

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”.

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Vice Chair Bowers Statement: Delivered on August 6, 2014

112 [I would like to formally submit this written statement into the official record for
113 today’s meeting of the Virginia State Board of Elections. Due to required travel on
114 behalf of my employer, I am unfortunately unable to be physically present during the
115 SBE’s discussion regarding the town hall comment period that closed on August 4th.
116 While my strong opinion and statements are on the record from prior meetings around the
117 topic of Photo ID (and I previously provided comments and made the motion to have an
118 expired DMV issued license be considered a valid form of voter identification), I would
119 like to ensure that my sentiments are also read during the first meeting following the
120 conclusion of the public comment period. I am also sure that much of what I am about to
121 state will probably be expressed by others during the open comment period of this
122 meeting (as many of the comments on Town Hall that I have read reflect my sentiment).

123 We, the members of the State Board of Elections, should do everything we can to
124 ensure that voting as a process is not convoluted, confusing, intimidating, or restrictive
125 and ensure equal access to all those qualified to exercise voting rights. With so many
126 election based changes in a short period of time, I also take very seriously the role that
127 the members of this Board have in giving out guidance to the Electoral community on the
128 practices and policies that ensure the entire voting and election process is executed and
129 implemented uniformly across the Commonwealth. This responsibility is also inclusive

130 of the new voter identification laws and the subsequent guidelines around its
131 implementation.

132 There is absolutely no reason why we should not accept an expired driver's
133 license if presented at the polls as a form of identification. The Department of Motor
134 Vehicles issues a driver's license for the purpose of driving. However, its uses are many
135 and one of the main reasons it is used is for purposes of identification. In fact, this form
136 of identification is widely accepted for its validity and its authenticity in identifying an
137 individual. It was also discussed during a prior meeting that other forms of identification
138 do not have expiration dates on them, and in fact the decision was made to not to use
139 expiration dates on the free voter cards issued by the registrars offices around the
140 Commonwealth as a result of SB 1256 and subsequently the Governor's Executive Order.
141 We should not complicate the matter around whether or not this document should be
142 viewed as acceptable or get into an argument around the SBE's ability to define valid.
143 This board has sought to provide very succinct and uniform guidance to those in the field
144 and to the public (with a great deal of buy in through forums such as Town Hall)
145 throughout the changes that have occurred over the last 3 years. The guidance on this
146 matter ensures that no citizen is turned away based on an expiration date.

147 We have heard from the electoral community and from the citizens of Virginia the
148 sentiment that an expiration date should not be an additional restriction. The point of
149 voter identification remains the same- to identify the voter and verify the person who
150 walks into their respective polling location. An officially issued (Department of Motor
151 Vehicles) expired ID or an unexpired (Department of Motor Vehicles) ID will
152 accomplish exactly the same thing. Therefore, I am adamantly opposed to having an
153 expiration date be the reason that one's photo form of identification is not accepted for
154 the purposes of casting a ballot on Election Day.]

155 Thank you,



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157 Vice Chairman
158 Virginia State Board of Elections

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

167 Public comments were provided by Delegate Vivian Watts, D-39th District;
168 Therese Martin, Virginia League of Women Voters; Tram Nguyen, Director Virginia
169 New Majority, Donna Miller Rostant, Chair Fairfax County Democrats; Maggi Luca,

170 Past Electoral Board Secretary Fairfax County; Courtney Mills, Fair Elections Legal
171 Network and Hope Amezquita, ACLU of Virginia provided comment.

172 Chairman Judd asked Secretary Palmer to repeat the motion. Secretary Palmer
173 stated: “Valid” for purposes related to voter identification shall mean: (i) the document
174 appears to be genuinely issued by the agency or issuing entity appearing upon the
175 document, (ii) the beater of the document reasonably appears to be the person whose
176 photograph is contained thereon, and (iii) the document shall be current or have expired
177 within the preceding twelve (12) months. The officer of election shall determine whether
178 the document is officially acceptable based on its face. Chairman Judd asked for a final
179 vote. The motion carried 2-0 in favor of the presented motion.

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

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

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

200 Donna Miller Rostant, Fairfax County Democrats approached the podium. Ms.
201 Rostant asked which particular comments posted to Townhall aided in the decision made
202 at this Board Meeting by Board Members regarding the voter identification interpretation
203 of “valid”. Chairman Judd stated that if an item is posted on Townhall it is because the
204 Board Members motion and approve the item for public comment. The decision made by
205 Board Members was based on those previously submitted comments.

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

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

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

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

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Secretary

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Chair

Vice Chair