecute violations, ensure
345 enforcement of election laws, and report to the State Board. The motion was seconded by
346 Vice-Chair Pyon and unanimously approved by the Board.

347 Chair Cunningham called for a five minute break.

348 Chair Cunningham called the meeting back to order at 2:25 p.m.

349 Chair Cunningham called attorney Mr. James Alcorn to the front. On behalf of the
350 entire Board, Chair Cunningham presented Mr. Alcorn (former Deputy Secretary) with a

351 commending resolution for his years of service to the State Board of Elections. She
352 thanked him for his service to the State Board of Elections.

353 The next item of business was the restatement of the voter registration policies.
354 State Board of Elections' Policy Analyst, Martha Brissette, presented this restatement at
355 the previous Board meeting on January 12, 2011, where all requested additional time to
356 study a revision from the Fairfax County registrar. After reviewing, Martha Brissette
357 thought it went beyond the mission of restating existing policies. She said it broke new
358 ground first by undertaking to identify what is material or not. While she thought this
359 was a good idea, she thought that should be another regulation. Second, it proposed that
360 changes to voter registration records can be made based on an official source, but did not
361 define "official source." Martha Brissette proposed to adopt what has been put forward as
362 a restatement and to do a further new regulation with Fairfax County's suggestions. Vice-
363 Chair Pyon moved to adopt the voter registration restatement that has already been placed
364 in Townhall for comment. The motion was seconded by Secretary Rodrigues and was
365 unanimously adopted by the Board.

366 The next order of business was the Stand by Your Ad violations. State Board of
367 Elections' Policy Analyst, Peter Goldin, came forward. Peter Goldin said he received a
368 complaint against Mr. Mike Winston, candidate for sheriff in Roanoke County, for
369 distributing cards that did not have a proper disclaimer. Peter Goldin spoke to Mr.
370 Winston and determined that Mr. Winston had read and tried to abide by the Code. Peter
371 Goldin said that there was a football schedule on the back of the card which Mr. Winston
372 interpreted as a novelty item. Peter Goldin explained in this case it was not a novelty
373 item. Because the cards were immediately taken out of circulation upon learning of the
374 violation and because it was a first time offense, the recommendation from staff would be
375 a reduction in the penalty to \$50.00. Mr. Winston came forward and said he had no
376 intention of violating the Code. Vice-Chair Pyon made a motion to reduce the penalty
377 from \$1,000.00 to \$50.00. Secretary Rodrigues seconded and the motion was
378 unanimously adopted by the Board.

379 The next order of business was the request for waiver of civil penalties. The first
380 request was from the Friends of Phillip Hamilton. Peter Goldin said the initial penalty
381 assessed was for \$350.00; \$100.00 for filing a late statement of organization and \$250.00
382 for filing late reports. Additional communication with Mr. Hamilton showed that his

383 amended statement of organization was filed timely; therefore the recommendation from
384 staff would be a reduction in the penalty from \$350.00 to \$250.00. Vice-Chair Pyon
385 made a motion to reduce the penalty to \$250.00. Secretary Rodrigues seconded, and the
386 motion was unanimously adopted by the Board.

387 The next order of business was the request for waiver of civil penalties from the
388 Friends of Bryce Reeves. Peter Goldin explained that Mr. Reeves filed his statement of
389 organization through the general registrar's office, but was told by Spotsylvania County
390 General Registrar Kellie Acors that he was not required to file through the State Board.
391 The recommendation from staff would be a reduction in the penalty to \$50.00 because
392 the general registrar's recommendation was incorrect. Ms. Acors came forward to speak
393 on the issue. She said she takes a lot of responsibility for this incident because she was
394 incorrect. Secretary Rodrigues said that she believes general registrars are an extension of
395 the State Board, and because the State Board would waive a penalty if it were a staff
396 member's mistake, she would like to waive this penalty. Chair Cunningham disagreed
397 because she thinks it is the candidate's responsibility to know the Code. Secretary
398 Rodrigues moved to waive the penalty. Vice-Chair Pyon seconded. The motion was
399 adopted by the Board.

400 The next item on the agenda was the Fairfax League of Conservation Voters.
401 Peter Goldin explained that they submitted their report late because they returned from
402 vacation on the day before it was due. Because it was a first time violation, staff
403 recommended a reduction in penalty from \$100.00 to \$50.00. Vice-Chair Pyon made a
404 motion to reduce the penalty to \$50.00. Secretary Rodrigues seconded and the motion
405 was unanimously adopted by the Board.

406 The next item on the agenda was the Roanoke Valley Democratic Women. Peter
407 Goldin explained that they were a PAC that failed to file with the State Board. They tried
408 to provide an explanation but were still required to file based on their expenditure
409 amounts. They requested a waiver of all penalties. The recommendation from staff was to
410 reduce the original penalty of \$1,500.00 to \$200.00; \$100.00 for filing a late statement of
411 organization and \$100.00 for filing their last report late. Vice-Chair Pyon made a motion
412 to uphold the penalty of \$200.00. Secretary Rodrigues seconded, and the motion was
413 unanimously adopted by the Board.

414 The next item on the agenda was the Chesterfield Republican Women's Club.
415 Peter Goldin said the Virginia filing system erroneously reported that the reports were
416 late even though the group had requested and received a filing extension. Staff
417 recommendation was to fully waive the penalty. Vice-Chair Pyon made a motion to
418 waive the penalty. Secretary Rodrigues seconded, and the motion was unanimously
419 adopted by the Board.

420 The next item on the agenda was the Harrisonburg Rockingham Republican
421 Women's Club. Peter Goldin said they had been granted a penalty waiver but the fine had
422 already been paid before they received notice of the waiver. Peter Goldin requested
423 authorization to refund \$100.00 to the Harrisonburg Rockingham Republican Women's
424 Club. Vice-Chair Pyon made a motion authorizing the refund. Secretary Rodrigues
425 seconded, and the motion was unanimously adopted by the Board.

426 The next item on the agenda was the Democratic Party of Virginia. Peter Goldin
427 explained that all Democratic Party of Virginia's branch expenditures were accounted for
428 correctly in the State system, and they will not be penalized in the future. Staff
429 recommendation was to waive the penalties. Vice-Chair Pyon made a motion to waive
430 the penalties. Secretary Rodrigues seconded and the motion was unanimously adopted by
431 the Board.

432 The next item on the agenda was Ms. Melody Scalley from ESVA GOP. Ms.
433 Scalley's mother passed away within a week of the filing deadline. Staff recommendation
434 was to waive the penalties since Ms. Scalley would have qualified for an extension under
435 the circumstances. Vice-Chair Pyon made a motion to waive the penalty. Secretary
436 Rodrigues seconded, and the motion was unanimously adopted by the Board.

437 The next item on the agenda was Green for the 74th. Peter Goldin explained that
438 Mr. Green's treasurer provided staff with the required filings, but only the shortcut had
439 transferred to the staff's computer. He explained that by the time they were able to rectify
440 the problem high fines had been accrued. Staff recommendation was to waive the
441 penalties. Vice-Chair Pyon made a motion to waive the penalties. Secretary Rodrigues
442 seconded, and the motion was unanimously adopted by the Board.

443 The next item on the agenda was Virginia Leadership, Inc. Peter Goldin said that
444 they had filed an extension, but a penalty letter still went out by mistake. Staff
445 recommendation was to waive the penalties. Vice-Chair Pyon made a motion to waive

446 the penalty. Secretary Rodrigues seconded and the motion was unanimously adopted by
447 the Board.

448 The next item on the agenda was Voters to Stop Sprawl. Peter Goldin explained
449 that this committee had mailed their reports to the previous 9th Street address. He said he
450 confirmed by the postmark that they were sent and delivered to the State Board in a
451 timely manner. He contacted DGS to ensure mail is forwarded properly in the future, and
452 all information on the website was updated. Staff recommendation was to waive the
453 penalty. Vice-Chair Pyon made a motion to waive the penalty. Secretary Rodrigues
454 seconded, and the motion was unanimously adopted by the Board.

455 Peter Goldin requested for Valley PAC to be removed from the agenda.

456 The next order of business was the request for approval of updated SBE forms.
457 Martha Brissette explained that the need to update the Statement of Voter when Absentee
458 Ballot Lost or Not Received came up when updating the “What-If” document. She
459 received some comments from general registrars recommending small, uncontroversial
460 changes. One suggestion was to remove the footnote and to add instructions specifying
461 that the form is not to be used on election day. Another comment was to restate the oath
462 to emphasize that voters had not already voted and will not vote anywhere else in
463 Virginia. Vice-Chair Pyon asked whether the changes were just for better clarification.
464 Martha Brissette responded in the affirmative. Vice-Chair Pyon made a motion to
465 approve the form. Secretary Rodrigues seconded, and the motion was unanimously
466 adopted by the Board.

467 The next order of business was the approval of existing board policies for
468 conversion to regulations. Peter Goldin came forward with the Standards for Recounts
469 and Contested Elections and explained that this is just a restated, condensed version of a
470 previous Board policy. The Board asked if there were any comments from the audience
471 or Attorney General’s Office. There being none, Vice-Chair Pyon made a motion to
472 approve the regulation. Secretary Rodrigues seconded, and the motion was unanimously
473 adopted by the Board.

474 The next item on the agenda was the Election Administration Restatement.
475 Martha Brissette came forward and said that this restatement had not received any
476 comments on the online forum; however, some comments were received from general
477 registrars. Registrars commented it would be helpful to have a regulation dealing with

478 electronic devices in the polling place and that a sentence dealing with determination by a
479 majority of the officers should be made generally applicable to this section. Another
480 recommendation was that a paragraph dealing with voting equipment programming be
481 deleted and moved to a separate new regulation on voting equipment” for future
482 consideration. A typographical error consisting of an unnecessary “be” was also noted.
483 Chair Cunningham commented that for future restatements, if all text is new she thinks it
484 would be better to indicate “All text is new” rather than underline all new text. Vice-
485 Chair Pyon made a motion to approve the regulation with the three modifications.
486 Secretary Rodrigues seconded and the motion was unanimously adopted by the Board.

487 The next item on the agenda was the General Administration Restatement. Martha
488 Brissette explained this restatement involved the bylaws, delegations to secretary, general
489 duties and organization of the State Board. Martha Brissette said this regulation is just a
490 restatement of previous Board policies, but she did receive one comment recommending
491 changing the language regarding staff posting changes to delegation to the Internet to
492 “shall.” Chair Cunningham asked if there were any comments from the audience or
493 Attorney General’s Office. There being none, Vice-Chair Pyon made a motion to approve
494 the regulation. Secretary Rodrigues seconded, and the motion was unanimously adopted
495 by the Board.

496 Secretary Rodrigues asked that the complaint against Tammy Alexander be
497 moved to the agenda for the next Board meeting.

498 The next order of business was reviewing the final report. Copies of the report
499 were distributed to the public. Secretary Rodrigues said that because these were our
500 personal reflections and recommendations, she would like a motion. Vice-Chair made a
501 formal motion. Secretary Rodrigues seconded, and the Board unanimously approved.

502 Chair Cunningham asked if there were any comments from the public.

503 Mr. Robin Lind, Secretary of Goochland County Electoral Board, came forward.
504 He said that he was glad that the Montgomery County case would be handled on a
505 judicial level. Secretary Lind referenced Section 24.2-1016 of the Code which discusses
506 false statements and penalties. He said that the State Board published false information
507 for seventy days, and removed the information only after an Electoral Board member
508 pointed out the error.

509 Secretary Rodrigues responded that the State Board had recognized the mistake
510 Secretary Lind referenced. She said that the State Board had started to focus on using
511 data more efficiently and had begun work on data modeling to find errors in election
512 results and campaign finance reports. She continued that the State Board had learned
513 from that mistake and had included that information in the final report to ensure
514 improvement continued.

515 Chair Cunningham responded to Secretary Lind saying that for there to be
516 criminal fraud there has to be intent to deceive. Secretary Lind again referenced the
517 Montgomery County case discussed earlier and the intent in that case. Chair Cunningham
518 and Vice-Chair Pyon responded the State Board does not have the capacity to investigate
519 the matter, and therefore referring the issue to the Attorney General's Office was the best
520 decision.

521 Ms. Barbara Null from the City of Charlottesville came to the front. Ms. Null said
522 that the Board already had a copy of the letter she had sent concerning her firing as Chief
523 Election Officer in Charlottesville. She said she did not realize that the State Board was a
524 "toothless tiger" and had no ability to investigate these issues. Her only complaint was
525 that no one got back to her concerning her issue. Chair Cunningham apologized on behalf
526 of the Board for not getting back to her.

527 Mr. Albert Kohn came to the front. Mr. Kohn said he also did not realize that the
528 State Board was a "toothless tiger," and he believes that should change. Chair
529 Cunningham responded that for those people who have complained about State Board's
530 limited ability she urges them to talk to their state Senator and House of Delegates
531 member so the Code can be changed. Chair Cunningham said that most people do not
532 realize that the State Board is more of an oversight rather than enforcement organization.
533 Mr. Kohn said his main complaint was that he was not notified that he and his wife had
534 been fired as Officers of Election in the City of Charlottesville. He thought the whole
535 situation had been handled poorly, and he wanted it on record that this happened to him
536 and that he believed it was wrong.

537 Susan Lee, Manager of Election Uniformity at the State Board of Elections, came
538 to the podium. She thanked the Board for their service and the time they dedicated. On
539 behalf of the entire Board, Chair Cunningham thanked Susan Lee and State Board staff
540 members for their dedication and support of the Board.

541 Vice-Chair Harold Pyon left at 3:20 p.m.

542 Ms. Patricia Napoleon from the City of Charlottesville came to the podium to
543 address the Board. Ms. Napoleon volunteered as a poll watcher in the City of
544 Charlottesville on November 2, 2010. She said her first experience as a poll watcher was
545 very negative. She cited incidents where she was chastised, ordered to stay in her seat and
546 threatened by General Registrar, Rick Sincere. Ms. Napoleon said that Mr. Sincere did
547 not follow approved procedures with regards to election law. She said that Charlottesville
548 Republican Committee has unanimously voted for Mr. Sincere's resignation, and she
549 asked that this incident be taken very seriously. Because this is this Board's last meeting,
550 Secretary Rodrigues asked Ms. Napoleon to give her statement to Justin Reimer,
551 Confidential Policy Analyst, so that the new Board can look into the matter.

552 Henrico County General Registrar Mark Coakley came forward to address the
553 Board. Mr. Coakley said that he thinks this Board had demonstrated the utmost
554 professionalism considering cuts to the budget and services, all without obstructing the
555 freedom and fairness of elections. He said he thought that this Board has been transparent
556 with laws, procedures and policies. Mr. Coakley said that he saw better professional
557 training, and that State Board should be complimented for this. He continued that this
558 Board emphasized the importance of volunteering for the 2008 Presidential Election and
559 Henrico County still uses the volunteers that the State Board helped recruit that year. He
560 thanked the Board for the work and care they have given to the Commonwealth of
561 Virginia.

562 Chair Cunningham asked if there were any additional comments from the public.
563 There being none, Secretary Rodrigues moved to adjourn the meeting. The motion was
564 seconded and unanimously approved. The meeting was adjourned at 3:24 p.m.

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575 Vice-Chair

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Secretary

577 Statement of Correction of Patricia Napoleon*

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My using the word "unanimous" within your meeting when describing vote was the result of an inability to completely hear (as members cast votes) within the Charlottesville meeting-January 6, 2011. Thus, I request that my statement be amended. A vote was permitted by Chairman Weber as the request was made in asking Mr. Sincere to willingly submit his resignation from the Charlottesville Electoral Board. The result-vote was not unanimous. There was one abstention and one nay. Importantly, the majority ruled and the vote carried on January 6, 2011. My personal complaint-(Sincere), stems from the fact that others and (I as a respectful volunteer Republican poll watcher) were sternly reprimanded and then prevented from hearing questionable voters' conversation for hours. The Code of Virginia clearly gives poll watchers the right to hear. The law was broken as Mr. Sincere either did not know the law or he chose not to follow the law on November 2, 2010.

* Received on March 8, 2011. The Board at its meeting on March 15, 2011, approved adding this statement as an addendum to the end of its previously approved minutes of January 31, 2011, pursuant to Va. Code § 2.2-3806 (5)(c).