MINUTES

The State Board of Elections Board Meeting was held on Thursday, August 23, 2012. The meeting was held in the General Assembly Building, House Room C in Richmond, Virginia. In attendance, representing the State Board of Elections (SBE) was Charles Judd, Chair; Kimberly Bowers, Vice-Chair; Donald Palmer, Secretary; Joshua Lief, Senior Assistant Attorney General and SBE Counsel; Justin Riemer, Deputy Secretary; Nikki Sheridan, Confidential Policy Advisor; Chris Piper, Election Services Manager; David Blackwood, Policy Analyst and Martha Brissette, Policy Analyst. Chairman Judd called the meeting to order at 2:00PM.

The first order of business was the approval of the Minutes from the State Board of Elections Board Meetings held on July 24, 2012 and August 6, 2012. After careful review, Chairman Judd made a motion to approve the Minutes. Secretary Palmer seconded the motion and the Board unanimously approved the Minutes.

The second order of business was the Secretary's Report delivered by Secretary Palmer. The Secretary's Report is an agenda item for each Board Meeting describing recent developments at SBE. Secretary Palmer reported that the Voter ID bill was precleared by the Department of Justice (DOJ). Secretary Palmer thanked the SBE staff members who worked on this bill and particularly noted the efforts of Deputy Justin Riemer and the Attorney General's Office. Secretary Palmer reported that the Voter Outreach Program continues to play an important role in the daily work of SBE with voter card mailings and the development of voter card inserts. Secretary Palmer stated that approximately 4.7 million Virginia voters will receive new voter cards at the end of September 2012. Secretary Palmer stated that SBE is developing Public Service Announcements (PSA(s)) that will be viewed at regional community events and public forums. Secretary Palmer stated that the Virginia Participation Center (VPC) provided the 13 additional protocols that were promised to SBE Board members in anticipation of their September mailing. Secretary Palmer stated that the estimated VPC mailing date is in September and SBE expects to receive an exact mailing date in the near future. Secretary Palmer stated that when SBE receives the exact mailing date the general registrars will be notified. Secretary Palmer noted that he recently attended the Summer Conference of the National Association of State Election Directors with the Election

Center Conference and that there were recent CERA graduates. Secretary Palmer extended congratulations to Jackie Clark Britt from Nelson County, Judith Brown from Loudoun County and Danette Moen from Caroline County for graduating from CERA. Secretary Palmer stated that there will be a special election in Arlington, Alexandria, Chesapeake, Fairfax County, and Norfolk on September 4, 2012. Secretary Palmer stated that there will be a meeting of the Election Contingency Workgroup on August 29, 2012 with the scope of the meeting being continuity of elections in the event of a natural or manmade emergency on Election Day. Secretary Palmer stated that there will be a Military Election Ready Open House conducted on August 24, 2012. Secretary Palmer invited everyone to attend and stated that this was an opportunity for the stakeholders to meet and prepare for the upcoming election. Secretary Palmer noted that August 24, 2012, at noon, is the filing deadline for independent candidate petitions for the presidential election.

The next order of business was the Legal Report delivered by Joshua Lief, Senior Assistant Attorney General and SBE Counsel. The Legal Report is an agenda item for each Board Meeting describing recent developments at SBE. Mr. Lief reported that the Eppes ballot access case was settled by consent decree. Mr. Lief reported that a final decision was received in the Project Vote case which has been distributed to Board members.

The next order of business was the presentation of the resolution in remembrance of Susan Fitz-Hugh who passed on April 1, 2012. Chairman Judd invited the family of Susan Fitz-Hugh to the podium for the presentation. Chairman Judd presented the resolution to the family and made note of the eight distinguished years, from 1982 through 1990, which she served as the Secretary of the State Board of Elections. Chairman Judd and each Board member personally expressed their sincere gratitude to the family members for the community service and dedication of Susan Fitz-Hugh. Mr. Fitz-Hugh expressed that Susan loved the election community to the point of personally soliciting corporations to donate to the development of the first "Voter Education Guidebook". Mr. Fitz-Hugh stated that although he would miss the guidebook sitting on his night stand that it thought it fitting to place it in the safety of the current Secretary of SBE. Mr. Fitz-Hugh officially presented the document to Secretary Palmer and thanked the Board for the recognition of the work his wife so enjoyed.

The third order of business was the presentation of the resolution honoring the work of Peggy Harding, retiring General Registrar of Lancaster County. Vice-Chair Bowers invited Ms. Harding to the podium for the presentation. Vice-Chair Bowers presented the resolution to Peggy Harding and each Board member extended their sincere thanks for her twenty-nine years of service to the election community. Ms. Harding addressed the Board and expressed that she really appreciated all the help she had received over the years and especially was grateful that she worked for an excellent electoral board. Ms. Harding expressed that she was looking forward to spending time with her family.

The next order of business was the Board approval of recount materials. Myron McClees, SBE Policy Analyst, stated that a previous policy analyst for SBE collected and edited most of Virginia's recount documents to make the process clearer to those conducting the recount. Mr. McClees stated that the documents were in an unfinished form that required further edits prior to their usage throughout the Commonwealth. Mr. McClees stated that in November 2011 the documents were further edited for usage. Mr. McClees stated that the Virginia recount materials have been used in two separate recounts to ensure that their internal processes are fully honed and error free prior to full consideration by the Board. Mr. McClees stated that copies of the tracked changes documents and the revised documents were provided to the Board members for their review and approval. Mr. McClees inquired if there were any questions from the Board Members. Vice-Chair Bowers inquired if there would be any additional changes expected in the near future and Mr. McClees stated that none were expected. Vice-Chair Bowers stated that she felt this was a well-planned document that would address the questions the general registrars would have in the event of a recount. Chairman Judd inquired if there were any additional comments and there were none. Secretary Palmer moved that the Board approve the proposed changes to the Virginia recount materials. Vice-Chair Bowers seconded the motion and the Board unanimously passed the motion.

The next order of business was the Board approval of the revised Voter Registration Drive Guidelines. Justin Riemer, Deputy Secretary, stated that a review of the guidelines presented at the May 3, 2012 Board Meeting along with the guidance of Joshua Lief, Senior Assistant Attorney General and SBE Counsel, occurred in reference to whether third party registration groups can retain information provided on the voter

97 registration application. Mr. Riemer stated that after consideration a prohibition on
98 retention of registration data by third-party groups could not be enforced. Mr. Riemer
99 explained the changes made to the Voter Registration Drive guidelines and provided a
100 copy of the changes to the Board members. Mr. Riemer stated that SBE added language
101 that states third-party groups should not pre-populate the registration form unless
102 specifically directed by the applicant. Mr. Riemer stated that this language has been
103 added based on the problems associated with the recent Voter Participation Center
104 mailings. Mr. Riemer stated that while the pre-population issue has not been a problem
105 with groups that are conducting drives in-person, it was an important enough issue to
106 include in the guidelines. Mr. Riemer stated that the references to the June Primary
107 Registration Deadline have been removed as the election has already taken place.
108 Chairman Judd inquired if there were any comments. Vice-Chair Bowers stated that the
109 conclusions that were made at the August 6, 2012 Meeting regarding the general
110 registrars checking each voter registration application for validity is effective in exposing
111 irregularities in the process. Chairman Judd added that it is important that the third-party
112 registration groups understand that pre-populating voter registration forms must be at the
113 direction of the applicant. Secretary Palmer stated that the language provided by the
114 constitution and verified by Mr. Lief confirms that the application cannot be pre-
115 populated unless so directed by the individual applying. Mr. Lief stated that it may be a
116 good idea to adopt a Board Policy that states pre-populating a voter application form is
117 not permissible. Mr. Lief suggested that the language be changed from "pre-populate" to
118 "fill-in". Mr. Lief stated that SBE has that authority under § 24.2-103. Chairman Judd
119 inquired if there were any additional comments or questions. Mr. Riemer stated that a
120 letter from Project Vote was received by SBE commenting on the Voter Registration
121 Drive Guidelines. Chairman Judd inquired if there were any additional comments or
122 questions and there were none. Secretary Palmer moved that the Board adopt the revised
123 guidelines for conducting voter registration drives with an amendment to change the
124 word "pre-populated" to "fill-in". Vice-Chair Bowers seconded the motion and the Board
125 unanimously passed the motion.

126 The next order of business was the Board consideration of Stand by Your Ad
127 Complaints. David Blackwood, SBE Policy Analyst, informed the Board that the
128 violation to be considered was related to the campaign of Robert C. Sarvis. Mr.

129 Blackwood stated that Mr. Sarvis continues to maintain a website relating to his
130 campaign for a State Senate Seat in 2011 that does not contain the required disclosure
131 statement and does not comply with state law requiring that candidates identify whether
132 they have authorized an advertisement. Mr. Blackwood stated that although Mr. Jarvis
133 ran for office in 2011, the website remains online and he maintains a campaign account.
134 Mr. Blackwood stated that under the terms of §§ 24.2-955.1 and 24.2-101, one remains a
135 candidate "until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter
136 9.3". Mr. Blackwood stated that Mr. Sarvis has written a response letter to the SBE Board
137 members that was in their Board materials. Mr. Blackwood stated that the SBE staff
138 recommended a fine of one hundred dollars. Chairman Judd inquired if Mr. Sarvis was
139 present and he was not. Chairman Judd inquired if there were any additional comments or
140 questions and there were none. Secretary Palmer moved to adopt the staff
141 recommendations. Vice-Chair Bowers seconded the motion and the Board unanimously
142 passed the motion.

143 The next order of business was the Board consideration to delegate to the SBE
144 Secretary to secure required translation of voter registration and election materials.
145 Martha Brissette, SBE Policy Analyst, stated that following the 2010 Census, the United
146 States Department of Justice determined that Fairfax County had a sufficient Spanish
147 speaking population to require bilingual elections. Ms. Brissette stated that current
148 delegations require Board action to change certain forms such as the voter registration
149 application and absentee ballot application. Ms. Brissette stated that SBE is working with
150 Fairfax County to identify forms for translation. Ms. Brissette stated that a delegation to
151 the Secretary is requested to allow staff to translate forms after the Board has approved
152 the English version or amendment. Chairman Judd stated that under the Voting Rights
153 Act of 1965 provision for bilingual elections the Secretary already has authority to secure
154 translation of voter registration and election materials. Ms. Brissette stated that a
155 confirmation of this was requested by the Board. Chairman Judd stated that no further
156 action was required.

157 The next order of business was the Board consideration for approval of a
158 conforming amendment to the regulation defining federal only overseas voters. Martha
159 Brissette, SBE Policy Analyst, stated that parts of the Uniform Military and Overseas
160 Voters Act (UMOVA) was enacted during the 2012 General Assembly Session. Ms.

Brissette stated that the new law eliminates temporary registration. Ms. Brissette stated that the regulation definitions need to conform. Ms. Brissette stated that the Board on June 23, 2012, approved inviting public comment on the proposed regulation. Ms. Brissette stated that a comment period opened July 16, 2012 in the Virginia Regulatory Town Hall. Ms. Brissette stated that no comments have been received to date and that the forum closed on August 17, 2012. Chairman Judd inquired if there were any additional comments or questions and there were none. Secretary Palmer moved that the Board approve amending the regulation defining overseas absentee voter to conform to 2012 legislation. Vice-Chair Bowers seconded the motion and the Board unanimously passed the motion.

Chairman Judd then moved to close the meeting to discuss actual and probable litigation matters and specific legal matters requiring the provision of legal advice by legal counsel as authorized by § 2.2-3711(A)(7) of the Code of Virginia. Vice-Chair Bowers seconded the motion and the Board went into Executive session at 3:00PM.

At 4:00PM Chairman Judd moved to reconvene in open session and a roll call vote was taken as required by § 2.2-3712(D) of the Code of Virginia, unanimously certifying that during the closed meeting (i) only public business matters lawfully exempted from open meeting requirements under this chapter, and (ii) only such public business matters as were identified in the motion by which the closed meeting was concerned were heard, were discussed or considered.

Chairman Judd asked if there was any other business to come before the Board for the Good of the Order and with there being none Vice-Chair Bowers made a motion to adjourn. Chairman Judd seconded the motion and the Board unanimously passed the motion. The Board shall reconvene on August 28, 2012 at 10:00AM in the Washington Building, Room B27. There being none, the meeting was adjourned at approximately 4:10PM.

Secretary

Chair

Vice-Chair