

1 MINUTES

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3 The State Board of Elections Board Meeting was held on Friday, January 24,
4 2014. The meeting was held in the Washington Building, Room B27 in Richmond,
5 Virginia. In attendance, representing the State Board of Elections (SBE) was Charles
6 Judd, Chair; Kimberly Bowers, Vice Chair; Donald Palmer, Secretary; Kristina Stoney,
7 Senior Assistant Attorney General and SBE Counsel; Matt Abell, Election Services Lead;
8 and Rose Mansfield, Executive Assistant. Chairman Judd called the meeting to order at
9 12:00PM.

10 Chairman Judd announced that the Board would reconvene in the General
11 Assembly Building, House Room D at 2:00PM when the tabulation of the results for the
12 Special Election in Senate District 33 was complete. Chairman Judd stated that the Board
13 convened at the established time to satisfy the meeting posting. Chairman Judd made the
14 formal introduction of Senior Assistant Attorney General and SBE Counsel, Kristina
15 Stoney. Ms. Stoney thanked the Board for the warm welcome and introduced Anna
16 Birkenheier, Assistant Attorney General in the Financial, Law, and Government Support
17 Division and Alex Reidell, Intern with Attorney General’s Office.

18 The first order of business was the Secretary’s Report delivered by Secretary
19 Palmer. Secretary Palmer reported that SBE will have a role in the Senate District 6
20 recount and will be sending staff to the Virginia Beach General Registrars’ Office.
21 Secretary Palmer stated that the legislative session is very busy and SBE Staff is handling
22 a large amount of bills parallel to larger agencies with dedicated teams for this legislative
23 tasking. Secretary Palmer stated that the SBE Policy Team handles this tasking efficiently
24 and as a small agency SBE is proud and appreciative of the work they produce. Secretary
25 Palmer asked if there were any questions. Chairman Judd asked: “The recount in Virginia
26 Beach, why is it being conducted at that location?” Secretary Palmer deferred to Matt
27 Abell, Election Services Lead. Matt Abell added: “The Virginia Beach General
28 Registrars’ Office had experience with a recount of this size and this may have been a
29 factor in the decision.” Secretary Palmer stated that SBE will not certify the results of the
30 recount as it is the responsibility of the Recount Court.” Vice Chair Bowers asked: “How
31 much involvement will SBE have in the recount?” Secretary Palmer replied: “The parties

32 are represented by counsel and the recount teams understand that there will be political
33 observers and SBE will send four staff members. The process will be similar to the
34 statewide recount that was conducted in Richmond.” Chairman Judd asked: “Who
35 physically will be doing the count?” Secretary Palmer replied: “The recount tables will
36 do the initial canvassing and that information then goes to the summary table where the
37 numbers are recalculated and if there is any disputed ballots that the parties cannot agree
38 on, then those ballots go to the court and the court will decide on the contested ballots.
39 The SBE staff will do the recalculation with the assistance of the Virginia Beach General
40 Registrars’ office and Clerk of Court staff.”

41 Chairman Judd moved that the Board go into recess and reconvene in the General
42 Assembly Building at 2PM, House Room D. Vice Chair Bowers seconded the motion
43 and the Board unanimously passed the motion.

44 Chairman Judd called the Board to reconvene at 2PM. The next order of business
45 was the ascertainment of the January 21, 2014 Special Election in Senate District 33.
46 Matt Abell, Elections Services Lead, explained the process. Chairman Judd announced
47 that having examined the certified abstracts of the votes cast from the January 21, 2014,
48 Special Election, the State Board determined on this 24th day of January, 2014, that
49 Jennifer T. Wexton received the greatest number of votes (11,431) in said election and
50 was duly elected as the next representative to the Thirty-third Senate of Virginia District.
51 Chairman Judd announced that the ascertainment process was complete.

52 Chairman Judd asked if there was any other business or public comment to come
53 before the Board. Theresa Martin, League of Women Voters, approached the podium.
54 Ms. Martin stated that the comment previously made about the nature of being short in
55 staff has been noticed as well as the result of that shortage during legislative session. Ms.
56 Martin stated that the league is involved in voter advocacy and the improvement of
57 election management. Ms. Martin stated that the league is always supportive of
58 maintaining adequate resources for SBE to oversee election management and to assist the
59 local electoral boards and general registrars. Secretary Palmer thanked Ms. Martin for her
60 comments and noted that the Presidential Commission on Elections recently released a
61 report, and the major recommendation is that there is a need to transition to new
62 technology 10 years after the passage of the Help America Vote Act (HAVA). Secretary

63 Palmer stated that the commission outlined its recommendations and I encourage all
64 individuals to read the report. Secretary Palmer stated that the authors of this report
65 received and utilized input from local and state officials. Chairman Judd asked: “Will the
66 report be on the SBE Website?” Secretary Palmer replied: “We could certainly post the
67 report.” Chairman Judd asked if there were any other public comments and there were
68 none.

69 Chairman Judd stated that SBE Board Members invited the Fairfax County
70 General Registrar and Electoral Board Members to this Board Meeting. Chairman Judd
71 stated that there has been comment during previous Board Meetings referencing concerns
72 based on activity during the November 2013, General Election. Chairman Judd stated that
73 it is appropriate to address those concerns in this public forum. Chairman Judd stated that
74 he has read the 33 page report compiled by Fairfax County Electoral Board. Chairman
75 Judd invited the Fairfax County Electoral Board to the podium to address the report. The
76 three members of the Fairfax County Electoral Board; Seth Stark, Chairman; Stephen
77 Hunt, Vice Chairman; and Brian Schoeneman, Secretary approached the podium. Mr.
78 Schoeneman stated that the electoral board produced the report voluntarily regarding the
79 issues of the November 5, 2013, General Election. Mr. Schoeneman stated that the
80 electoral board tried to maintain transparency to ensure that the voters of Fairfax County
81 and the commonwealth knew how we made our decisions and that they can have faith
82 that the elections were administered fairly. Mr. Schoeneman stated that the report outlines
83 the three major issues of concerns; (i) the provisional ballot, (ii) release of provisional
84 voters’ information to the media, and (iii) our electoral board decision to extend the hours
85 to allow the voters’ time to return with their identification. Mr. Schoeneman stated that
86 the electoral board believed that they had followed SBE guidance. Mr. Stark stated:”The
87 board stands by the report and the report summarizes how we acted and why we acted in
88 the way that we did.” Mr. Schoeneman asked if the SBE Board Members had questions
89 for the Fairfax County Electoral Board.

90 Chairman Judd stated: “From the outside looking in it appears that you were
91 doing some cherry picking of the guidelines. The reason this Board exist is to have
92 uniformity statewide. I am talking about processes and procedures and when a locality
93 decides on those guidelines this raises some concerns on the part of this Board Member.

94 Your report was very inclusive but, what I see is that Fairfax County should be treated
95 very different and that is not the case. The code says that we should have uniformity
96 statewide and all the processes and procedures should be the same in every locality.” Mr.
97 Stark asked: “Could you tell us which procedure we cherry picked?” Secretary Palmer
98 stated: “We are colleagues before today and will be colleagues in the future, and my
99 major concern is the uniformity of practices throughout the state. The code states that
100 SBE supervises the work of the localities on these issues. In one example, the counting of
101 provisional ballots, it is my understanding that a number of provisional ballots were
102 counted without a signature. SBE guidance specifically stated that those ballots should
103 not be counted. There may be disagreement with this but it is the reality that if Fairfax
104 and let’s say 10 localities decide to count provisional ballots without signatures then we
105 have a real problem in the commonwealth that will not withstand the glare of what
106 happened in a close race and we will have the same non-uniform counting of ballots that
107 caused a crisis in Florida in 2000. There would have been a right to an election contest by
108 an aggrieved party because ballots would have been counted or not counted based on
109 what county you lived in and whatever legal whim the local electoral boards would have
110 exercised. There would have been equal protection problems and there are exact reasons
111 SBE provides guidance on this particular issue. On October 23, 2013, memos were sent
112 to the field from our office on this issue.” Mr. Schoeneman stated: “We believe that we
113 that we followed SBE guidance and that we were not to reject any ballot simply because
114 it did not have the proper identifying information on the ballot. The way the envelope
115 reads is that by physically marking the envelope and putting the ballot inside the voter is
116 testifying that everything on the envelope is true to the best of your knowledge. Our
117 perspective is that when we received guidance on October 23rd that specifically said we
118 should not reject any provisional ballot for lack of identifying information we understood
119 this included the signature. Fairfax County had 14 ballots that did not have the signatures.
120 We did receive an email from Mr. Riemer stating that we should not count those but it
121 did not have a code citation or any other information.” Secretary Palmer replied: “I
122 understand part of your argument but, the provisional envelope has to be filled out and
123 signed by both the voter and the chief officer of election and laws of the commonwealth
124 and our guidance was very specific in that requirement. We were asked by your office

125 for guidance and we responded to the entire election community of November 6, 2013,
126 providing the citation that requires the voter to sign the provisional ballot envelope. The
127 code specifically §24.2-103 states that the state board shall supervise and coordinate the
128 work of the electoral boards and the general registrars to provide uniformity in practices
129 and procedures in all elections. It shall make rules and regulations and issue instructions
130 and provide information consistent with the election laws to promote proper
131 administration of election laws. SBE provided the advice and instruction and then Fairfax
132 County counts provisional ballots without signatures. The SBE memo was very clear and
133 additionally addressed the issue of the social security number. Our responsibility is to
134 ensure that the Board or the localities are not sued for violating the law. When there is an
135 issue, which may result in litigation, we find the correct interpretation to the code and
136 provide guidance. The state board or the attorney general's office does not have to
137 represent a locality in litigation that does not follow the code or guidance. An additional
138 concern is the lack of uniformity, and the lack of it may create a perception that one party
139 had an advantage over another party in an election.”

140 Vice Chair Bowers stated: “There seems to be an overarching message coming
141 from this Board and we pride ourselves in our message, that we want everyone to feel
142 that they can come to us to include those individuals out in the election community
143 regarding regulations and election related matters. I am concerned that an email went out
144 that directly address the concern of signatures on provisional ballots. Then you still took
145 action off of what you thought was best verses the guidance provided. We should not act
146 independently of that guidance no matter our background or because of the locality we
147 represent. To know that there is an uncounted vote because in some localities a procedure
148 was or was not followed concerns me because and this is something that we have worked
149 through during multiple elections to have prepared guidance. As a Board we do not
150 always know the backstory on everything and your document of explanation was helpful
151 to me to understand the logic behind your actions. It is very concerning that you did not
152 follow the guidance of the Board and SBE Staff.” Chairman Judd asked if there were
153 additional comments.

154 Mr. Schoeneman cited several lines from the memo and stated: “The Board has
155 lost sight of what really is important here. We had a Marine return home that had mailed

156 his federal post card and then we sent an electronic absentee ballot, which he did not
157 receive and he came to the polls on Election Day and this Marine was listed as voting
158 absentee. This individual filled out his provisional ballot envelope and he forgot to sign
159 it. That vote came to us and he was qualified to vote in the precinct for which he had cast
160 his ballot. My staff should have caught this error before he left and you are telling me that
161 his vote should not count. The guidance the Board issued, in Mr. Riemer's email was
162 wrong. We took the information provided and the circumstances for which these votes
163 were cast and we error on side of ensuring that the individual right to vote was not
164 compromised. With the provisional ballot list we did our best to comply with what the
165 Board told us. Fairfax County and the Board of Elections were sued in November, 2012,
166 and I defended the electoral board. The only thing that Fairfax County did different is that
167 we provided them with a type written copy of the information that they could have copied
168 by hand. It was just the portion of the log that was available to the public. In a locality
169 like ours that had 489 provisional ballots what did it matter that we provided the copy.
170 The reason we allowed the extra time was because the Democratic Party had taken on the
171 willingness to go out and tell people that they will represent the voter in the provisional
172 ballot meeting if you sign a document and then we will take your information and
173 represent you. I disagreed with this and this was in contradiction of what the Secretary
174 previously stated. We needed to protect the voters who were told incorrect information,
175 from the parties, and we gave them enough time to come down and present their
176 information."

177 Secretary Palmer stated: "I had heard about this situation and this is totally
178 outside the requirements of the code. It has only been acceptable in the last two years that
179 counsel for the voter was even allowed inside the provisional ballot meeting. The laws
180 may not always seem fair or we may not agree with them but in this case, this is a
181 procedure that is not facilitated by the code." Chairman Judd asked: "How many
182 provisional ballots did you count without signatures?" Mr. Schoeneman replied: "14".
183 Chairman Judd asked: "Did you apply the Marine story in all 14?" Mr. Schoeneman
184 replied: "No, we are not exactly sure but, most were the result of the federal post card
185 application which is good for two years." Secretary Palmer stated: "It not to say that your
186 heart was not in the right place but, our concern is the affirmation under oath the voter

187 says: "I am who I say I am and I am eligible to vote". The signature is very important
188 because it is the only thing affirming the information provided." Chairman Judd stated:
189 "You made a reference to lawyers disagreeing and I understand that your Board voted
190 unanimously to disagree with guidance and our guidelines". Mr. Schoeneman stated:
191 "That is incorrect; we had a 2 to 0 vote but, we still followed SBE guidelines. We
192 followed the guidelines even though we disagreed with them." Chairman Judd asked:
193 "Why did you think it was important to have a vote as a matter of record that you
194 disagreed with the guidelines and yet you followed them?" Mr. Hunt replied: "Because, it
195 seemed to us that it was being changed in midstream." Chairman Judd asked: "What did
196 you do with that vote?" Mr. Schoeneman replied: "It is on the record." Chairman Judd
197 asked Secretary Palmer to address "midstream". Secretary Palmer stated: "From our
198 perspective there has never been in the commonwealth the allowance that an attorney
199 could simply show up at the provisional ballot meeting without the voter and make
200 assertions on their behalf. Until 2012, it was only the voter himself allowed in the
201 meeting." Chairman Judd asked: "What changed "midstream"?" Secretary Palmer stated:
202 "We (the SBE) heard what procedures was being considered in Fairfax and called and
203 explained that our reading of the code does not allow this. There has not been a situation
204 in the commonwealth like this regarding this issue since I came into office so it certainly
205 was not a change; it was simply an affirmation of the guidelines." Chairman Judd asked:
206 "What changed "midstream"?" Mr. Schoeneman replied: "In the November, 2012
207 elections the electoral board did allow attorneys for the Obama campaign that had signed
208 up voters to be present in the meeting when the discussion was held during the
209 provisional ballot meeting. This then became the practice of our electoral board. Then we
210 started our provisional ballot meeting and we were told that we needed to contact the
211 voter and have them come back in person verses a lawyer representing them. What
212 changed was what was told to our voters in Fairfax County. The guidance came down on
213 Friday in midstream. The SBE guidance was correct and this is never going to happen
214 again in Fairfax County." Chairman Judd stated: "In order to clarify a public statement; It
215 changed midstream from the way you used to do it and you were told by the SBE that
216 you were not following guidelines and then you voted that you disagree. Is what I just
217 said right or wrong?" Mr. Schoeneman replied: "We voted because of the way the

218 guidelines came down and the guidelines.” Chairman Judd stated: “Ok, so you disagreed
219 with the SBE guidelines because you were used to doing it your way.” Mr. Schoeneman
220 replied: “No one told us that our way was wrong, then guidelines came down and we did
221 it correctly but, we disagree with the guidelines.” Chairman Judd stated; “So, you
222 disagreed with timing of the guidelines so if you would have received the guidelines on
223 Monday verses Friday you would not have disagreed?” Mr. Schoeneman replied: “That is
224 correct.” Secretary Palmer stated: “I know that I have talked about this issue a number of
225 times. The October 23, 2013, memo has a paragraph regarding this issue and the roles of
226 the authorized individual and from my perspective this is not a new issue as the Fairfax
227 County Democratic Party had wanted to do this a number of times in the past. There were
228 individuals in the electoral community that were upset at Fairfax County that your
229 electoral board took a long time to complete the task of handling the provisional ballots.”
230 Mr. Hunt replied: “I have a day job and I spent every day for over a week doing our job
231 as an electoral board and you can pass this along to those individuals that never a day did
232 we go golfing and I didn’t go back to work. Staff was working the whole time and this
233 perception is absurd.” Mr. Schoeneman added: “I think people may believe this because
234 I was posting updates on Facebook and twitter and they wrongly believed that I had time
235 on my hands. The bottom line is that we had 489 provisional ballots and we did not stop
236 until we got to the end. This is an unfair criticism from folks that do not have the
237 population of 800,000 voters. We are very proud of how our staff handled this event.”
238 Chairman Judd asked: “Would you do anything different if we were to do this again? Mr.
239 Schoeneman replied: “Oh, absolutely we would have received clearance a head of time so
240 when Election Day happens we would not have had questions. We would have pushed
241 back a little bit harder in regard to the signatures. I would have done a better job of
242 making sure that the press got it right the first time. I think the process will be better for
243 us in the future.” Chairman Judd asked if there were any other comments.

244 Secretary Palmer asked: “On the provisional ballot information we had received
245 information that some of the staff was allowing voters to fill in information after the fact.
246 This situation is of concern and can you explain this to the Board?” Mr. Schoeneman
247 replied: “I have been interviewed by the attorney generals’ office in regards to the
248 situation and I will let you know. There were four individuals as I recall that had not

249 signed their provisional ballot envelope that had come in to present information on their
250 behalf and at that time they were given the option to sign the provisional ballot envelope
251 while they were in the provisional meeting. Their identification was checked by staff
252 before this was done. This is before we made the final decision on Tuesday to accept the
253 14 without signatures and as I understood the reasoning behind that was this had been
254 allowed in the past. This is what was told to us at the time.” Chairman Judd asked: “Who
255 told you that?” Mr. Schoeneman replied: “I believe you told me that and that the
256 Democratic Party authorized representative told me that as well.”

257 Cameron Quinn, Fairfax County General Registrar, approached the podium. Ms.
258 Quinn stated: “The 14 ballots that had no signatures included the 4 that were later signed.
259 Included in that 14 were where ballots had hand-written a note from the voter explaining
260 their information on Election Day and the election officials had put in with the
261 provisional ballot envelope that they used with the precinct and the voter actually signed
262 the envelope even though they actually had a signature from the voter on Election Day.”
263 Secretary Palmer stated: “That concerned me greatly, Cameron I would asked you to go
264 back to your staff and really tighten up these procedures.” Ms. Quinn replied: “To my
265 knowledge that had never occurred before, that doesn’t mean that it didn’t, that means
266 that it was something that I was not aware of before.” Secretary Palmer replied: “I
267 understand but, part of the reason we are here is because of the scrutiny and spotlight of a
268 very close election. This situation is very serious and I encourage you to go back and
269 tighten up this procedure to keep this uniform within your office.” Mr. Schoeneman
270 asked: “What is the cause of your concern?” Secretary Palmer replied: “It is often an
271 issue whether a voter has spoiled their absentee ballot: Do you allow that voter to come in
272 and correct the error and have that ballot counted? I think the same analysis takes place
273 with provisional ballots; this is not something that is permitted within the Election Code.
274 The larger issue is uniformity.” Mr. Schoeneman replied: “I understand that and it is a
275 bad idea for us to be disenfranchising voters because of administrative error. There is a
276 difference between a provisional and absentee ballot, the rules are different. The concerns
277 about voter fraud and ensuring identity of voters on an absentee ballot then when you
278 physically have a voter in your presence; both on Election Day and during the provisional
279 ballot meeting.” Secretary Palmer stated: “The General Assembly did stress the

280 importance of the signature and the code does say subject to the penalties of making false
281 statements. The General Assembly has stated that the provisional envelope needs to be
282 filled out subject to the penalties of perjury.” Mr. Schoeneman replied: “I understand this
283 and the General Assembly also directly required that a full social security number be
284 included on that line. This Board has chosen to tell the electoral boards of the
285 commonwealth that we do not have to follow that and I do not see the difference.”
286 Secretary Palmer replied: “We are not making these decisions up out of thin air. With
287 regards to the full social security number, the Assembly put in a requirement for full
288 social security number however; federal law only requires the last four of the social
289 security number unless the state is grandfathered. In consultation with the attorney
290 generals’ office we decided that even though the General Assembly accidentally removed
291 the requirement for the social security number in 2011 and then went back to require the
292 full social security number. As a result, the commonwealth may have lost its
293 grandfathered waiver and federal law appears to only allow the locality and SBE to ask
294 for the last four (of the social security number). We had to read and interpret state and
295 federal law together so SBE took a look at this issue and provided guidance in a uniform
296 manner.” Vice Chair Bowers asked: “The code is clear on the signature of the officer of
297 election; is that done following the signature of the voter?” Mr. Schoeneman replied: “It
298 should but, it depends on what happens in the locality.” Vice Chair Bowers stated: “The
299 instructions state that the officer of election is reading this and is stating that to the best of
300 my knowledge “I am not disqualified from voting” and at that point is it in the voters
301 hand to turn it into a box or is it left to the officer of election to submit this envelope. Is it
302 the job of the officer to ensure that the voter has signed the envelope?” Mr. Schoeneman
303 replied: “The Election Chief is supposed to confirm all the information is correct then
304 place it into larger envelope. This is why we view the voter not signing the envelope as
305 an administrative error on our part. I agree 100% with the social security number issue.
306 When there is an administrative error you give the benefit of the doubt to the voter.” Vice
307 Chair Bowers stated: “It would definitely be an administrative error if this fell on the
308 responsibility of the officer of election.” Vice Chair Bowers asked Chairman Judd if
309 consideration was given to the prospect of changing the code. Chairman Judd asked Mr.
310 Schoeneman to explain upon the inquiry from the attorney general’s office. Mr.

311 Schoeneman replied: "I meet with the investigator last Monday, January 13, 2014."
312 Chairman Judd stated that the attorney general office, as of last year, is equipped to open
313 an investigation without SBE Board Members officially requesting an investigation.
314 Chairman Judd asked Ms. Stoney, Senior Assistant Attorney General and SBE Counsel,
315 to check with the office to see if an investigation was in place. Ms. Quinn stated that she
316 had been in touch with the attorney generals' office and confirmed that there was an
317 investigation in progress. Ms. Quinn stated: "This was an important discussion and one of
318 things that is not well understood is while there is a requirement and legality in training
319 the structure of the election system makes clear that local electoral boards are suppose to
320 coordinate with the SBE. Members of electoral boards followed everything SBE said
321 without question. The structure does allow the local electoral boards some discretion. It is
322 important to find a way to have those discussions where there may be some areas of
323 disagreement and to take in the consideration the small and large localities. There are
324 times when uniformity is not required under due process and we need to figure out in
325 those cases where it matters. I would encourage SBE to have those discussions with the
326 entire electoral board community. I do not think any of these issues occurred intentionally
327 but, I do know that SBE resources have gotten tighter over the last 10 years in the terms
328 of general funding. The expectations in the entire election community have increased and
329 there needs to be more resources and we would like to work with SBE to ensure that
330 there are sufficient resources. I am willing to work on getting more resources for SBE."
331 Chairman Judd thanked Ms. Quinn for the offer of locating more resources. Chairman
332 Judd stated: "The tone of the letter explaining the action of the Fairfax County Board
333 came across as "Well we are Fairfax County and we are different then all the rest of the
334 localities". I understand the dynamics of a large locality and the difficulty of one size fits
335 all. I take very seriously the whole thing about uniformity across the commonwealth and
336 to me it is still a process and procedure issue. When SBE heard about these issues I stated
337 that there are some questions that need to be answered. My point is that I do not intend to
338 try to change to outcome of this election: I want to see what we can learn from this and
339 go to the next election better equipped and educated on how we can make sure there is
340 uniformity." Chairman Judd asked if there were any other comments. Secretary Palmer
341 reminded the Fairfax delegation that: "Colleagues before, colleagues now and colleagues

342 in the future.” Chairman Judd asked if there were any other comments and there were
343 none.

344 Chairman Judd asked if there was any other business to come before the Board for
345 the Good of the Order and with there being none Chairman Judd made a motion *to*
346 *adjourn*. Secretary Palmer seconded the motion and the Board unanimously passed the
347 motion. The Board shall reconvene on February 26, 2014 at 10:00 AM in the Washington
348 Building, Room B27. The meeting was adjourned at approximately 3:15PM.

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Secretary

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Chair

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Vice-Chair

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