

1 MINUTES

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3 The State Board of Elections Board Meeting was held on Tuesday, June 24, 2014.
4 The meeting was held in the General Assembly Building, Richmond, Virginia, Room C.
5 In attendance, representing the State Board of Elections (SBE) was Charles Judd, Chair;
6 Kimberly Bowers, Vice Chair; Donald Palmer, Secretary; Edgardo Cortés, Deputy
7 Secretary; Kristina Perry Stoney, Senior Assistant Attorney General and SBE Counsel;
8 Anna Birkenheier, Assistant Attorney General and SBE Counsel; Chris Piper, Election
9 Services Manager; Matt Abell, Election Services Lead; Susan Lee, Election Uniformity
10 Manager; Martha Brissette, SBE Policy Analyst; Gary Fox, Voting Technology Specialist
11 and Rose Mansfield, Executive Assistant. Chairman Judd called the meeting to order at
12 4:00PM.

13 The first order of business was the approval of the Minutes from the State Board
14 of Elections Board Meeting held on June 10, 2014. Chairman Judd asked if Board
15 Members had any additions or corrections to the June 10, 2014 Board Minutes and there
16 were none. Chairman Judd moved *to adopt the Minutes for the June 10, 2014, Board*
17 *Meeting*. Vice Chair Bowers seconded the motion and the Board unanimously approved
18 the Minutes.

19 The second order of business was the Secretary's Report delivered by Secretary
20 Palmer. Secretary Palmer stated that SBE received correspondence from legislators
21 regarding the rule making process in regards to defining what a "valid" identification is.
22 Secretary Palmer reported that the voter identification testing period during the month of
23 June, 2014, was successful. The testers received their identification within three to five
24 days of SBE processing the request. SBE created voter photo software that additional
25 provides direction to the offices' of the general registrars' and staff. This will assist the
26 general registrars' in obtaining the best possible picture of the voter. Secretary Palmer
27 thanked the SBE Team for their efforts in producing this software and implementing the
28 program. Virginians will be confident that "No voter is left behind." In regards to the
29 outreach program, mailings will be sent to those voters' who do not have a Division of
30 Motor Vehicle (DMV) record or other records that SBE can obtain. The Electronic
31 Registration Information Center (ERIC) mailing will provide the identification

32 requirements as with previous identification outreach program. SBE is working with the
33 Outdoor Advertising Association of Virginia to evaluate the use of billboards and
34 roadside advertising posters on interstates and thoroughfares' across the commonwealth.
35 Secretary Palmer asked if there were any questions and there were none.

36 The next order of business was the Legal Report delivered by Kristina Perry
37 Stoney, Senior Assistant Attorney General and SBE Counsel and Anna Birkenheier,
38 Assistant Attorney General and SBE Counsel. Ms. Stoney stated that counsel requested
39 an executive session to discuss probable and pending legal matters.

40 The next order of business was the General Registrar and Electoral Board Survey
41 update presented by Edgardo Cortés, Deputy Secretary. Deputy Cortés stated that SBE is
42 in the process of selecting individuals to serve as members of the working group on the
43 review of duties and responsibilities of general registrars and electoral board members.
44 Recommendations for members have been received from the electoral board members
45 and the general registrar's of the commonwealth. Deputy Cortés stated that a list of
46 volunteers desiring to serve on the workgroups is also being compiled. Deputy Cortés
47 stated that members will be selected to form the workgroup from different size localities
48 and geographical areas within the commonwealth. The members selected will be
49 announced at the Board Meeting on July 22, 2014. Deputy Cortés stated that the second
50 group will be working on SB11 which passed during the last legislative session. This
51 legislation deals with electronic return of absentee ballots by military personnel stationed
52 overseas and requires SBE to establish a working group to establish the process. The list
53 of selected individuals will be presented at the July 22, 2014 Board Meeting for
54 appointment. SBE will be providing the support in regards to information and research.
55 The group will have the same meeting requirements of a Board in regards to public notice
56 and open meetings.

57 The next order of business was the Voter Identification Regulations; 1VAC20-40-
58 10 and 1VAC20-40-90. Chairman Judd stated that SBE Board Members received
59 correspondence from legislators expressing concern about the SBE Boards' definition of
60 "valid" relating to identification cards. Chairman Judd stated that he was open to
61 submitting the definition approved at the June 10, 2014 Board Meeting out for public
62 comment and believed that was occurring when the materials were presented at the last

63 meeting. Vice Chair Bowers stated that the question regarding the new voter
64 identifications being issued and the absence of an expiration date and why the definition
65 of “valid” would include an expiration date for the purpose of identifying the voter. The
66 validity of the identification is not based on whether the commonwealth is checking the
67 ability of the voter to drive but, rather whether the voter is who they say they are and
68 residing at the address listed on the general registrar’s records. Secretary Palmer stated
69 that SBE received three letters; (i) from Members of the House of Delegates and (ii) from
70 the Members of Virginia State Senate and (iii) from Senator Mark Obenshain. These
71 letters brought attention to a number of issues including the definition of and whether
72 “valid” is not defined and whether SBE has the authority to regulate. Secretary Palmer
73 stated that the definition of “valid” should go out for public comment.

74 Chairman Judd stated that what the voter identification intended to accomplish is
75 to identify the voter at the polls and the address matches what is in the database.
76 Chairman Judd asked legal counsel to determine if SBE has the ability to define “valid”
77 for our purposes and our purposes only. Ms. Stoney stated that the Board requested the
78 review of regulations however: “The language of the regulation is up to the Board
79 Members and at your discretion. After the public comment period, the attorney generals’
80 office will review the proposed language that will be adopted by the Board.” Vice Chair
81 Bowers stated that it is important to define “valid” to ensure uniformity across the
82 commonwealth. Chairman Judd referred to the Minutes of the June 10, 2014 Board
83 Meeting quoting the definition provided by Secretary Palmer: “...the definition of “valid”
84 for all purposes related to voter identification shall mean documents containing the name
85 and photograph of the voter appearing to be genuinely issued by the agency or issuing
86 entity appearing upon the document where the bearer of the document reasonably appears
87 to be the person whose photograph is contained thereon. Other data contained on the
88 document, including but not limited to expiration date, shall not be considered in
89 determining the validity of the document.” Secretary Palmer proposed that the definition
90 for public comment read: “Documents containing the name and photo of voter appearing
91 to be genuinely issued by the agency or issuing entity appearing upon the document
92 where the bearer of the document reasonably appears to be the person whose photograph
93 is contained thereon. Other data contained on the document, including but not limited to

94 expiration date, shall not be considered in determining the validity of the document.”
95 Secretary Palmer stated that the current definition be subject to public comment and also
96 include language that is similar to the original language which would include a small
97 change of: “Valid for all purposes related to voter identification shall mean documents
98 having legal effect, legally or officially acceptable or of binding force and appearing to
99 be genuinely issued by the agency or issuing entity appearing upon the document where
100 the bearer of the document reasonably appears to be the person whose photograph is
101 contained thereon. Such documents shall be accepted up to 30 days after expiration.”
102 Secretary Palmer moved *that both definitions be placed out for public comment on Town*
103 *Hall.* Vice Chair Bowers seconded the motion. Deputy Cortés explained the process for
104 posting regulations to Town Hall and the comments would be ready for Board Member
105 review at the August 27, 2014, Board Meeting. Chairman Judd asked if there were public
106 comments.

107 Anna School, Executive Director of Progress Virginia; Carol Noggle, Virginia
108 League of Women Voter’s; Courtney Mills, Staff Attorney for the Fair Election Legal
109 Network; Marian Schneider, Staff Attorney for the Advancement Project and Robin Lind,
110 Secretary of the Goochland County Electoral Board provided comment. Chairman Judd
111 asked if there were additional comments. The Board Members by roll call vote cast two
112 yeas’ and one nay with Vice Chair Bowers dissenting.

113 The next order of business was the Certification of the results of the primary held
114 on June 10, 2014, presented by Matt Abell, Election Services Lead. Mr. Abell explained
115 the process and Board Members examined the abstracts. Chairman Judd announced that
116 having examined the certified abstracts of the votes cast from the June 10, 2014, Primary
117 Election the State Board determined on this 24th day of June, 2014; that Donald S. Beyer,
118 Jr. received the greatest number of votes (17,783) in said election and was the House of
119 Representatives 8th District Democratic candidate and that; David A. Brat received the
120 greatest number of votes (36,105) in said election and was the House of Representatives
121 7th District Republican candidate and that; Robert J. Wittman received the greatest
122 number of votes (13,292) in said election of the House of Representatives 1st District
123 Republican candidate on November, 2014 ballot. Chairman Judd announced that the
124 ascertainment process was complete.

125 The next order of business was the ballot position drawing for the August 19,
126 2014 Special Election in the 38th Senate District. Matt Abell, Election Services Lead,
127 explained the process. Vice Chair Bowers drew the first position of the Republican Party
128 and Secretary Palmer drew the second position of Democratic Party. Chairman Judd
129 declared that the ballot order had been determined with the Republican candidate listed
130 first and the Democratic candidate listed second.

131 The next order of business was the certification of ES&S voting systems
132 presented by Gary Fox, Voting Technology Specialist. Mr. Fox explained the particulars
133 of the equipment to the Board Members. Mr. Fox explained that the product sheets and
134 test reports were included in the Board Materials. ES&S also provided their
135 corresponding Technical Data Package and Corporate Information on April 28, 2014.
136 Both of these submissions were deemed complete and in sufficient detail to warrant Step
137 3, the Preliminary Review. On May 16, 2013, the Election Assistance Commission
138 (EAC) issued their Grant of Certification of the ES&S EVS 5.2.0.0. EVS 5.2.0.1 is the
139 same system as ES&S EVS 5.2.0.0 with the addition of the plastic ballot box and write-in
140 report. National Technical Systems ((NTS) formerly Wyle Laboratories) completed
141 successful testing on March 1, 2013. Mr. Fox noted that the equipment was used in
142 Stafford County during the June Primary without issue and was well received. Vice Chair
143 Bowers moved *that the Board certify ES&S EVS 5.2.0.0/5.2.0.2 voting systems for use in*
144 *elections in the Commonwealth of Virginia, pursuant to the State Certification of Voting*
145 *Systems: Requirements and Procedures*. Secretary Palmer seconded the motion.
146 Chairman Judd asked if there were public comments and there were none. The Board
147 unanimously approved the motion.

148 The next order of business was the Democracy Live Presentation presented by
149 Bryan Finney, Founder and President of Democracy Live. Mr. Finney introduced Jackie
150 Harris, Systems Coordinator for Democracy Live. Mr. Finney explained that Democracy
151 Live has been working on a project to support military and overseas voters to ease their
152 access to electronic ballots. Mr. Finney stated that the Commonwealth of Virginia is a
153 leader in using this technology and Democracy Live has delivered this service in a secure
154 format. Mr. Finney stated that Democracy Live has developed a new sample ballot that
155 could be delivered electronically to overseas and military personnel. Mr. Finney provided

156 a visual demonstration of the equipment to the Board Members. Mr. Finney stated this
157 program would result in a more informed voter and decreased time in casting their ballot.
158 Mr. Finney stated that Democracy Live will be providing this service to the voters of the
159 commonwealth without charge for the next election. Chairman Judd thanked Mr. Finney
160 for the presentation and stated that applicable input would be generated by SBE Staff and
161 Democracy Live would be contacted accordingly.

162 Chairman Judd asked if there were any public comments. Carol Noggle, Virginia
163 League of Women Voter's; Anna School, Executive Director of Progress Virginia;
164 Courtney Mills, Staff Attorney for the Fair Election Legal Network; Marian Schneider,
165 Staff Attorney for the Advancement Project; Robin Lind, Secretary of the Goochland
166 County Electoral Board; and Wanda Judd, Citizen of the Commonwealth provided public
167 comment.

168 Chairman Judd then moved *to close the meeting to discuss actual and probable*
169 *litigation matters and specific legal matters requiring the provision of legal advice by*
170 *legal counsel as authorized by § 2.2-3711(A)(7) of the Code of Virginia.* Vice Chair
171 Bowers seconded the motion and the Board unanimously carried the motion. Chairman
172 Judd directed Kimberly Bowers, Vice Chair; Donald Palmer, Secretary; Edgardo Cortés,
173 Deputy Secretary; Kristina Perry Stoney, Senior Assistant Attorney General and SBE
174 Counsel; Anna Birkenheier, Assistant Attorney General and SBE Counsel and Rose
175 Mansfield, Executive Assistant, to remain with the Board during the closed session.
176 Secretary Palmer seconded the motion and the Board went into Executive Session at
177 5:15PM.

178 At 6:00PM Chairman Judd *moved to reconvene in open session and a roll call*
179 *vote was taken as required by § 2.2-3712(D) of the Code of Virginia, unanimously*
180 *certifying that during the closed meeting (i) only public business matters lawfully*
181 *exempted from open meeting requirements under this chapter, and (ii) only such public*
182 *business matters as were identified in the motion by which the closed meeting was*
183 *concerned were heard, were discussed or considered.* Vice Chair Bowers seconded the
184 motion and the Board unanimously approved the motion. Rose Mansfield, Executive
185 Assistant performed the roll call vote and all Board Members approved the motion.

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187 Chairman Judd asked if there were comments for the Good of the Order.
188 Secretary Palmer stated that the SBE Website will have a location to post public
189 comments regarding the subjects presented at today's Board Meeting.

190 Chairman Judd moved *that the Board adjourn*. Vice Chair Bowers seconded the
191 motion and without further comment the Board voted to adjourn. The meeting was
192 adjourned at approximately 6:05PM.

193 The Board shall reconvene on July 22, 2014 at 8:00AM during the SBE Annual
194 Training Event, 12042 West Broad Street, Richmond, Virginia, Room-Large Ballroom.

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Secretary

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Chair

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Vice Chair

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