

MINUTES

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4 The State Board of Elections Board meeting was held on Tuesday, March 15
5 2011. The meeting was held in the State Capitol, House Room Two in Richmond,
6 Virginia. In attendance, representing the State Board of Elections was Charles Judd,
7 Chair; Kimberly Bowers, Vice-Chair; Donald Palmer, Secretary; Justin Riemer,
8 Confidential Policy Advisor; Joshua Lief, Senior Assistant Attorney General and SBE
9 Counsel; Susan Lee, Election Uniformity Manager; Peter Goldin, Policy Analyst; Martha
10 Brissette, Policy Analyst; Susan Pollard, Director of Communications; and Alfred Giles,
11 Voting Technology Coordinator. Chairman Judd called the meeting to order at 9:02 AM.

12 The first order of business was the approval of Minutes from the State Board of
13 Elections Board Meeting held on February 18, 2011. Vice-Chair Bowers made a motion
14 to approve the minutes. Chairman Judd seconded the motion and the minutes were
15 unanimously approved by the Board.

16 Chairman Judd then called for the meeting to go into Executive Session, to
17 discuss actual and probable litigation matters requiring the provision of legal advice by
18 agency counsel, as provided by section 2.2-3711(A) (7) of the Code of Virginia. Vice-
19 Chair Bowers seconded the motion, and the motion was unanimously passed. The
20 meeting moved into Executive Session.

21 After the Executive Session, the Board opened the meeting to the public and each
22 Board member certified by roll call vote that, to the best of each member's knowledge,
23 only lawfully exempt public business matters identified in the motion closing meeting
24 were heard, discussed, or considered in the closed portion of the meeting.

25 Martha Brissette then informed the Board of a communication SBE staff received
26 requesting correction of the previously approved Minutes of the January 31, 2011, Board
27 Meeting regarding Patricia Napoleon's statement. Martha Brissette informed the Board
28 that Virginia Code section 2.2-3806 allows individuals to submit statements of less than
29 200 words stating their position regarding government records about them. Pursuant to
30 this Code section, Ms. Napoleon on March 8, 2011, emailed a statement to append to the
31 Board minutes. Upon motion, the Board approved unanimously appending the statement

32 of correction to follow the approved Minutes from the January 31, 2011, State Board of
33 Elections Board meeting.

34 The next order of business was the request for approval of two updated State
35 Board of Elections' forms on the appointment of General Registrars in Virginia. SBE
36 Elections Uniformity Manager Susan Lee presented the updated forms for General
37 Registrar Oath or Affirmation Form Number 120 and General Registrar Certification of
38 Appointment Form. Upon motion, both forms were approved unanimously by the Board.

39 The next order of business was the request for indefinite approval of voting
40 equipment. Al Giles requested approval of the use of AutoMARK, ADA compliant ballot
41 marking devices, with AccuVote optical scanners. Each piece of equipment has been
42 certified in the Commonwealth, but in different system packages. Both systems are
43 included in Premier Election Systems Assure 1.2 package. While Assure 1.2 was
44 completing federal certification, two previous requests for temporary approval to use the
45 combination of equipment were submitted to the Board and approved based on the states
46 of Iowa and Florida's independent testing and approval of the package. Virginia's state
47 certification procedures provide for reciprocity, which allows the consideration of
48 independent testing in conjunction with, or in lieu of, federal certification. Other than
49 direct-recording electronic voting machines (DREs), an AutoMARK with a ballot
50 scanner system is the only other ADA compliant accessible system available to the
51 Commonwealth. Upon motion, the Board approved unanimously to allow all localities to
52 use the AutoMARK with AccuVote optical scanners as long as each system is certified
53 for use in the Commonwealth.

54 The next order of business was requests to waive campaign finance civil penalties
55 presented by Peter Goldin, SBE Policy Analyst. For "Citizens First for Blacksburg", the
56 staff recommended to uphold the \$100.00 penalty for the late filing of a campaign
57 finance report. After determining no one was present for the organization, the Board,
58 upon motion, voted unanimously to uphold the \$100.00 penalty.

59 Mr. Goldin informed the Board that the YR Dominion Political Action Committee
60 (PAC) disbanded shortly after coming together and did not raise or expend any funds.
61 Furthermore, the PAC backdated their "close" date. Mr. Herndon, Treasurer for the YR
62 Dominion PAC was not present in the audience for questioning. Chairman Judd asked

63 Mr. Goldin about the additional fines, and Mr. Goldin responded that the SBE staff has
64 recommended the \$50.00 fine because this was a first time penalty, and the Code requires
65 a recommended penalty. Chairman Judd motioned the organization should not be fined.
66 The Vice-Chair seconded the motion, and the motion was unanimously approved by the
67 Board.

68 Justin Riemer commented about a tornado drill in the State Capitol at 9:45 AM.
69 The Board Meeting reconvened at 9:52 AM.

70 Chairman Judd questioned the Shenandoah County Democratic Women's Club's
71 expense for their honorarium. There was no one present in the audience to answer the
72 Board's concerns. The State Board of Elections does not have further information
73 regarding this issue. Vice-Chair Bowers had a couple questions regarding the structure of
74 their organization, and its description. Justin Riemer, Confidential Policy Advisor,
75 responded that oftentimes campaign committees do not incorporate. Joshua Lief, Senior
76 Assistant Attorney General and SBE Counsel, commented that their structure does not
77 excuse their penalty for their honorarium. The definition of a PAC was discussed at
78 length regarding the Shenandoah County Democratic Women's Club. It appeared that
79 the organization contributed solely to the John Lesinski campaign since they did not
80 invite other candidates. It also remains unknown whether they paid honorariums to other
81 speakers. Vice-Chair Bowers requested more information on this organization for clarity
82 in order to weigh her decision. Mr. Goldin suggested making a request for their
83 appearance at the next Board Meeting to aid their case with the Board. Therefore, until
84 the next Board Meeting in April, the organization shall not accrue additional civil
85 penalties. Mr. Lief added that if they are truly not a PAC and remain apolitical, than they
86 do not need to report the contribution. The Board motioned and agreed unanimously to
87 postpone this case until further information is gathered.

88 The College Republicans Federation of Virginia and the University Democrats
89 have been accused of acting as a PAC without registering and reporting, and have thus
90 accrued campaign finance civil penalties. However, Chairman Judd has disclosed himself
91 as the Republican Party of Virginia Executive Director during the specified time period,
92 and the organization bought tickets to a state function that exceeded the reporting
93 threshold. Chairman Judd also stated the University Democrats had a similar issue of

94 purchasing tickets to a state event over the reporting threshold. Mr. Goldin received a
95 letter during the weekend of March 11, 2011, restating the facts in a Board memorandum.
96 Thus, the SBE staff recommended waiving the penalty fee to the College Republicans
97 Federation of Virginia and University Democrats because they did not meet the “primary
98 purpose” test and were therefore not required to register and report as a PAC. The
99 motions to waive for both groups were agreed to unanimously by the Board.

100 The final order of business included complaints by Marion Werkheiser, Jacquelyn
101 Bailey Kidd, Laura Judd, and Linda Pittman against Tammy Alexander, Vice-Chair from
102 the City of Petersburg Electoral Board. All plaintiffs spoke in-person directly to the
103 Board requesting a petition for Ms. Alexander’s removal as Vice-Chair. First, Marion
104 Werkheiser, a Springfield resident who worked as a Democrat election protection
105 volunteer attorney and a member of the Virginia State Bar, has been under a wrongful
106 criminal investigation due to Vice-Chair Alexander’s faulty understanding of election
107 laws. Werkheiser stated Vice-Chair Alexander unlawfully ejected her from a polling
108 place citing a non-existent law that supposedly prevented Werkheiser from illegally
109 communicating with a voter for any reason. Vice-Chair Alexander contacted the
110 Commonwealth Attorney to indict Werkheiser on charges, which they found to be
111 groundless. Moreover, allegations in newspapers such as *Virginia Lawyers Weekly* during
112 the criminal investigation have affected her reputation as a lawyer and member of the
113 Virginia State Bar. Werkheiser made a brief statement about Vice-Chair Alexander’s
114 wrongful exercise of authority requesting a petition for her removal citing infractions
115 made to the democratic process; damage made to reputations of good people who wish to
116 be a part of the democratic process; and deterred future participation in the democratic
117 process.

118 Next, Jacquelyn Bailey Kidd took the podium to testify before the Board. She is
119 seventy years old and a third generation city resident of Petersburg from Leesburg, who
120 has retired from Social Services as a National Public Policy Analyst in child welfare. Ms.
121 Kidd stated she intended to run for Petersburg City Council and turned in her petition.
122 Two days later, she stated she was accused of criminal misconduct. Her minister, who is
123 her employee, was also accused of wrongdoing. After an investigation, the charges were
124 dropped. However, her name was smeared in the newspapers for criminal prosecution

125 during the investigation, and she has several thousand dollars in fines involving campaign
126 finance disclosure forms. Ms. Kidd apologized to the Board for her emotional testimony.

127 Laura Judd, a Petersburg resident since 2004, was next to testify before the Board.
128 She has served as a chief election official from Baltimore, Maryland. She volunteered her
129 services, and when she arrived at her Ward Six precinct on November 2, 2010, Vice-
130 Chair Alexander began asking questions about Ward Six citizens. Ms. Judd stated that
131 everything appeared fine except that the people in Ward Six thought they could vote for
132 Annie Mickens who is on the ballot for Ward Five. She stated to Vice-Chair Alexander
133 that maybe this was due an illiteracy issue, which continues to plague 43% of citizens in
134 Petersburg. Then, Vice-Chair Alexander asked Ms. Judd to leave her precinct. Ms. Judd
135 felt that Vice-Chair Alexander did not give her proper explanations for her termination.
136 Ms. Judd stated that the termination made her feel embarrassed and hurt. Shortly after the
137 removal, she received a letter regarding prosecution due to abandonment of post. Ms.
138 Judd stated that Vice-Chair Alexander lied to prosecution about her abandonment of post.
139 Ms. Judd denied these accusations and stated that Vice-Chair Alexander had lied.
140 Furthermore, Ms. Judd's name was smeared in the newspapers leaving her humiliated.
141 She therefore accuses Vice-Chair Alexander of abusing her authority.

142 Linda Pittman, a geology professor at Richard Bland College in Petersburg,
143 testified next to the Board about her interaction with Vice-Chair Alexander. She is a
144 Treasurer for Reform Petersburg Now PAC. Mrs. Pittman began a petition for the
145 removal of the entire Petersburg City Council. While Mrs. Pittman was on vacation,
146 Vice-Chair Alexander tried contacting her by phone. When Mrs. Pittman returned, she
147 discovered a message from the President of Richard Bland College on her voicemail.
148 Mrs. Pittman had used her direct telephone number at Richard Bland College in error
149 without the knowledge or permission of the college as the primary daytime contact
150 number for Reform Petersburg Now. Since then, she has been harassed by newspapers
151 and reporters for her misstep. One example she cited was a reporter informing her about a
152 lawsuit filed against her by a member of the Petersburg City Council for listing the wrong
153 number. At this point, Ms. Judd interjected and stated that her name was also smeared in
154 the newspapers.

155 Robin Lind, Secretary of the Goochland County Electoral Board and Legislative
156 Chair for the Virginia Electoral Board Association (VEBA), spoke to the Board on behalf
157 of VEBA. Mr. Lind inquired the Board about notification to Vice-Chair Alexander and
158 her requested presence at the March 15, 2011, Board Meeting. Lind noted that Alexander
159 claimed she was not notified by the State Board of Elections about the date of the Board
160 Meeting. Secretary Palmer referred to Mr. Riemer for a report on communications with
161 Vice-Chair Alexander. Mr. Riemer explained to the Board that he had moved the agenda
162 to March 15, 2011 to allow Vice-Chair Alexander an opportunity to prepare her case
163 before the Board. He explained that Vice-Chair Alexander was indeed informed of the
164 meeting.

165 In conclusion of the testimonies, Greg Werkheiser, who is a resident of Petersburg
166 and husband of Marion Werkheiser, spoke before the Board and highlighted three legal
167 points surrounding the testimonies. First, Vice-Chair Alexander did not give uniform
168 treatment to Jacquelyn Bailey Kidd to quietly withdraw her petition. She has shown
169 preferential treatment to others in the same position as Ms. Kidd. Second, Laura Judd
170 was improperly informed about her immediate termination from her precinct. Mr.
171 Werkheiser stated that Ms. Judd's termination appeared groundless in laws and
172 regulation. Third, Linda Pittman received disproportionate treatment from merely
173 submitting the wrong number. Mr. Werkheiser stated Vice-Chair Alexander also made
174 repeated and harassing calls to the Mrs. Pittman's husband's work phone number when
175 the local electoral board does not have authority over PACs. When Mr. Werkheiser
176 inquired about jurisdiction to Vice-Chair Alexander, he claims she acknowledged her
177 understanding of laws regarding PACs. He also elaborated on her absence of knowledge
178 about electoral finance laws, citing the improperly assessed \$4,500 fines in Ms. Kidd's
179 case.

180 Chairman Judd thanked everyone for their candid testimonies before the Board,
181 and stated these are serious accusations that should be investigated thoroughly. He also
182 requested legal counsel from Mr. Lief outlining potential options. Mr. Lief cited the
183 standard procedure for removal of an electoral board member. First, there must be clear
184 and convincing evidence, considered a quasi-criminal status. Moreover, both sides must
185 be heard. Mr. Lief offered one option--the Board could go to Circuit Court to petition for

186 removal of an elected board member if they believe there was sufficient evidence based
187 upon these testimonies heard today. Secretary Palmer questioned the possibility of a
188 current civil suit involving Vice-Chair Alexander and/or the involvement of attorneys,
189 which may have ceased communications between Alexander and the Virginia State
190 Board of Elections. Mr. Riemer indicated Vice-Chair Alexander has sought legal
191 representation, and that she may be absent today due to advice from counsel.

192 Mr. Lief offered another option to the Board if they would like to continue an
193 investigation into the matter: Under Virginia State Code section 24.2-104, the State
194 Board has the right to make a unanimous request to the Attorney General's Office to
195 investigate the circumstances and report back to the Board and take whatever action
196 deemed appropriate, including prosecuting a criminal violation or seeking removal.

197 Mr. Lief also stated that citizens have the right to report to the Commonwealth's
198 Attorney and make complaints or swear out warrants for violations of law. Under
199 Virginia Code section 24.2-104, the Board also has the option of requesting assistance
200 from the Attorney General to formulate an additional investigation and act accordingly if
201 the results from the previous investigation do not please the Board.

202 Chairman Judd then questioned Mr. Riemer about correspondence with Vice-
203 Chair Alexander. Mr. Riemer wanted Ms. Alexander to be aware of the matter, and he
204 communicated with her by phone and email. In conclusion, Chairman Judd and Secretary
205 Palmer decided to appoint someone in the SBE staff to interview witnesses and provide a
206 report at the next Board Meeting. If the Board remains dissatisfied with the results at that
207 time, then they may request assistance from the Office of the Attorney General (OAG).
208 Mr. Lief explained to the Board the importance of hearing from the person subject to the
209 complaint when there are multiple allegations and proof is of paramount importance. One
210 side of the story is insufficient for the removal of an election official. Vice-Chair Bowers
211 expressed her gratitude to the individuals who shared their heartfelt accusations. Then,
212 the Board motioned and agreed unanimously to formally investigate the matter fully and
213 allow a 20 to 30 day process before a decision about the removal of an election official.
214 The Board will reconvene in April for the next Board Meeting.

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216 Chairman Judd asked for any further public comments. There being none, the
217 meeting was adjourned at approximately 10:42 AM.

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Secretary

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Chair

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Vice-Chair

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