



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

# BOARD MEETING

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Friday, September 23, 2013  
General Assembly Building  
Room C  
10:00 AM

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BOARD WORKING PAPERS



**STATE BOARD OF ELECTIONS  
AGENDA**

*DATE: September 23, 2013  
LOCATION: General Assembly Building, Room C  
TIME: 10:00 a.m.*

- A. CALL TO ORDER** *Charles E. Judd  
Chair*
- B. APPROVAL OF MINUTES: August 13<sup>th</sup> & 23<sup>rd</sup>, 2013** *SBE Board Members*
- C. SECRETARY'S REPORT** *Donald Palmer  
Secretary*
- D. REPORT FROM LEGAL COUNSEL** *Joshua Lief  
SBE Legal Counsel*
- E. NEW BUSINESS**
- A. Ballot Position Drawing – Powhatan County Clerk  
Special Election February 4, 2014** *Matt Abell  
Election Services Lead*
- B. Optical Scan Trial for Brunswick County** *Susan Lee  
Elections Uniformity Manager*
- C. Complaint Against Mike McHugh** *Chris Piper  
Elections Services Manager*
- F. OTHER BUSINESS & PUBLIC COMMENT**
- G. GOOD OF THE ORDER**

**ADJOURNMENT**



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# Call to Order

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BOARD WORKING PAPERS



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Approval of Minutes  
August 13, 2013  
&  
August 23, 2013

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BOARD WORKING PAPERS



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# Approval of Minutes August 13, 2013

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BOARD WORKING PAPERS

# MINUTES

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3 The State Board of Elections Board Meeting was held on Tuesday, August 13,  
4 2013. The meeting was held in the General Assembly Building, Room C, 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; Joshua Lief;  
7 Senior Assistant Attorney General and SBE Counsel; Justin Riemer, Deputy Secretary;  
8 Nikki Sheridan, Confidential Policy Advisor; Chris Piper, Election Services Manager;  
9 Susan Lee, Election Uniformity Manager; Myron McClees, SBE Policy Analyst; Gary  
10 Fox, Voting Technology Coordinator; and Matt Abell, Election Administration Lead.  
11 Chairman Judd called the meeting to order at 9:00AM.

12 The first order of business was the approval of the SBE Board Minutes from the  
13 May 22, 2013 and the June 25, 2013 Board Meetings. Chairman Judd stated that each set  
14 of Board Meeting Minutes would be addressed separately. Chairman Judd asked if Board  
15 Members had any additions or corrections to the May 22, 2013 Board Minutes. Vice  
16 Chair Bowers noted she thought the Board had time to review the minutes and made  
17 corrections that were reflected in these Minutes and she had no changes. Chairman Judd  
18 noted for the record the changes desired to the Board Minutes draft document. Chairman  
19 Judd and Secretary Palmer discussed a suggested change on page 14, line 430 regarding  
20 “protected addresses” and “dumbing down the system.” Secretary Palmer asked if the  
21 Chairman wanted to eliminate the sentence on protected addresses and Chairman Judd  
22 noted that he did not want the sentence removed, that he wanted it corrected so that it did  
23 not appear that he approved of dumbing it down. Vice Chair Bowers moved *that the*  
24 *Board accept and approve the amended changes to the May 22, 2013 Minutes.* Secretary  
25 Palmer seconded the motion and the Board unanimously approved the Minutes.  
26 Chairman Judd asked if Board Members had any additions or corrections to the June 25,  
27 2013 Board Minutes. Vice Chair Bowers moved *that the June 25, 2013 Minutes be*  
28 *approved as submitted.* Secretary Palmer seconded the motion and the Board  
29 unanimously approved the Minutes. Chairman Judd observed the difference between the  
30 May 22 and June 25 Minutes is a nice new procedure that the Secretary, Rose Mansfield  
31 and others put in place in getting the minutes processed in a timely manner in a form that  
32 the Board is more familiar with and the June 25 minutes reflect that change.

33           The second order of business was the Secretary's Report delivered by Secretary  
34 Palmer. Secretary Palmer stated that the online registration rollout occurred in mid-July,  
35 and to date there had been over 1,800 voter registrations conducted online. Secretary  
36 Palmer stated that SBE staff continues to improve and streamline the process. Secretary  
37 Palmer stated that this system is an outstanding new access to voters and improves the  
38 integrity of the voter rolls on the front end. Secretary Palmer noted the communication  
39 between SBE and DMV is vital.

40           Secretary Palmer reported that he was a presenter at the National Association of  
41 State Election Directors (NASED) meeting and spoke on topics related to the 2012  
42 General Election that was similar to a presentation made to local registrars and electoral  
43 board members at Annual Training. Secretary Palmer thanked the Chairman for coming  
44 and noted it was a huge success. Secretary Palmer stated that the presentation was based  
45 on surveys completed by the general registrars and SBE's own analysis that provided  
46 excellent information to the Presidential Commission. Secretary Palmer got positive  
47 feedback on the use of technology, improving the process of interacting with voters in the  
48 registration phase and the updating of addresses. Secretary Palmer thanked the general  
49 registrars for completing the survey. Secretary Palmer stated that SBE was presented an  
50 award by Google and the PEW Foundation during the NASED conference. Secretary  
51 Palmer recognized Matt Davis, IS Division Manager, and his team for their efforts and  
52 stated that Virginia was recognized as one of the pioneers and leaders in the Voting  
53 Information Project which provides polling place information online. Secretary Palmer  
54 stated that over 25 million people utilized the Google website to look up their polling  
55 location. Chairman Judd asked Mr. Davis to come to the podium to officially accept the  
56 award and extended congratulations to his entire team.

57           Secretary Palmer stated that SBE is involved with the Crosscheck program based  
58 on guidance from the Board. The PEW Foundation spoke to the Board about the ERIC  
59 Project and SBE jumped into the project. ERIC now has nine members. ERIC maintains a  
60 website, Virginia was a founding member, and has been receiving reports from the nine  
61 states involved in the project. ERIC allows SBE to utilize DMV information as well as  
62 the other states' voter registration lists to identify duplicate voters or those who have left  
63 the state or have potentially double-voted. Secretary Palmer stated that SBE is also  
64 involved in the Interstate Crosscheck, the interstate compact that compares voter

65 registration lists. Those lists are utilized to identify potential duplicates and those voters  
66 who have relocated. Secretary Palmer concluded that without any federal solution out  
67 there, the states are starting to work together to identify those who have moved to another  
68 state.

69 Chairman Judd asked if there were additional details on some of the numbers that  
70 have been matched, including up to 300,000 that was discussed. Secretary Palmer stated  
71 that Pew just came out with some numbers that he can share in more detail at the next  
72 meeting. Secretary Palmer noted that since Virginia has not participated in these types of  
73 projects in the past we had fairly significant number of potential duplicates and that the  
74 IS Division has been working on the data to make sure we get it right. The process will  
75 be bifurcated and different depending on how good of a match there is. Secretary Palmer  
76 stated that the process would be complete before the Commonwealth enters the  
77 gubernatorial election cycle as a result of sharing information.

78 Vice Chair Bowers asked about the address verification in the ERIC project and if  
79 there are similar parallels in the address verification process. For example, if someone in  
80 one state has matching data for a person in Virginia, how does SBE handle verifying the  
81 address as far as which record is current. Secretary Palmer replied that because we are  
82 using voter registration and DMV data and you will be able to compare dates to  
83 determine the latest update to the voter's address. Vice Chair Bowers asked if the  
84 crosscheck is dated when the check occurs. Secretary Palmer replied "Yes". Vice Chair  
85 Bowers asked at what point the voter is deemed inactive. Secretary Palmer stated that if  
86 SBE receives information that someone has moved, the state or the locality would send a  
87 mailing to the individual. If the voter does not respond within 30 days a secondary  
88 mailing is sent and that mailing will state that if you do not respond you will be placed on  
89 the inactive list, that you are still able to vote, but if you do not update your records for  
90 two general election cycles you will be removed from the rolls. Vice Chair Bowers asked  
91 if that mailing process would apply to Crosscheck. Sec. Palmer said "yes" but that there  
92 are some instances where only one piece of mail would be sent. Secretary Palmer asked if  
93 there were any other questions.

94 Chairman Judd asked for an update on the Bruce Tyler letter. Secretary Palmer  
95 stated that it was his understanding that there was a meeting scheduled in July for the  
96 Richmond Electoral Board Meeting and due to the amount of agenda items the report that

97 was to come from the general election was postponed until a later meeting. Secretary  
98 Palmer stated that Mr. Tyler was able to address the electoral board, there was a motion  
99 to ask SBE for an investigation, and it was reported that the motion did not get a second  
100 and no request has been made for SBE to investigate. There will be a report made by the  
101 Richmond City General Registrar at the August meeting. Secretary Palmer stated that  
102 SBE has conducted an audit of the 2012 Election for long lines and voting equipment  
103 issues. The Absentee Ballot Working Group can review these absentee voting issues that  
104 were also addressed by Mr. Tyler. The working group is looking at various issues  
105 including overseas and domestic absentee voting. SBE will send a survey to the electoral  
106 community to help identify and what we can do to mitigate absentee ballot problems.  
107 SBE is looking for ways to streamline the absentee ballot process, including going to  
108 JCOTS for military and overseas voters. This was a challenging year with Hurricane  
109 Sandy which just pushed the postal service which has some real problems and these  
110 issues also came up on the federal level with the Presidential Commission. SBE will  
111 continue to work with the postal service to find ways to reduce the time that it takes to get  
112 a ballot from Point A to Point B. Secretary Palmer stated that if it cannot be done then we  
113 will have to go to the General Assembly with a recommendation on starting the process  
114 earlier if we are going to continue to use the mail. The deadlines are tight and there were  
115 some real issues with the postal service. Secretary Palmer inquired if there were any  
116 questions. Chairman Judd stated that Mr. Tyler's letter was helpful in outlining the  
117 activities surrounding that election and there is no interest in changing the outcome of the  
118 election, there is interest in what can we learn from what happened in that process to  
119 prevent those types of things from happening again and that is what is most important.  
120 Chairman Judd asked if there were any other questions and there were none.

121 The next order of business was the Legal Report delivered by Joshua Lief, SBE  
122 Counsel. Mr. Lief reported that the investigation into the petition fraud in connection  
123 with the 2012 Presidential Election, the two individuals involved plead guilty to multiple  
124 felonies in Augusta County and were more recently indicted in Martinsville and Henry  
125 County for additional felonies. The second update is from Harrisonburg, the case where  
126 voter registration forms were dumped. That individual was acquitted as the judge  
127 dismissed the charges at trial stating there was not sufficient intent. Mr. Lief stated that  
128 he is continuing to work with SBE on the interstate crosscheck program and the *Fairfax*

129 *County Democratic Party* case against SBE and the General Registrar and Electoral  
130 Board of Fairfax County. Mr. Lief reported that a new case has been filed which is not  
131 against SBE, rather they have sued election officials, the Attorney General and Governor  
132 trying to invalidate the At-Large Election of the Norfolk Mayor.

133 The next order of business was the presentation of the resolution honoring the  
134 work of Ann Loukx, retiring General Registrar of Accomack County. The Board  
135 presented the resolution to Ms. Loukx and each Board Member extended their sincere  
136 thanks for 29 years of service to the election community. Ms. Loukx thanked SBE for the  
137 years of support and noted that she was looking forward to her retirement.

138 The next order of business was the presentation of the “Feather in Your Cap”  
139 recognition award. Secretary Palmer asked Victoria Baldwin, Director of Training, to  
140 come to the podium. Secretary Palmer presented Ms. Baldwin with the feather and stated  
141 that she had earned this recognition because of the research she performs on the retiring  
142 general registrars’ resolutions. SBE Board Members extended their gratitude to Ms.  
143 Baldwin and stated how her efforts have made the ceremonial presentations of the  
144 resolutions to the general registrars unique and rewarding to all.

145 The next order of business was to ascertain the results of the Special Election in  
146 the 14th Senate District on August 6, 2013 pursuant to § 24.2-681 of the Code of  
147 Virginia. Matt Abell, Election Administration Lead, explained the certification process  
148 to the Board and SBE staff members. Mr. Abell stated that having examined the certified  
149 abstracts of the votes given in the counties and cities of the seven jurisdictions the  
150 member-elect is awarded a certificate. Mr. Abell stated that John A. Cosgrove, Jr.  
151 received the greatest number of votes (2,254). Board Members completed the  
152 certification process and Mr. Abell stated that Delegate Cosgrove, is now Senator-elect  
153 Cosgrove, Chairman Judd declared the results of the August 6, 2013 Special Election  
154 officially certified.

155 The next order of business was the Certification of Voting Equipment presented  
156 by Gary Fox, Voting Technology Coordinator. Mr. Fox stated that the first order of  
157 equipment business was to certify the ES&S Unity 3.4.0.1 voting system for use in the  
158 Commonwealth of Virginia. Mr. Fox explained the particulars of the equipment to the  
159 Board Members. Mr. Fox explained the product sheets and test reports were included in  
160 the Board materials. Mr. Fox stated that SBE hired Jack Cobb to perform the testing and

161 it occurred between March 18 and 20 at SBE and all the systems passed certification. The  
162 ES&S equipment was tested in Chesterfield County during the June 11, 2013 Democratic  
163 Primary and was well received by staff and voters. Mr. Fox asked if there were any  
164 questions. Chairman Judd asked if this was a digital scanner and Mr. Fox replied “Yes”.  
165 Chairman Judd asked who used the DS850 and Mr. Fox replied that Chesterfield used the  
166 850 and the DS200. Chairman Judd inquired if Fairfax County used the DS850 and Mr.  
167 Fox replied “They did not”. Mr. Fox added that Fairfax County is in the process of  
168 selecting equipment. Chairman Judd asked if there were any public comments and there  
169 were none. Secretary Palmer moved that *the Board certify ES&S Unity 3.4.0.1 voting*  
170 *system for use in elections in the Commonwealth of Virginia, pursuant to the State*  
171 *Certification of Voting Systems Requirements and Procedures*. Vice Chair Bowers  
172 seconded the motion and Chairman Judd inquired if there were any comments and there  
173 were none. The Board unanimously carried the motion.

174 The next order of business was the Certification of the Voting Equipment,  
175 Dominion Democracy Suite 4.14 Voting System presented by Gary Fox, Voting  
176 Technology Coordinator. Mr. Fox stated that there were software changes that required  
177 the product to go back through full certification. Mr. Fox explained the particulars of the  
178 equipment to the Board Members. Mr. Fox stated that the voting system completed  
179 certification through the Election Assistance Commission (EAC) on July 18, 2013. Mr.  
180 Fox explained the product sheets and test reports were included in the Board materials.  
181 The testing occurred between March 14 and 15 at SBE and all the systems passed  
182 certification. The equipment was tested in Caroline County and Isle of Wight County  
183 during the June 11, 2013 Democratic Primary and performed flawlessly. Mr. Fox asked if  
184 there were any questions. Chairman Judd asked if this was also a digital scanner and Mr.  
185 Fox replied “Yes”. Chairman Judd asked if there were any public comments and there  
186 were none. Secretary Palmer moved that *the Board certify Dominion Voting’s*  
187 *Democracy Suite 4.14 voting system for use in elections in the Commonwealth of*  
188 *Virginia, pursuant to the State Certification of Voting Systems Requirements and*  
189 *Procedures*. Vice Chair Bowers seconded the motion. Chairman Judd inquired if there  
190 were any comments and there were none. The Board unanimously carried the motion.

191 Chairman Judd had a question of whether there was any thought to global price in  
192 Virginia so that all localities would get the same price for voting equipment. Mr. Fox

193 responded that SBE was in the process of developing a proposal that would go out within  
194 the next 30 days for the equipment vendor to take advantage of quantity discounts.

195 The next order of business was proposed amendments to the When a Ballot is  
196 Cast Regulation presented by Myron McClees, SBE Policy Analyst. Mr. McClees stated  
197 that this regulation was brought before the Board at the June 2013 Board Meeting and  
198 concerns were raised as to whether the regulation was comprehensive enough including  
199 whether undervotes should be considered. Mr. McClees stated that Senate Bill 1027 was  
200 passed by the General Assembly and signed into law by the Governor. It included a  
201 provision that allows an officer of election to cause a machine to accept an optical scan  
202 ballot that was rejected due to an undervote or overvote. The action is directly counter to  
203 the regulation currently enforced within the Commonwealth, 1 VAC20-60-40. Mr.  
204 McClees explained different hypothetical scenarios of undervoting and overvoting to the  
205 Board Members. Mr. McClees asked if there were any questions. Chairman Judd said that  
206 he was puzzled why this was such a big deal and that he never witnessed someone putting  
207 the ballot in the scanner and hightailing out of the polling place. Chairman Judd  
208 acknowledged that this was the substance of the bill. Chairman Judd asked if there were  
209 any questions and there were none. Chairman Judd moved that *the Board adopt the*  
210 *proposed amendments to regulation 1VAC20-60-40, When Ballot Cast, to implement*  
211 *recently enact legislation, SB1027.* Vice Chair Bowers seconded the motion and  
212 Chairman Judd inquired if there were any comments. William Bell, Secretary of the Isle  
213 of Wight Electoral Board, approach the podium. Mr. Bell asked for clarification on  
214 training regarding this issue before Election Day arrives and described a scenario that  
215 involved putting the ballots aside when equipment broke down. Mr. McClees stated that  
216 the regulation being considered by the Board would not apply to the scenario described  
217 by Mr. Bell. Mr. Bell noted that the scenario he described would happen more frequently  
218 than what the regulation was addressing. Chairman Judd asked if there were any  
219 questions and there were none. The Board unanimously carried the motion.

220 Chairman Judd opened the meeting to other business and public comments. Bruce  
221 Tyler approached the podium. Mr. Tyler stated he was speaking in regards to the  
222 Richmond City 2012 election. Mr. Tyler stated that his intent was to address future  
223 elections not past elections. Mr. Tyler stated that this is about his concern that all  
224 registered voters who wish to vote do not become disenfranchised voters. Mr. Tyler

225 outlined the events of the past year after a letter was sent to SBE on December 31, 2012  
226 and thanked Secretary Palmer for the meeting that was conducted on June 12, 2013. Mr.  
227 Tyler stated that he was led to believe he had no standing to go before the State Board  
228 and was directed to approach the Richmond City Electoral Board about his concerns. Mr.  
229 Tyler stated that he provided the Richmond City Electoral Board the report he prepared  
230 regarding his election concerns. Mr. Tyler stated that in this meeting he had interpreted  
231 that the Board was going to investigate the election. Mr. Tyler asked for an explanation  
232 of what was going to be reviewed. Mr. Tyler asked: "Please explain to me what is going  
233 to happen with regards to the absentee ballot issue that I have previously presented". Mr.  
234 Tyler asked: "Are we investigating this now or are we waiting for the Richmond  
235 Electoral Board to make a decision on what to do?" Chairman Judd answered: "I'm  
236 interested in finding out what happened and why and then I am interested in seeing what  
237 are we going to do to make sure it does not happen again". Chairman Judd stated that he  
238 appreciated Mr. Tyler's phraseology of being interested in future elections. Vice Chair  
239 Bowers stated that Mr. Tyler raised valuable points and that she agreed with the  
240 Chairman's statement.

241 Secretary Palmer stated that during the June 2013 meeting with Mr. Tyler he  
242 understood why Mr. Tyler may have thought that he was told that he had no standing to  
243 ask the State Board to investigate but that was not in fact the case. Secretary Palmer  
244 stated that Mr. Tyler has a right as a citizen to come before the Board and voice the  
245 concerns that he had during the 2012 elections. The proper mechanism is to go before the  
246 local electoral board since they have the responsibility for the local absentee ballot  
247 procedures and the management of the local office. Secretary Palmer stated that the  
248 electoral board will analyze the events and the General Registrar will provide a report to  
249 SBE. SBE has an Absentee Ballot Working Group and SBE was looking at many of the  
250 issues raised. Secretary Palmer stated that SBE was looking at the issues and the specific  
251 facts really need to come from the General Registrar and Secretary Palmer was told the  
252 General Registrar's Report would arrive in August, 2013 to the Richmond City Electoral  
253 Board.

254 Mr. Tyler asked for clarification, "You are not investigating this; you are waiting  
255 on the Richmond City General Registrar to investigate this?" Secretary Palmer clarified  
256 that SBE does not have investigative powers on statutory issues except through a process

257 with the Attorney General's Office. Secretary Palmer stated that from his point of view  
258 SBE was both investigating the particulars of Mr. Tyler's situation and SBE needed to  
259 find ways to mitigate and provide recommendations to solve the problems. Mr. Tyler  
260 asked if the results of the General Registrar's investigation will be brought to SBE.  
261 Secretary Palmer replied that issue will be determined by the Richmond City Electoral  
262 Board but that it will not stop SBE's audit of the issues.

263 Chairman Judd stated that Mr. Tyler wrote the Board a letter on December 31,  
264 2012 and this is August 13, 2013, and that SBE continues to kick the tin can down the  
265 road. The Board does not have investigative powers but, we do have the ability to ask by  
266 motion to have the Secretary officially contact the Richmond City General Registrar and  
267 ask them to answer these questions: "What happened, why did it happened, and what  
268 remedies are going to be in place?" Chairman Judd stated that information could be  
269 shared in a public meeting. Chairman Judd stated he understood that the Richmond City  
270 General Registrar and her staff as well as the Electoral Board are working on finding out  
271 some of those answers. Chairman Judd moved that *we direct the Secretary of SBE to ask*  
272 *the General Registrar of Richmond to provide this Board with simple answers as to what*  
273 *happened, why it happened, and what steps are being taken to resolve the issue.* Vice  
274 Chair Bowers seconded the motion and Chairman Judd inquired if there were any  
275 comments. Chairman Judd stated these findings can factor into the efforts of the  
276 statewide working group. Vice Chair Bowers stated that she was wholeheartedly in  
277 agreement with this and when the Board has issues brought to its attention, particularly in  
278 a way that is thorough and transparent for the Board to have it to be a part of long lines or  
279 other issues, that this was something totally separate and specific to one race. Vice Chair  
280 Bowers said that the implications of what the Board decides on this race will have  
281 implications on future cases and that she thought Mr. Tyler has a very valid point and that  
282 it does fall within the Board's duty to find out what happened. Those answers will not  
283 only answer "the who, the what, and the where," but also what are the future implications  
284 if these matters come before the Board again. Chairman Judd asked if there were any  
285 comments and there were none. The Board unanimously passed the motion.

286 Chairman Judd asked if there were any additional public business or comments.  
287 Robin Lind, Secretary of the Goochland County Electoral Board, approached the podium.  
288 Mr. Lind stated that his Electoral Board directed him to report to the SBE Board

289 Members that within 24 hours of the online registration system going live that we had  
290 one individual register and that the General Registrar stated that the system worked  
291 extremely well and we would like to compliment the members of SBE who implemented  
292 the process.

293 Clara Belle Wheeler, Secretary of the Albemarle of the Electoral Board,  
294 approached the podium. Ms. Wheeler thanked the Board and thanked the Board for  
295 developing a proposal that would look at global pricing for voting equipment as it would  
296 be beneficial to small localities such as Albemarle County.

297 Chairman Judd asked if there were any other comments. Vice Chair Bowers noted  
298 that given the Attorney's General Office's role to serve as counsel to the SBE which is  
299 the agency that administers Virginia's election laws, and now given the fact that he has  
300 full investigatory powers to investigate without the Board's consent, has the Board  
301 considered what potential conflicts might arise given the fact that he is now a  
302 gubernatorial candidate? That is, what potential conflicts will exist if the SBE seeks  
303 counsel from the AG's office on election matters, as this is the same office whose head is  
304 running for Governor, play into future investigations or actions taken as it relates to the  
305 gubernatorial race in which he is a candidate?

306 Vice Chair Bowers noted that given the Attorney General's Office role to serve as  
307 counsel to SBE, which is the agency that administers Virginia election laws, and know  
308 given the fact that he has full investigatory powers to investigate without the Boards  
309 consent has the Board considered what potential conflicts might arise given the fact that  
310 he is now a gubernatorial candidate. Vice Chair Bowers asked if we were prepared to  
311 address the issue since we know that a gubernatorial race will have issues that will come  
312 before this Board. Chairman Judd referred the questions to Mr. Lief, Senior Assistant  
313 Attorney General and SBE Counsel. Mr. Lief stated that he provides counsel to the Board  
314 day to day and will continue to serve in that capacity. Mr. Lief acknowledged the change  
315 effective July 1 that allows his office to independently investigate matters. He would look  
316 at issues the same as any manners involving an attorney, including a public attorney such  
317 as a Commonwealth's Attorney, based on the facts as presented. Mr. Lief said he wanted  
318 the Board's input and that if he has an issue and the Board wants to discuss hiring outside  
319 counsel that is the Board's call. Mr. Lief said he has been directed by his superiors to call  
320 balls and strikes and that if the Board has doubts that he would like it to be shared with

321 him. Mr. Lief stated he wanted the Board as a client to be confident that you are receiving  
322 the best advice. Depending on the situation we will certainly look at how to best handle  
323 issues on a case by case basis similar to how we handled things during the presidential  
324 election. Vice Chair Bowers stated that she agreed and that the advice Mr. Lief has given  
325 has been fair. For clarification what she is asking is that the Attorney General is a  
326 candidate for office and how will that effect the decision-making process particularly to  
327 this Board as he has the authority to file investigations and at what point could there be  
328 potential for a conflict of interest. Vice Chair Bowers asked what role would the Attorney  
329 General's office play if the Attorney General was the candidate affected by the  
330 investigation or if he was the subject of the investigation himself. Mr. Lief replied that §  
331 24.2-104 states the Attorney General's Office has the authority to fully investigate and  
332 prosecute and take action necessary to enforce the laws. Mr. Lief acknowledged the  
333 change in law but that it does not change the analysis for a conflict of interest. The law  
334 provides that the Board can always ask a Commonwealth's Attorney office to investigate  
335 and the Attorney General's Office could recuse itself from the investigation. Vice Chair  
336 Bowers asked about the checks and balances of the process since before the Board had to  
337 ask for the investigation. Mr. Lief responded that the Commonwealth's Attorney has had  
338 that authority and continues to have that authority even though they run for reelection.  
339 Mr. Lief state that Commonwealth's Attorneys have said they are not going to investigate  
340 their own campaign and have referred the matter to another Commonwealth's Attorneys.  
341 Mr. Lief said that if something comes up that is outside the norm that in the Board's  
342 judgment the investigation should have outside eyes then he will raise it with his  
343 superiors. Vice Chair Bowers responded that the superior is the candidate. Vice Chair  
344 Bowers said in her opinion it is a conflict of interest to go to someone that is running for  
345 office and ask them to investigate a related issue. Vice Bowers pointed to the importance  
346 of the role of the Attorney General and the State Board in the election process. Mr. Lief  
347 cited the Board working together as a team in the 2012 General Election regardless of the  
348 political issues involved. Vice Chair Bowers stated that she appreciated Mr. Lief's  
349 answers but that 2012 had nothing to do with her concerns or the future implications of  
350 the conflict of having the Attorney General as a current candidate while still having the  
351 full authority to investigate election matters and have representative counsel to the SBE.

352 Chairman Judd asked if there was any further discussion or comments and there  
353 was none.

354 Chairman Judd then moved to close the meeting to discuss actual and probable  
355 litigation matters and specific legal matters requiring the provision of legal advice by  
356 legal counsel as authorized by § 2.2-3711(A) (7) of the Code of Virginia. Secretary  
357 Palmer seconded the motion and the Board went into Executive Session at 10:40AM.

358 At 11:28AM Chairman Judd moved to reconvene in open session and a roll call  
359 vote was taken as required by § 2.2-3712 (D) of the Code of Virginia, unanimously  
360 certifying that during the closed meeting (i) only public business matters lawfully  
361 exempted from open meeting requirements under this chapter, and (ii) only such public  
362 business matters as were indentified in the motion by which the closed meeting was  
363 convened were heard, were discussed or considered.

364 Chairman Judd asked if there were any other comments and with there being none  
365 Secretary Palmer moved *to adjourn*. Vice Chair Bowers seconded the motion and the  
366 Board approved the motion to adjourn. The meeting was adjourned at approximately  
367 11:35PM.

368 The Board shall reconvene on August 23, 2013 at 10:00AM in the General  
369 Assembly Building, Room D.

370 \_\_\_\_\_  
371 Secretary

372  
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374 \_\_\_\_\_  
375 Chair

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379 Vice-Chair

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STATE BOARD *of* ELECTIONS

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# Approval of Minutes August 23, 2013

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BOARD WORKING PAPERS

# MINUTES

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2           The State Board of Elections Board Meeting was held on Friday, August 23,  
3 2013. The meeting was held in the General Assembly Building, Room D, in Richmond,  
4 Virginia. In attendance, representing the State Board of Elections (SBE) was Charles  
5 Judd, Chair; Kimberly Bowers, Vice Chair; Donald Palmer, Secretary; Joshua Lief;  
6 Senior Assistant Attorney General & SBE Counsel; Justin Riemer, Deputy Secretary;  
7 Nikki Sheridan, Confidential Policy Advisor; Chris Piper, Election Services Manager;  
8 Susan Lee, Election Uniformity Manager; Martha Brissette, SBE Policy Analyst; and  
9 Gary Fox, Voter Technology Coordinator. Chairman Judd called the meeting to order at  
10 10:00a.m.

11           The first order of business was the approval of the SBE Board Minutes from the  
12 August 13, 2013 Board Meeting. Chairman Judd asked if Board Members had any  
13 additions or corrections to the August 13, 2013 Board Minutes. Vice Chair Bowers stated  
14 that she had a couple of corrections and additions. Vice Chair Bowers noted for the  
15 record the changes desired to the Board Minutes draft document. Vice Chair Bowers  
16 stated that on line 341 she desired an additional clarification of what was stated. Vice  
17 Chair Bowers stated that she would like the Minutes to read: Vice Chair Bowers stated  
18 that she appreciated Mr. Lief's answers but that 2012 had nothing to do with her concerns  
19 or the future implications of the conflict of having the Attorney General as a current  
20 candidate while still having the full authority to investigate election matters and have  
21 representative counsel to SBE. Secretary Palmer stated that the audio would require  
22 reviewing and SBE has not posted the Minutes and SBE was within the 10 day  
23 requirement and SBE would not be able to formally adopt the Minutes of the August 13,  
24 2013 Board Meeting during this proceeding. Chairman Judd replied "Ok". Vice Chair  
25 Bowers stated that since the Minutes have not been formally adopted I would like  
26 clarification on line 297 and "I would like the Minutes to reflect the following: Vice  
27 Chair Bowers noted that given the Attorney General Offices' role to serve as counsel to  
28 the SBE which is the agency that administers Virginia's election laws, and now given the  
29 fact that he has full investigatory powers to investigate without the Boards consent, has  
30 the board considered what potential conflicts might arise given the fact that he is now a

31 gubernatorial candidate?” Vice Chair Bowers stated that she would like this statement  
32 reflected in the Minutes since this was the gist of what she was asking at the last meeting  
33 and was more than willing to have staff take a look at what was stated and she would like  
34 the Minutes to accurately reflect her sentiments. Chairman Judd asked if Vice Chair  
35 Bowers had copies of those statements to give to the Secretary. Vice Chair Bowers  
36 replied: “Yes”. Chairman Judd asked Secretary Palmer if SBE would like to postpone  
37 the approval of the Minutes. Secretary Palmer replied that there will definitely be a  
38 postponement of the approval of the Minutes. Secretary Palmer stated that he wanted to  
39 remind the Board Members that these are a summary of the Minutes: “This is not  
40 supposed to be a transcript of the meetings, we have limited resources and to meet the  
41 timelines necessary for FOIA, my staff has other things to do other than the Minutes of  
42 the Board Meeting”. Chairman Judd stated “OK and that’s on the record”.

43 The second order of business was the Secretary’s Report delivered by Secretary  
44 Palmer. Secretary Palmer informed the Board that the SBE IS Division is conducting a  
45 comprehensive audit of the deceased similar to the audit conducted in 2012. Secretary  
46 Palmer stated that this should be the final audit and we will be shifting our resources to  
47 ERIC and we have an ongoing subscription with Social Security. We also have a growing  
48 interstate compact on death called STEVE which is an interstate compact of states across  
49 the country involving the Department of Health. Secretary Palmer stated that Virginia  
50 will be entering this compact in January, 2014. Secretary Palmer stated that during the  
51 Pew Foundation Meeting a presentation occurred on the status of ERIC. Secretary Palmer  
52 noted that some of the problems noted during this presentation are that 1.8 million  
53 deceased individuals were listed as voters across the country and 2.7 million voters are  
54 registered in multiple states. Additionally, 12.7 million voter records are out of date and  
55 51 million citizens are not registrar to vote. The ERIC project is design to identify where  
56 the gaps are in the registration rolls.

57 Secretary Palmer stated that research from the PEW Foundation found that 1 out of 8  
58 Americans move each year and 1 out of 4 young Americans move each year and that  
59 mobility has increased the problems of trying to keep track of citizen voter registration  
60 roles. In the ERIC states, the data showed 764,071 in-state movers identified and over 92  
61 thousand cross-state movers. ERIC identified over 23,281 deceased voters and over

62 14,118 in-state duplicates on our (Virginia) rolls despite our best efforts with the 2012  
63 and 2013 audits. Secretary Palmer stated that technology is showing SBE where the  
64 shortcomings really are and we are still working on the data reports from the interstate  
65 compact agreement with 22 other states.

66 Chairman Judd asked if the numbers just cited were these across all the states or  
67 just in Virginia? Secretary Palmer stated that these are the numbers related to the seven  
68 states involved in the ERIC interstate compact. Secretary Palmer stated that North  
69 Carolina, West Virginia, and Washington, D. C. are also considering joining the ERIC  
70 compact which would be particularly beneficial to the Commonwealth as they are our  
71 neighbors. Secretary Palmer stated that there is an ongoing effort to recruit states and the  
72 program is in the infancy stage and that Virginia is a pioneer state in this program. SBE  
73 will continue forward and receive and provide data to other states. The IS Division is  
74 currently developing structures and guidelines to deal with the information in the future  
75 according to the regulations and the law.

76 Secretary Palmer recognized Martha Brissette, SBE Policy Analyst, for her tenure  
77 at SBE for six years, thanking her hard work as a policy analyst and attorney at SBE.  
78 Secretary Palmer stated that a survey went out on the annual training workshop and that  
79 SBE has received the feedback. The training was attended by 450 attendees and 98% of  
80 the attendees found the information to be useful and 93% felt better prepared to perform  
81 their jobs after their training. Secretary Palmer noted that 45% of the attendees felt that  
82 they have a good relationship with SBE after attending and 43% stated that they already  
83 had a good relationship. Overall 95% of the attendees stated that the conference was  
84 beneficial to them. Secretary Palmer stated that he wanted to thank the staff for all their  
85 hard work. Chairman Judd asked if SBE had the numbers from previous training years to  
86 make a comparison. Secretary Palmer stated then since he was not at SBE during  
87 previous years it would be hard to gauge a precise response but if the attendees were  
88 happy, then SBE is happy.

89 Secretary Palmer stated that 37 localities have signed up for the on-line officer of  
90 election training and an additional 50 localities asked SBE for more information. The  
91 third party registration training has had 358 individuals sign the sworn affidavit  
92 indicating that those individuals have taken the training on-line. SBE has conducted a

93 number of classes at SBE which have been well received. Seventy-four individuals have  
94 taken the in-house training and 41 organizations have registered with the state. Secretary  
95 Palmer stated that the Voter ID Workgroup met on August 20, 2013 and SBE continues  
96 to move forward with election officials. Chairman Judd announced that he participated in  
97 the third party registration training and passed. Chairman Judd asked if there were any  
98 questions and there were none.

99 The next order of business was the Legal Report delivered by Joshua Lief, SBE  
100 Counsel. Mr. Lief reported that there were no updates since the Board Meeting on August  
101 13, 2013.

102 The next order of business was the Stand By your Ad Violations (Lamont Kizzie)  
103 presented by Chris Piper, Election Services Manager. Mr. Piper stated that on June 27,  
104 2013, July 3, 2013 and July 18, 2013, SBE received three separate complaints concerning  
105 the campaign advertising disclosures allegedly paid for by Lamont Kizzie for Sheriff  
106 2013, a candidate campaign committee registered to support Lamont Kizzie for the office  
107 of Sheriff in the City of Richmond. The first two complaints were concerning a flyer  
108 circulated at the Richmond Greek Festival. The third complaint included the flyer as well  
109 as the committee's website, a sign posted on a fence outside a local business, a yard sign  
110 and a local newspaper. Mr. Piper stated that the evidence submitted was included in the  
111 Board Materials and reference the flyer posted at the Richmond Greek Festival. Mr. Piper  
112 noted that the advertisement did not include the disclosure and clearly states elect Lamont  
113 Kizzie. Mr. Piper stated that the newspaper ad also advocates for Lamont Kizzie without  
114 the disclosure. Mr. Piper stated that the website, although currently updated, did not  
115 contain the disclosure as of July 31, 2013. The two other advertisements included a yard  
116 sign and one at a private business which did contain the disclosure. Mr. Piper stated that  
117 three of the advertisements were in violation of the law and two meet the disclosure  
118 requirements. Mr. Piper stated that the committee has committed three violations of the  
119 requirements of Chapter 9.5 of Title 24.2, *Code of Virginia*, and should be assessed civil  
120 penalties totaling \$550 representing a first time violation at \$50 along with second and  
121 third violation at \$250. Mr. Piper asked if there were any questions. Chairman Judd asked  
122 about the letter to Mr. Kizzie which cites \$1050 while SBE staff recommendation is  
123 \$550: "What is the difference?" Mr. Piper stated that the law requires that SBE provides

124 the candidates with the maximum penalty and based on the Boards' civil penalty  
125 schedule staff recommended \$550. Chairman Judd asked if the candidate or a  
126 representative was present and they were not. Chairman Judd stated that he had two  
127 observations; (i) two of the three complaints were anonymous which has no consideration  
128 and (ii) was SBE staff provided with originals? Mr. Piper stated that only copies were  
129 provided to SBE staff. Vice Chair Bowers asked whether there was a response from the  
130 candidate. Mr. Piper replied "No". Mr. Piper stated that Tony Pham provided all of the  
131 copies of the written materials and a link to the website on July 8, 2013. The other two  
132 complaints arrived at SBE anonymously. Vice Chair Bowers inquired if the candidate is  
133 an active candidate. Mr. Piper stated that Lamont Kizzie is registered with the local  
134 general registrar office. Vice Chair Bowers moved that *her recommendation would be to*  
135 *follow the SBE staff recommendations and access the \$550 fine.* Secretary Palmer  
136 seconded the motion and Chairman Judd inquired if there were any comments. Chairman  
137 Judd stated that he was agreeing on the information with the person who signed the letter.  
138 Chairman Judd asked if there were any additional comments. Secretary Palmer stated  
139 that Lamont Kizzie is ignoring the letter from SBE and thus is continuing to violate the  
140 law. Chairman Judd asked if there was a response from Lamont Kizzie and if it could be  
141 verified that the certified letter was received. Mr. Piper confirmed that the letter was  
142 signed for and that there was not a response. Chairman Judd asked if there were  
143 additional comments and there were none. The Board unanimously approved the motion.

144 The next order of business was the Campaign Finance Penalty Waiver Requests  
145 (Burgos for Delegate) presented by Chris Piper, Election Services Manager. Mr. Piper  
146 stated that the committee was penalized on June 3, 2013 for failure to file a campaign  
147 finance report due June 3, 2013 in a timely manner. The committee requests a waiver of  
148 the penalty due to the fact they filed only minutes after the deadline. Mr. Piper stated that  
149 the request for waiver was included in the Board materials. Mr. Piper noted that the  
150 campaign attempted to send the report several times before the 5:00p.m. deadline and  
151 received a message that said "invalid request". Mr. Piper stated that in Board policy  
152 2001-003, the Board affirmatively stated that, among other reasons, good cause allowing  
153 Board waiver of campaign finance civil penalties does not include the committee's lack  
154 of knowledge of how to file, the need to file or due date of filing. Mr. Piper noted that

155 the e-filing system on this date was operational and experienced no problems. Mr. Piper  
156 stated that the system will automatically assess the penalty for any report that does not  
157 have the time stamp of 5:00p.m. Chairman Judd asked if there were any questions. Vice  
158 Chair Bowers asked if SBE was finding that this is happening on a frequent basis. Mr.  
159 Piper replied that a few campaigns have complained that they have attempted to go into  
160 the system minutes before the deadline and experienced problems. Mr. Piper stated that  
161 the campaigns are informed of their right to appeal to the Board for a waiver. Mr. Piper  
162 stated that, *Code of Virginia*, allows the Secretary to extend the deadline if COMET is  
163 experiencing problems. Chairman Judd asked: "What is unique about 5:00p.m.?" Mr.  
164 Piper replied that previous Boards' choose 5:00p.m. as a standard. Secretary Palmer stated  
165 that the 5:00p.m. deadline was most likely chosen to accommodate campaigns who hand  
166 delivered reports to the SBE offices before the days of all electronic filing. Mr. Piper  
167 stated that the 5:00p.m. deadline increased the ability of SBE to disclose the reports to  
168 members of the public. Chairman Judd asked how soon the information is electronically  
169 available to Virginia Public Access Project (VPAP). Mr. Piper replied that VPAP has had  
170 the policy of not providing the reports publically until after the deadline. Chairman Judd  
171 asked when is the information available to VPAP. Mr. Piper stated that the reports are  
172 produced at 5:05p.m. for both members of the public and VPAP. Vice Chair Bowers  
173 asked about "invalid requests": "Can we verify that the campaign was trying to complete  
174 their reporting before 5:00p.m.?" Mr. Piper replied if there was a system error SBE  
175 would receive a report. Chairman Judd asked if numerous campaigns were submitting  
176 their reports at exactly 5:00p.m. is there a potential for a report to be logged at 5:01p.m.  
177 Mr. Piper replied that there is a possibility.

178 Chairman Judd queried the Board Members of their thoughts on the 5:00p.m.  
179 deadline. Chairman Judd asked how many fines have been levied due to campaigns  
180 missing the 5:00p.m. deadline with COMET. Mr. Piper replied that he did not have those  
181 exact numbers immediately available and stated that there have been approximately two  
182 or three violations each of the last 10 cycles. Vice Chair Bowers stated that because they  
183 are not occurring as frequently as previously thought she is leaning towards leniency  
184 when the candidate is stating they are trying to file a report and the report actually arrives  
185 within minutes of the deadline. Secretary Palmer stated he has experienced deadlines set

186 at midnight and SBE deadlines are so that SBE can process the information for VPAP  
187 and the public. Secretary Palmer stated that he was open to moving the deadline.  
188 Chairman Judd stated that he is not inclined to move the deadline during this Board  
189 Meeting but, believes a review of this procedure should occur and would encourage SBE  
190 to bring a proposal to a future Board Meeting. Secretary Palmer moved that the *Board*  
191 *uphold the penalty assessed and recommended by SBE staff*. Vice Chair Bowers  
192 seconded the motion and Chairman Judd inquired if there were any comments and there  
193 were none. The Board unanimously carried the motion.

194 The next order of business was the Campaign Finance Penalty Waiver Requests,  
195 Citizens for Accountability in Politics, presented by Chris Piper, Election Services  
196 Manager. Mr. Piper stated that the committee was penalized on April 16, 2013 for failure  
197 to file a finance report due April 15, 2013 in a timely manner. The committee requests a  
198 waiver of the penalty due to the fact they sent in the wrong report year. Mr. Piper stated  
199 that in Board policy 2001-003, the Board affirmatively stated that, among other reason,  
200 good cause allowing Board waiver of campaign finance civil penalties does not include  
201 the committee's lack of knowledge of how to file, the need to file or due date of filing.  
202 Mr. Piper stated that staff recommendation is to uphold the penalty assessed. Chairman  
203 Judd asked if there was a representative from the campaign present and there was not.  
204 Vice Chair Bowers moved that the *Board uphold the penalty assessed and recommended*  
205 *by SBE staff*. Chairman Judd seconded the motion and inquired if there were any  
206 comments and there were none. The Board unanimously carried the motion.

207 The next order of business was the Campaign Finance Penalty Waiver Requests  
208 (Peschke for Delegate) presented by Chris Piper, Election Services Manager. Mr. Piper  
209 stated that the committee was penalized on June 3, 2013 for failure to file a Campaign  
210 finance report due June 3, 2013 in a timely manner. The committee requests a waiver of  
211 the penalty due to the fact that he wasn't sure he was going to be a candidate until June 1,  
212 2013. Mr. Piper stated that the committee was registered prior to May 31, 2013 which  
213 was the last day of the reporting period. Mr. Piper stated that Mr. Peschke was raising  
214 and or spending funds prior to June 1, 2013. Mr. Piper stated that a report would be  
215 required. Mr. Piper stated that in Board policy 2001-003, the Board affirmatively stated  
216 that, among other reason, good cause allowing Board waiver of campaign finance civil

217 penalties does not include the committee's lack of knowledge of how to file, the need to  
218 file or due date of filing. Mr. Piper stated that staff recommendation is to uphold the  
219 penalty assessed. Chairman Judd asked if there was a representative from the campaign  
220 present and there was not. Vice Chair Bowers moved that the *Board uphold the penalty*  
221 *accessed and recommended by SBE staff*. Secretary Palmer seconded the motion and  
222 Chairman Judd inquired if there were any comments and there were none. The Board  
223 unanimously carried the motion.

224 The next order of business was the Campaign Finance Penalty Waiver Requests  
225 (Virginia Automatic Merchandising Association (VAMA) PAC) presented by Chris  
226 Piper, Election Services Manager. Mr. Piper stated that the committee was penalized on  
227 April 15, 2013 for failure to file a large dollar contribution finance report due April 15,  
228 2013 in a timely manner. The committee requests a waiver of the penalty due to the fact  
229 they attempted to file on time. Mr. Piper stated that staff recommendation is to uphold the  
230 penalty assessed. Chairman Judd asked if there was a representative from the campaign  
231 present and there was not. Chairman Judd moved that the *Board uphold the penalty*  
232 *accessed and recommended by SBE staff*. Vice Chair Bowers seconded the motion and  
233 Chairman Judd inquired if there were any comments and there were none. The Board  
234 unanimously carried the motion.

235 The next order of business was the Citizen Webster Complaint Against DPV &  
236 McAuliffe for Governor presented by Chris Piper, Election Services Manager. Mr. Piper  
237 stated that on July 19, 2013, staff at the State Board of Elections received an email  
238 complaint about an advertisement which ran on TV allegedly paid for by the Democratic  
239 Party of Virginia. The complaint claims that the committees may be in violation of  
240 provisions of the Campaign Finance Disclosure Act of 2006 ("the Act") and/or § 24.2-  
241 955 et al (aka "Stand By Your Ad") depending on how the Democratic Party of Virginia  
242 reported its expenditure for an advertisement allegedly opposing Ken Cuccinelli for  
243 Governor. Further, the complaint alleged that McAuliffe for Governor was failing to  
244 disclose the name of the person contracting for or arranging the expenditure for the  
245 campaign as required by § 24.2-947.4(C)(3). Mr. Piper stated that in summary there was  
246 an advertisement run by the McAuliffe campaign that did not have the required

247 disclosure and the caller stated that the McAuliffe campaign was not disclosing the name  
248 of the person who has authorized their expenditures on their campaign finance reports.

249 Chairman Judd asked Mr. Piper to address the two issues separately. Mr. Piper  
250 stated that there is a link to the advertisement in the Board materials and that the ad  
251 appeared at least once on or about July 13, 2013. Mr. Piper states that the ad states that it  
252 was sponsored by the Democratic Party of Virginia but does not state that it was  
253 authorized by any candidate. The complainant infers that the lack of an authorization  
254 statement means that the committee has made an independent expenditure and thus an  
255 independent expenditure report is required under § 24.2-945.2. The complainant points  
256 out that the Democratic Party of Virginia did not submit an independent expenditure  
257 report which has been confirmed by SBE staff. The complainant further states that the  
258 absence of an independent expenditure report infers that the party committee made an in-  
259 kind contribution to the Terry McAuliffe for Governor campaign committee, but that the  
260 campaign failed to disclose this contribution on their campaign finance reports. A review  
261 of the Terry McAuliffe for Governor campaign committee shows that no such in-kind  
262 contributions were reported by the committee. The complainant believes that one or both  
263 committees are in violation of the Act and Stand By Your Ad. Mr. Piper stated that the  
264 concept of “express advocacy” has its genesis in the United States Supreme Court case  
265 *Buckley v. Valeo* (No. 75-436) No. 75-36, 171 U.S.App.D.C. 172, 519 F.2d 821  
266 (“hereinafter referred to as “*Buckley*”). The Court held that the government’s power to  
267 regulate expenditures “include express words of advocacy of the election or defeat” of a  
268 clearly identified candidate. The words include “Vote for...”, “Vote Against...”,  
269 “Support...”, “Oppose...” and other like statements. Mr. Piper stated all other  
270 expenditures were not within the power to regulate and these expenditures are often  
271 referred to as “issue advocacy”. Mr. Piper stated that in 1998 in *Virginia Soc’y for*  
272 *Human Life, Inc. v. Caldwell*, 256 Va. 151, 500 S.E.2d 8014 (1998), the Virginia  
273 Supreme Court found that “for the purpose of influencing the outcome of the election” as  
274 used in former § 24.2-901, may be narrowly construed to limit its application to groups  
275 that expressly advocate the election or defeat of a clearly identified candidate. Mr. Piper  
276 stated this relates to the *Buckley v. Valeo* case. Mr. Piper stated that in 2005, the General  
277 Assembly requested a review of the Act’s provisions be conducted by the State Board of

278 Elections. The review included a recommendation to replace “for the purpose of  
279 influencing the outcome of the election” with “expressly advocating the election or defeat  
280 of a clearly identified candidate” in order to reflect in the law the decision of the court. In  
281 2006, the General Assembly adopted the recommendation and the bill was signed into  
282 law. Mr. Piper stated that the definitions of “contribution” and “expenditure” require that  
283 the money be provided or expended in order to “expressly advocate the election or defeat  
284 of a clearly identified candidate”. A disclosure statement on a television ad as required by  
285 § 24.2-957.1 or to file an independent expenditure report as required in § 24.2-945.2 are  
286 dependent on whether the expenditure and/or contribution meet the express advocacy  
287 standard as stated in *Buckley* and *Caldwell*. Mr. Piper stated that he viewed the  
288 advertisement online and it does not contain the required statement. Chairman Judd asked  
289 if the “Paid for the Democratic Party of Virginia” qualifies to meet the disclosure  
290 statement. Mr. Piper replied “Yes”. Chairman Judd stated that the ad shall include a  
291 disclosure statement, spoken by the chief executive officer or treasurer of the political  
292 committee, containing at least the following words: “The [Name of political committee]  
293 sponsored this ad”. Mr. Piper replied: “That is correct.” Chairman Judd asked if this  
294 satisfies the second item. Mr. Piper replied: “No, the written statement would not satisfy  
295 the spoken statement and in reviewing the full screen picture the DPV opens the ad and  
296 there is a statement that the DPV sponsored this ad”. Chairman asked if one and two have  
297 been satisfied. Mr. Piper replies: “Yes”.

298 Chairman Judd asked Dave Webster to come to the podium. Mr. Webster stated  
299 that he was the complainant and that he was from Northern Virginia. Mr. Webster stated  
300 that the issue of express advocacy was unfamiliar to him and it is clear that they are  
301 advocating the defeat of Ken Cuccinelli. Mr. Webster stated that the McAuliffe  
302 Committee has transferred in July, 2013 2.6 million dollars to the DPV and then they run  
303 the television ads with the disclosure only paid for by the DPV and then they donate the  
304 ad back to the McAuliffe campaign as an in-kind donation. Mr. Webster stated that he did  
305 not know what was going on behind the scenes. Mr. Webster stated: “I do not believe that  
306 the DPV had enough money to run the statewide ads as at the end of June, 2013 they had  
307 \$290,000 dollars before the cash infusion of 2.6 million dollars and I think it is pretty  
308 clear where the money coming from and in closing I will just say that I believe this is an

309 expressed advocacy ad and I was surprised to hear that analysis.” Chairman Judd asked if  
310 there were any other comments and there were none.

311 Chairman Judd asked if the reports reflect what Mr. Webster stated about the  
312 2.6 million dollars given to the DPV Committee. Mr. Piper stated that he did review the  
313 report and there was a contribution received but did not recall the exact amount and this  
314 did occur around the same time period. Chairman Judd asked if the report by the  
315 campaign, would show the in-kind contribution at this point. Mr. Piper replied: “In my  
316 review I did not see any contribution by the McAuliffe Campaign and the next report due  
317 for that time period would not be due until September 15, 2013.” Chairman Judd stated  
318 that he was not sure why we had to go through all of this and he could understand some  
319 of the creative names that appear on the ads, stating that they are the ones that paid for  
320 the ad and you can’t really find out who is behind the ad but, in this case it is pretty clear  
321 who is behind it. Chairman Judd stated that the spirit of the law should be followed that  
322 says paid for and authorized by. Chairman Judd asked if there were other comments from  
323 the Board Members. Vice Chair Bowers stated that she was not clear that the code that is  
324 being referenced is actually the code. Vice Chair Bowers stated that she was not in a  
325 comfortable position to make a statement as the only information she has is what has  
326 been stated in the letter from Mr. Webster and is inclined to take the staff  
327 recommendations. Mr. Lief, Senior Assistant Attorney General and SBE Counsel, stated  
328 that there has been debate in the Federal Election Commission about expressed advocacy  
329 and didn’t believe that it is directly applicable to our law but there is some debate about  
330 the exact definition and he would conduct more research at the Boards request. Secretary  
331 Palmer stated that the Supreme Court has weighed in on this and they have sided more to  
332 free speech verses the regulatory scheme and the issue of transferring dollars into  
333 different accounts is outside or does not meet the parameter of our regulatory scheme.  
334 The SBE staff has reviewed this issue and this is legal under our regulatory scheme and  
335 with the review of express advocacy, I believe that the recommendations of the staff  
336 should be upheld. Chairman Judd stated the he would like to take legal counsel on his  
337 offer to conduct more research. Chairman Judd moved *to table this item so that counsel*  
338 *could have time to get back to the Board with the results of his research.* Secretary  
339 Palmer requested additional discussion. Secretary Palmer stated that his concern about

340 tabling this agenda item is that it will linger and that the staff recommendation is to have  
341 the McAuliffe campaign file an incomplete report so that we get a clear picture and to  
342 report the name of the person authorizing, as that is still a part of the recommendation.  
343 Mr. Piper stated the separate issue is having reviewed the reports Mr. Webster complaint  
344 is valid as there are no names listed in the person authorizing the expenditures for any of  
345 the reports I reviewed. The reports of the McAuliffe campaign would need to be amended  
346 to include the name of the person authorizing the expenditures. This issue is separate to  
347 the issue that has been debated with the express advocacy and whether or not this  
348 advertisement in question would fall into a regulated speech. Mr. Piper stated that you  
349 could table the discussion on the Stand By your Ad portion and the Board could take up  
350 the second issue. Mr. Lief stated that he has completed some research during the Boards'  
351 discussion and it appears there was a June, 2013 codification in the federal court that  
352 released a decision that is under review by the FEC. Mr. Lief clarified that he was not  
353 speaking against the staff recommendations just offering the opinion that was asked for  
354 by the Chairman. Secretary Palmer asked what the applicability of the federal scheme to  
355 a state gubernatorial race. Mr. Lief stated that these issues are governed by state law and  
356 the issue of expressed advocacy came from the Supreme Court ruling on the federal level.

357 Chairman Judd stated that the staff recommendation is that SBE dismisses the  
358 complaints and the Board should direct the Secretary to notify the McAuliffe for  
359 Governor campaign committee to amend all previously filed reports to include the  
360 required by § 24.2-947.4. Chairman Judd asked if we do this for other campaigns, we did  
361 not do this for other campaigns. Mr. Piper asked if the amendment was being addressed.  
362 Chairman Judd replied: "No, I am addressing the recommendation." Mr. Piper stated that  
363 the staff recommendation is that neither the McAuliffe campaign nor the DPV were in  
364 violation of the Stand By your Ad or any other applicable laws of the ad. The only item  
365 SBE found was that the McAuliffe campaign reports were missing the person  
366 authorization the expenditure and those would need to be amended as that information is  
367 required by the *Code of Virginia*. Chairman Judd stated that the Board has issued  
368 penalties to E.W. Jackson: "Did we do the same thing to E.W. Jackson?" Mr. Piper  
369 stated that the penalty that was assessed to the E.W. Jackson campaign was for a late  
370 filing of a large pre-election contribution report. Chairman Judd stated that the reason the

371 Board was discussing the McAuliffe incident was because a complaint was filed? Mr.  
372 Piper replied: "That is correct."

373 Chairman Judd asked Mr. Lief if he needed more time to research this issue.  
374 Chairman Judd stated that this is the reason he made the motion to table this item. Mr.  
375 Lief replied that he had explained the federal law and if that was the purpose of tabling  
376 this item he did not need more time. Chairman Judd asked Mr. Lief if he concurred with  
377 the staff recommendation. Mr. Lief replied that the statute clearly states that express  
378 advocacy is part of Virginia law and therefore it is the Board's decision to decide what  
379 express advocacy is in this instance. Secretary Palmer asked Mr. Piper to read the  
380 language of the ad. Mr. Piper stated that he did not retype the ad however, the link was  
381 provided to the Board Members and Deputy Riemer has the ad on his computer if the  
382 Board wishes to view the ad in its' entirety. Chairman Judd stated that this is an unusual  
383 situation and that he feels that the Board has a recommendation that is not consistent with  
384 similar issues that have been brought to the Board. Chairman Judd stated: "The big  
385 question for me, on the record, is and in all caps is "WHY", why would you not put the  
386 proper disclosure, why do you feel the need to put millions of dollars into a campaign to  
387 somehow do it differently and I am puzzled over that and I just don't understand why  
388 they would do that. When we start talking about disclosure and independent expenditure  
389 verses an in-kind donation that applies as well." Chairman Judd stated that we are asked  
390 to make a decision on information that we do not really have. Secretary Palmer stated that  
391 currently the motion is to table both of the actions. SBE can separate the two elements or  
392 we can just table the Stand By Your Ad consideration so that SBE can conduct additional  
393 research on express advocacy. Chairman Judd moved that the *Board table the Stand By*  
394 *Your Ad consideration*. Secretary Palmer seconded the motion and the Board  
395 unanimously carried the motion.

396 Chairman Judd stated that the Board will deal with the reporting portion of the  
397 complaint concerning the Citizen Webster Complaint Against DPV & McAuliffe for  
398 Governor. Mr. Piper stated that the review of the reports filed by the McAuliffe for  
399 Governor Campaign shows that there is no disclosure of the person authorizing the  
400 expenditures required by § 24.2-947.4. Staff recommends that the Board should direct the  
401 Secretary, pursuant to § 24.2-953.3, to notify the McAuliffe for Governor campaign

402 committee to amend all previously filed reports to include the information required by §  
403 24.2-947.4. Chairman Judd asked if any filing deadlines had been missed by the  
404 campaign. Mr. Piper stated that the *Code of Virginia* states that SBE staff has 21 days to  
405 notify the committee of a need to amend but, under the Attorney General guidance SBE  
406 can initiate this action after that prescribed time period. Mr. Piper stated the reason this  
407 was brought before the Board is because it is a part of the complaint and normally this  
408 would be handled at the staff level. Secretary Palmer moved that the *Board direct the*  
409 *Secretary, pursuant to § 24.2-953.3, to notify the McAuliffe for Governor campaign*  
410 *committee to amend all previously filed reports to include the information required by §*  
411 *24.2-947.4.* Chairman Judd seconded the motion and asked if there were additional  
412 comments. Vice Chair Bowers stated that she was not sure it was necessary to amend the  
413 report because the first item builds upon the need to actually amend the report and  
414 because we are tabling this issue. Vice Chair Bowers stated that if SBE had defined what  
415 creates express advocacy and when it is met in the actual campaign then is it necessary  
416 for that campaign to have their report amended. Vice Chair Bowers stated that she would  
417 be abstaining from voting on this motion for those reasons. Chairman Judd asked if there  
418 were any other comments and there were none. The Board passed the motion: two  
419 ‘Yea’s’, zero ‘Nay’s’, and one ‘abstention’.

420 The next order business was the Public Participation Guidelines (Chapter 10)  
421 presented by Susan Lee, Election Uniformity Manager. Ms. Lee stated 1 VAC §§ 20-10-  
422 130 requires Board review after each presidential election. The Public Participation  
423 Guidelines were adopted in 2010, making the 2012 presidential election the first election  
424 triggering this review. On May 15, 2013, the Board announced a periodic review of all  
425 regulations and that the regulations were posted to Regulatory Town Hall for comments  
426 on June 3, 2013. The comment period closed on June 24, 2013, and no comments were  
427 received in the Regulatory Town Hall online forum for Chapter 10. At the Board Meeting  
428 on June 25, 2013, members of the Board commented that staff needed to find a more  
429 efficient way to propose regulations without the delay required to receive comments  
430 utilizing Regulatory Town Hall. Ms. Lee stated that SBE has prepared a proposed  
431 regulation to allow greater flexibility in seeking public comment through the agency  
432 website as well as Regulatory Town Hall, at the discretion of the Board. SBE staff

433 proposes continuing in Regulatory Town Hall the process initiated with the periodic  
434 review in May. A comment period for 14 days will open on September 9, 2013  
435 publication in the Virginia Register of Regulation, and close on Monday October 7, 2013,  
436 allowing consideration of a final regulation at the next Board Meeting. After this  
437 regulation is approved and incorporated into the Virginia Administrative Code (VAC) the  
438 Board may exercise its' discretion for reviewing comments on Regulatory Town Hall and  
439 or on the SBE website. Ms. Lee asked if there were any questions. Chairman Judd asked  
440 if we are using the SBE website along with Regulatory Town Hall or in place of  
441 Regulatory Town Hall. Ms. Lee stated that after the regulation is approved and  
442 incorporated in the Virginia Administrative Code that would solely be the discretion of  
443 the Board. Ms. Lee stated that in order to provide full disclosure for the Board SBE is  
444 working with the SBE IS Division to allow for public comment on SBE website.  
445 Chairman Judd asked if there was an implementing date for this change. Ms. Lee stated  
446 that the Board would review this at the October 2013, Board Meeting. Chairman Judd  
447 asked if there were additional comments. Deputy Riemer stated that in order to change  
448 the process the Board has to go through the process, of changing the process, to change it  
449 to a more streamlined version. This new process if the Board agreed could include  
450 Regulatory Town Hall. Deputy Riemer stated that this will be helpful because during  
451 that process SBE staff can properly work out something that can be set up on the website  
452 that is not going to be thrown together quickly. Chairman Judd asked if there were any  
453 public comments and there were none. Vice Chair Bowers moved that the *Board seek*  
454 *public comment, for a period of 14 calendar days, on the proposed amendments to its*  
455 *regulations in Chapter 10, Public Participation Guidelines, to implement a*  
456 *recommendation received during the periodic review process.* Secretary Palmer seconded  
457 the motion and Chairman Judd asked if there were any other comments and there were  
458 none. The Board unanimously carried the motion.

459 The next order of business was the General Administration Guidelines (Chapter  
460 20) presented by Martha Brissette, SBE Policy Analyst. Ms. Brissette stated that SBE is  
461 proposing one change based on the comments received through Regulatory Town Hall.  
462 Ms. Brissette stated that the comment period for Chapter 20 closed on June 24, 2013. One  
463 commenter provided four comments detailed in a table provided to Board Members in

464 their Board materials. Staff recommends updating the reference to the HAVA Plan and  
465 otherwise retaining the regulations in this chapter without further change. Ms. Brissette  
466 stated that SBE is requesting that the Board approved the regulations, 1 VAC 20 Chapter  
467 20, (20-20-20-10 through 20-20-80) with the exception of the HAVA plan reference. Ms.  
468 Brissette inquired if there were any questions. Secretary Palmer asked if a regular  
469 complaint received by SBE is automatically treated as a HAVA complaint. Ms. Brissette  
470 stated that everything is presumably a HAVA complaint but, it has to involve certain  
471 topics in order to go into that framework. Chairman Judd asked what the difference is  
472 between a HAVA complaint and a complaint that is not a HAVA complaint. Ms.  
473 Brissette stated that certain subject matters and that the complaint has to be notarized.  
474 Ms. Brissette stated that letters arrive at SBE that are Election Day complaints and if they  
475 qualify SBE handles them according to HAVA guidelines and if not the letter still  
476 receives complete consideration. Chairman Judd asked why there is a difference in the  
477 handling. Ms. Brissette stated many complaints really they don't qualify due to lack of  
478 notarization. HAVA complaints require a response from the Deputy Secretary of SBE.  
479 Secretary Palmer stated that he was concerned that administrative tasking will increase if  
480 we treat a complaint as a HAVA complaint that is not a HAVA complaint and SBE could  
481 clear up the regulation to correct treating of non HAVA complaints as HAVA  
482 complaints. Ms. Brissette stated that the guidance provided on the SBE website is  
483 available to citizens who want to file HAVA complaints. Secretary Palmer stated that  
484 SBE should look at new language that will streamline this process and if SBE staff does  
485 not have a recommendation the regulation should remain unchanged. Deputy Riemer  
486 stated that following the election SBE receives complaints that are on the HAVA form  
487 and half of them are notarized and half of them are not. SBE then has to determine if the  
488 complaint is covered by HAVA therefore it is productive to treat them all as a HAVA  
489 complaints. The policy makes it difficult to determine what falls under HAVA and what  
490 does not fall under HAVA. Vice Chair Bowers moved that the *Board approve the staff*  
491 *recommendation to update the HAVA plan reference and otherwise retain the regulations*  
492 *in Chapter 20.* Secretary Palmer seconded the motion and Chairman Judd asked if there  
493 were any comments and there were none. The Board unanimously carried the motion.

494 The next order of business was the Campaign Finance Guidelines (Chapter 90)  
495 presented by Martha Brissette, SBE Policy Analyst. Ms. Brissette stated that SBE staff  
496 does not recommend changes to this chapter. Ms. Brissette stated that this filing fee  
497 regulation should not be exempt from the full rigors of the Virginia Administrative  
498 Process Act. Most SBE regulations are exempt from the extensive requirements of the  
499 Administrative Process Act (APA) under the *Code of Virginia* § 2.2-4002(B)(8).  
500 Chairman Judd asked if the only comment received was about the “indigent” language  
501 were by a person would not be able to afford to pay \$25.00 fees for filling their reports on  
502 paper verses electronically. Ms. Brissette replied that statement was correct. Staff  
503 recommendations are that it would not be necessary to amend the regulation to consider  
504 this chapter in review. Secretary Palmer stated to clarify the matter before the Board the  
505 Governor is asking SBE to review all the regulations systematically so that we could  
506 identify any issues or concerns. This process will continue over the next couple of  
507 meetings. Vice Chair Bowers moved that the *Board approve the staff recommendation to*  
508 *retain the regulation in Chapter 90 without change.* Secretary Palmer seconded the  
509 motion and Chairman Judd asked if there were any comments and there were none. The  
510 Board unanimously carried the motion.

511 The next order of business was the Hart Voting System Certification presented by  
512 Gary Fox, Voter Technology Coordinator. Mr. Fox stated that Hart Voting Systems  
513 approached SBE with the 6.2.1 Voting System that currently running on a Windows 2000  
514 platform and Hart has asked SBE to update that platform to a Windows 7 Operating  
515 System since Microsoft has announced that they are no longer providing support for  
516 Windows 2000 OS. Mr. Fox stated that a review by SLI Global Solution is included in  
517 the Board materials. SLI issued their test report certifying the system on May 20, 2013.  
518 SLI is one of the two labs that are certified by the EAC to test voting equipment. SBE  
519 contacted the independent examiner and it was determined that it did not modify the  
520 voting system, it only needed administrative review and SBE is asking for approval.  
521 Chairman Judd stated that the Board is being asked to move to Windows 7 Operating  
522 System. Mr. Fox replied: “Yes”. Chairman Judd asked if there were any questions.  
523 Secretary Palmer asked if Mr. Cobb tested the system and if there were irregularities  
524 found during testing. Mr. Fox replied: “No irregularities were found”. Chairman Judd

525 moved that the *Board certify the Hart 6.2.1 Voting System, changing the application from*  
526 *Windows 2000 to the Windows 7 Operating System platform for use in elections in the*  
527 *Commonwealth of Virginia, pursuant to the State Certification of Voting Systems:*  
528 *Requirements and Procedures.* Vice Chair seconded the motion and Chairman Judd  
529 asked if there were any comments and there were none. The Board unanimously carried  
530 the motion.

531 The next order of business was the Digital Scan Trial in Albemarle County  
532 presented by Gary Fox, Voter Technology Coordinator. Mr. Fox stated that Albemarle  
533 County has requested under the *Code of Virginia, § 24.2-630* that they use an  
534 experimental trial of certified voting equipment in three precincts during the November 5,  
535 2013 general election. Albemarle County plans to use the ES&S DS200 optical scan  
536 machine in the Georgetown precinct, the Dominion ICP machine in the Branchland  
537 precinct and the Unisyn OVI machine in the Ivy precinct. This trial will be used to  
538 evaluate the purchase of optical scan equipment for use in Albemarle County. Mr. Fox  
539 stated that Albemarle County is requesting approval from SBE to allow for the trial of the  
540 different equipment. Mr. Fox asked if there were any questions. Secretary Palmer stated  
541 that Albemarle County is seeking permission to use the pre-certified digital optical  
542 scanners during the next election so they may have the opportunity to test the different  
543 equipment before they make a purchase. The code requires them to ask the Board to  
544 utilize these systems in this manner. Chairman Judd asked if there were any comments.  
545 Secretary Palmer moved that the *Board approve the experimental use of certified optical*  
546 *scan voting equipment in Albemarle County for the November 5, 2013 general election*  
547 *pursuant to Code of Virginia § 24.2-630.* Vice Chair seconded the motion and Chairman  
548 Judd asked if there were any comments and there were none. The Board unanimously  
549 carried the motion.

550 Chairman Judd asked if there was any other business or public comment to come  
551 before the Board. Bill Brogen from Richmond, Virginia approached the podium. Mr.  
552 Brogen stated that Vice Chair Bowers raised the issue of the Attorney General serving as  
553 counsel to the Board and there is an appearance of conflict. Mr. Brogen stated that when  
554 Mr. Lief was asked for an opinion my observation was that he felt uncomfortable and he  
555 did not give you an opinion or provide a statement. Mr. Lief is an honorable person but, I

556 believe he has been put in a position and I believe there is an actual conflict not just an  
557 appearance. Mr. Brogen stated that he hoped the Board would consider this and appoint  
558 independent counsel. Mr. Brogen stated that he would like to know if there has been any  
559 further consideration of the questions Vice Chair Bowers has posed about the possible  
560 conflict. Chairman Judd asked if there were any comments. Secretary Palmer stated that  
561 SBE continues to do its' business day by day and SBE does it in a fair and impartial  
562 manner regardless of who the candidate is and we have a very good relationship with the  
563 Attorney's General Office when we need to request their input on information. The Board  
564 has every resource to request the Attorney General to conduct an investigation or to  
565 request an independent counsel if we believe there is an issue and SBE disagrees with the  
566 assertion, and the code independently gives the authority to the chief law enforcement  
567 officer of the state which is the Attorney General. SBE will conduct the daily business in  
568 a bi-partisan manner and will continue to work through the Attorney General who is a  
569 very honorable person and so is Josh Lief, our counsel. Vice Chair Bowers thanked Mr.  
570 Brogen for bringing your message here today and again I want it to be clear that earlier  
571 today, I know there was some tension, and I wanted it reflected in the Minutes that I do  
572 think we have to be proactive by saying something that is affecting this current Board we  
573 know there are cases in past history where the Attorney General has run in the  
574 gubernatorial election and as a Board Member it is my job, although not paid, I take this  
575 very seriously. I think even an implied conflict regardless of someone's outstanding  
576 nature or even the bi-partisanship and the cordiality the Board has had these last couple  
577 of years this is the first scenario where the person running for office not only has  
578 investigatory powers that have changed since July 1<sup>st</sup>, that they no longer have to ask  
579 SBE Board Members for the investigation but, in day to day operations I had to take a  
580 proactive statement and say as a Board Member this is a concern of mine and this is why.  
581 We don't know what is going to come given this election is not until November and  
582 going back to my original intent was to ask the question and it was not an attack on the  
583 individual who sits in this room and represents us as counsel but, more importantly a  
584 statement on how this representation going to be adopted as it relates to the pending  
585 election in November given the fact that the Attorney General is an gubernatorial  
586 candidate. Vice Chair Bowers stated: "I wanted that to be stated and I think the examples

587 that were given speak to other cases and certainly to past workings together as a Board  
588 and I want to be clear that this is a proactive question I have and it is something I stand  
589 behind and I believe we are on very solid ground.” Chairman Judd stated that Vice Chair  
590 Bowers raised two points and (i) is that the Board Members serve unpaid and (ii) that the  
591 General Assembly in their action basically empowered the Attorney General to begin  
592 investigation without SBE Board Members permission and until then it took a unanimous  
593 vote to ask the Attorney General to investigate. Chairman Judd stated that the SBE Board  
594 Members still have that authority and I hasten to say that if we should be presented with  
595 any concern concerning the gubernatorial election we will carefully consider whether we  
596 should ask for independent counsel because we find ourselves in this situation. Chairman  
597 Judd thanked Mr. Brogen for his comments. Mr. Brogen stated that he did not want it to  
598 sound like he was attacking the integrity of the Attorney General or Mr. Lief rather I am  
599 concerned about the perception. Mr. Lief stated: “That I am a career public servant and I  
600 am counsel to this Board and I think I have made clear many times to this Board that my  
601 duties are to read the laws as is and the constitution as is and to do my best. I am very  
602 respectful of the work of staff and I am very careful not to overrule that and I want to be  
603 thoughtful about it and on that particular question the federal law is pretty clear on  
604 whether it applies to the state law and I can’t answer of the top of my head and I like to  
605 think about these things when they involve the gubernatorial race or the last election. As  
606 attorneys, we have the duty to avoid a conflict of interest and that means my duty to you  
607 as a client is twofold, (i) give you the best advice on what the law is and (ii) report any  
608 violation of a conflict of interest. There is no requirement that the Attorney General  
609 resigns before running for office or recuse himself on a blanket basis. I am cognitive of  
610 the concern and we will look at it on a case by case basis and look at it when it may be  
611 appropriate to appoint outside counsel.” Mr. Brogen stated: “I am convinced that the  
612 Board has given this serious consideration and I feel good about that.”

613 Chairman Judd asked if there were any other comments and there were none.  
614 Chairman Judd moved *to adjourn*. Vice Chair Bowers seconded the motion and the  
615 Board approved the motion to adjourn. The meeting was adjourned at approximately  
616 12:05p.m.

617 The Board shall reconvene on September 23, 2013 at 10:00a.m. in the General  
618 Assembly Building, Room C.

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Secretary

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Chair

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Vice-Chair

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# Secretary's Report

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BOARD WORKING PAPERS  
Presented by Donald Palmer



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# Report from Legal Counsel

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BOARD WORKING PAPERS  
Presented by Josh Lief



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# New Business

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BOARD WORKING PAPERS



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STATE BOARD *of* ELECTIONS

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Ballot Position Drawing  
Powhatan County Clerk  
Special Election  
February 4, 2014

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BOARD WORKING PAPERS  
Presented by Matt Abell  
Elections Services Lead



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# Optical Scan Trial For Brunswick County

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BOARD WORKING PAPERS  
Presented by Susan Lee  
Elections Uniformity Manager



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STATE BOARD  
*of* ELECTIONS

## Memorandum

To: Members of the State Board of Elections

From: Gary W. Fox, Voting Technology Specialist

Date: September 11, 2013

Re: Experimental Use of Approved Voting Systems in Albemarle County

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### **Suggested motion for a Board member to make:**

I move that the Board approve the experimental use of approved optical scan voting equipment in Brunswick County for the November 5, 2013 general election pursuant to Code of Virginia. §2.42-630, Experimental Use of Approved Systems.

**Applicable Code Sections:** § 24.2-630.

### **Attachments:**

Your Board materials include the following:

- Request from Brunswick County to trial one optical scan voting system.

### **Background:**

Virginia election law provides for the experimental use of certified voting systems at an election, with the approval of the State Board. Brunswick County is seeking permission to trial certified voting systems in one precinct during the November 5, 2013 general election. They plan to use the Unisyn OVO optical scan machine in the Brunswick precinct. The vendor has agreed to print the ballots, program the machines and provide training and support. This trial will be used to evaluate the purchase of optical scan equipment for Brunswick County.

From: Brissette, Martha (SBE)  
Sent: Wednesday, August 28, 2013 8:04 PM  
To: Fox, Gary (SBE)  
Subject: RE: scanner demonstration

Thanks Garry.

Martha B. Brissette, Esq.

Policy Analyst

Virginia State Board of Elections

1100 Bank St.

Richmond, VA 23219

804.864.8925

Toll free 800. 552.9745

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From: Fox, Gary (SBE)  
Sent: Wednesday, August 28, 2013 4:57 PM  
To: Brissette, Martha (SBE); Mary Truman  
Cc: Abell, Matt (SBE); McClees, Myron (SBE)  
Subject: RE: scanner demonstration

I will handle this and contact her. I will get it on the board meeting agenda next month. I've talked to Don and we will tell them to proceed. Thanks!

Regards,

Gary W. Fox

Voting Technology Specialist

Commonwealth of Virginia

State Board of Elections

1100 Bank Street

Richmond, VA 23219

(Email) [gary.fox@sbe.virginia.gov](mailto:gary.fox@sbe.virginia.gov)

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-----Original Message-----

From: Brissette, Martha (SBE)

Sent: Wednesday, August 28, 2013 3:04 PM

To: Mary Truman

Cc: Abell, Matt (SBE); Fox, Gary (SBE); McClees, Myron (SBE)

Subject: RE: scanner demonstration

Mary I have referred your question to the SBE voting equipment team for response.

Martha B. Brissette, Esq.

Policy Analyst

Virginia State Board of Elections

1100 Bank St.

Richmond, VA 23219

Direct: 804.864.8925

Toll free: 800. 552.9745 enter extension 8925

Mobile: 804.972.2545

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-----Original Message-----

From: Mary Truman [mailto:secretaryeb@brunswickco.com]

Sent: Wednesday, August 28, 2013 2:09 PM

To: Brissette, Martha (SBE)

Cc: Abell, Matt (SBE)

Subject: scanner demonstration

Hi Martha,

I need to know if we are allowed to use a scanner voting machine instead of our Winvote machine in just one of our precincts in the upcoming election.

Matt at ESO is working with us and would like to put his machine in our Dromgoole precinct to show us how well the machine works. That precinct has about 250 voters and our chief and assistant chief there will be able to provide us with excellent feedback.

We will have to order ballots for the machine as well as have a special training session for our poll workers.

We will follow all protocols on testing, etc.

If you don't see any issues with us doing this please let me know asap so we can begin to order ballots and program the machine.

Thanks for your assistance in regards to this matter.

Mary Truman

Secretary Brunswick County Electoral Board



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# Complaint Mike McHugh

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BOARD WORKING PAPERS  
Presented by Chris Piper  
Elections Services Manager



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STATE BOARD *of* ELECTIONS

## Memorandum

To: Members of the State Board of Elections  
From: Chris Piper, Election Services Division Manager  
Date: September 13, 2013  
Subject: Possible Failure to File Statement of Organization and Possible Violation of Title 24.2, Chapter 9.5 of the *Code of Virginia* (aka “Stand By Your Ad”)

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**Defendant:** Michael McHugh

**Background:** On June 20, 2013, an anonymous caller asked Chris Piper, Election Services Division Manager, to review a website allegedly paid for by Michael McHugh. The website expressly advocated the election of two candidates on the primary election ballot for the House of Delegates. The website contained the disclosure (“Paid for by Mike McHugh”).

Shortly after receipt of the anonymous complaint, Mr. McHugh faxed a letter to the State Board of Elections requesting an extension of any and all filing requirements which may apply to Mr. McHugh until such time as he could review the laws and be sure of his requirements.

In several telephone conversations with Mr. McHugh, he has stated that he solicited and accepted money in excess of \$200 in his efforts to elect the candidates and that he operated independently of the candidates.

### **Relevant Statutory and Policy Provisions:**

§ 24.2-945.1 defines ‘political action committee’ as

“any organization, person, or group of persons, established or maintained to receive and expend contributions for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate.”

§ 24.2-945.1 also defines ‘coordination’ or ‘coordinated’ as

“an expenditure that is made (i) at the express request or suggestion of a candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee or (ii) with material involvement of the candidate, a candidate's campaign committee, or an agent of the candidate or his campaign

committee in devising the strategy, content, means of dissemination, or timing of the expenditure.”

§ 24.2-945.2 states,

“A. Any person, candidate campaign committee, or political committee that makes independent expenditures, in the aggregate during an election cycle, of \$1,000 or more for a statewide election or \$200 or more for any other election shall maintain records and report pursuant to this chapter all such independent expenditures made for the purpose of expressly advocating the election or defeat of a clearly identified candidate.

“B. Independent expenditure reports shall be due (i) within 24 hours of the time when the funds were expended or (ii) within 24 hours of the time when materials, as described in subsection A of this section, are published or broadcast to the public, whichever (i) or (ii) first occurs.”

§ 24.2-949.2 states,

“Except as provided in subsection B or C, each political action committee that anticipates receiving contributions or making expenditures in excess of \$200 in a calendar year shall file with the State Board a statement of organization within 10 days after its organization, or if later, within 10 days after the date on which it has information that causes the committee to anticipate it will receive contributions or make expenditures in excess of \$200 or on which it otherwise becomes subject to the provisions of this chapter.”

§ 24.2-955 states,

“The disclosure requirements of this chapter [Chapter 9.5] apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 (§ [24.2-945](#) et seq.) except that the disclosure requirements of this chapter do not apply to (i) an individual who makes independent expenditures aggregating less than \$1,000 in an election cycle for or against a candidate for statewide office or less than \$200 in an election cycle for or against a candidate for any other office or (ii) an individual who incurs expenses only with respect to a referendum.”

§ 24.2-955.1 defines “print media” as

“billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, and outdoor advertising facilities.”

§ 24.2-956.1 states,

It shall be unlawful for any person or political committee to sponsor a print media advertisement that constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 (§ [24.2-945](#) et seq.) unless the following requirements are met:

1. It bears the legend or includes the statement: "Paid for by .....

[Name of person or political committee]."

2. In an advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [Name of candidate], candidate for [Name of office]" or "Not authorized by a candidate."

3. In an advertisement that identifies a candidate the sponsor is opposing, the sponsor must disclose in the advertisement the name of the candidate who is intended to benefit from the advertisement, if the sponsor coordinates with, or has the authorization of, the benefited candidate.

**Analysis:** Section 24.2-956.1 requires that any “person or political committee” identify whether the candidate(s) supported or opposed in the advertisement whether a candidate authorized the advertisement or, if the advertisement identifies a candidate the sponsor is opposing, the candidate intended to benefit from the advertisement should the candidate have coordinated with the person or political committee. Mr. McHugh’s website failed to include either statement. However, it is not clear that Mr. McHugh spent \$200 or more on the advertisement which would require the disclosure if he was making an independent expenditure as an individual.

If staff were to accept the statements from Mr. McHugh, then he is in violation of § 24.2-949.2 and is acting as a political action committee by soliciting and accepting contributions for the primary purpose of expressly advocating the election of a clearly identified candidate. Therefore, Mr. McHugh has failed to file a statement of organization to register as a political action committee as required by § 24.2-949.2.

If Mr. McHugh or his political action committee did not coordinate this website with the candidates intended to benefit from the advertisement, then he was required to file an independent expenditure report as required by § 24.2-945.2. However, it is not clear that Mr. McHugh spent \$200 or more on the advertisement which would require the disclosure if he was making an independent expenditure as an individual.

**Conclusion:** The information provided is insufficient to find Mr. McHugh in violation of the Act or Stand By Your Ad. Further investigation is necessary, but the State Board is not authorized by the *Code of Virginia* to conduct investigations.

**Staff Recommendation:** Mr. McHugh resides in the County of Warren. Staff recommends that the Board refer the matter to the Attorney for the Commonwealth in the County of Warren for further investigation.

**Authority:** Section 24.2-946.3 states,

“It shall be the duty of the State Board to report any violation of the provisions of this chapter to the appropriate attorney for the Commonwealth. The State Board shall report to the attorney for the Commonwealth of the City of Richmond in the case of reporting requirements for campaign committees for statewide office and to the attorney for the Commonwealth of the county or city of the residence of a candidate for the General Assembly. For political committees, the State Board shall report the violation to the attorney for the Commonwealth of the City of Richmond. If all the officers of a political committee are residents of one county or city as shown on the statement of organization required by this chapter, the State Board shall report violations for that political committee to the attorney for the Commonwealth of that county or city.”

## Piper, Chris (SBE)

---

**From:** Piper, Chris (SBE)  
**Sent:** Thursday, June 20, 2013 8:22 AM  
**To:** Piper, Chris (SBE)  
**Subject:** RE: SBYA Complaint

Anonymous caller into SBE asked that I visit this site and bring the matter to the Board's attention.

---

**From:** Piper, Chris (SBE)  
**Sent:** Friday, June 07, 2013 2:12 PM  
**To:** Piper, Chris (SBE)  
**Subject:** SBYA Complaint

---

<https://sites.google.com/site/virginiansprotectingchildren/>

**Christopher Piper**  
**Manager, Election Services**  
**Virginia State Board of Elections**  
[chris.piper@sbe.virginia.gov](mailto:chris.piper@sbe.virginia.gov)  
**Office: (804) 864-8907**  
**Cell: (804) 350-8123**

DISCLAIMER: This message is not legal advice, nor a binding statement of official policy. It is intended only for the use of the named addressee(s). Any other use is prohibited. If you received this message in error, please call me at: 800-552-9745, and delete the message and any attachments without forwarding, copying or otherwise disclosing them. This message, including any attachments, may summarize laws, regulations and policies. Furthermore, this message and any responses sent to this email address may be subject to public disclosure under FOIA.

From the Desk of Mike McHugh, PO Box 1599, Front Royal, VA 22640

Dear State Board of Elections,

On Tuesday morning June 11<sup>th</sup>, the morning of the primary, I received from Carol Tobin (spelling?), the registrar in Warren County VA, a large packet of information entitled Candidate Campaign Committees.

I had requested it the day before but her system was down and she was very gracious to put all the information together and went the extra mile to give me a copy of what she considered to be the relevant law governing Campaign Finance Disclosures ( Act of 2006). Carol is an outstanding public servant.

It is my intent to be in compliance with all statutory law regarding my responsibility to report my personal expenditures related to the Gilbert v Prince and Sherwood v Berg primary races on June 11<sup>th</sup> if such a duty exists, does not have an exemption for individuals and provided it is not a statutory duty that infringes upon or has a chilling effect on the God-given right of free speech that is specifically protected by man-made constitutional provision in the Virginia and Federal Constitutions.

Please know that I hold the SBE in highest regard and understand your duty to implement the laws and decrees of Richmond legislators to the best of your ability.

To that end I request an extension of time to report my expenditures because:

1. I have been extremely busy with personal family and work related issues. In fact, I am alone with one son until next week taking care of the home. I then begin work related travel out of state next week and right now Front Royal is in the eye of a massive storm watch for which I need to prepare our animals and property to withstand.
2. I need time to read the massive 24.2 election laws.
3. I need time to get legal counsel as to whether I am properly interpreting these laws.
4. I need time to discern if there is an exemption for individuals spending less than 15 thousand in a year as there appears to be for committees.
5. I need time to discern whether the word person in the law applies to any individual who is NOT part of a campaign or committee.
6. I need time to consider whether the law provides proper and sufficient notice to any such individual that they have a duty to report their speech to the government because one of the unintended consequences of this law may be the entrapment of individuals simply trying to voice their opinions in good faith at election time.

I also certify that:

1. I personally spent money advocating the defeat of Gilbert and Sherwood and the election of Mr. Prince and Mr. Berg on June 11<sup>th</sup>.

2. I don't know the exact amount because I was not aware that I need receipts for this. I have some but need to request others.
3. The money spent was spent on advertising my personal views regarding these candidates.
4. I am not a person with a committee or campaign or candidate. As you know all persons working with committees or candidates are individual persons but not all individual persons are persons working with committees or candidate.

I hope you see my need for an extensive extension of time. It is earnest and sincere desire to avoid a court battle over what appears to an assault on speech and liberty.

---

I am confident that the intent of the legislature was not to protect incumbent legislators from challenges but it does appear to be the consequence of these laws on individuals persons.

Signed this day June 13, 2013 Front Royal Virginia



Mike McHugh

Virginians Protecting Children and Families

Search this site

Do You Approve?

Do You Approve?  
 \*Governor Bill O'Brien Calls Out Gilbert's Behavior  
 \*PDF of "Do You Approve?"  
 \*James Gibson and Sherwood's Big Judge Speeches with Boy Friend

McHugh Responds to Gilbert's Threat to Take His Home  
 \*McHugh Talks Out Gilbert with Lindour, Fisher, Alpa  
 \*McHugh's Personal Calling Gilbert's Speeches "Pious Responses to Gilbert's Threat"  
 \*Richard Hahn Responds to O'Quinn's "Moral" on the "Moral" in Debate  
 \*Kara, Prince on the "Moral" in Debate  
 \*Practical Challenges Gilbert vs. O'Quinn  
 \*Sherwood

Albo Hodges McQuinn Siskias Ben Cole Hope Miller Spruill  
 Brink Howell A.T. Minchew Shorvell Bulova Bujarwa Morris Tara Carr James Merrysey Dorian Constock James O'Bannon Toscano Cosgrove Kea O'Quinn Tyler Cox M.K. Kilgore Orick Villanueva Dance Knight Peace Ware, O. Farrell Kory Plum Ware, R.L.  
 Filler-Corn Knapicka Purkey Watts Gilbert Leckertson Robinson Webert  
 Gresson Lewis Rush Vandyg Harbeck Lopez Kvasi Yost Helzel Loupassi Scott E. T. Bill Howell, Mr. Speaker, Herring Massee Scott, J.M. Hester McClellan Sherwood  
 NAVYS -- 28

9

6/26/2013  
 June 11th Republican Primary

Do You Approve?

Do You Approve of So-Called Pro-Family Delegates Voting for an Activist Homosexual Judge to Be a Role Model for Our Children?

HOUSE OF DELEGATES RC# 32 GENERAL ASSEMBLY OF VIRGINIA 2013 REGULAR SESSION 1/15/2013 12:52:58 PM  
 JUDICIAL ELECTION OF TRACY THORNE-BEGLAND 15TH JUDICIAL DISTRICT

Albo Hodges McQuinn Siskias Ben Cole Hope Miller Spruill  
 Brink Howell A.T. Minchew Shorvell Bulova Bujarwa Morris Tara Carr James Merrysey Dorian Constock James O'Bannon Toscano Cosgrove Kea O'Quinn Tyler Cox M.K. Kilgore Orick Villanueva Dance Knight Peace Ware, O. Farrell Kory Plum Ware, R.L.  
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 NAVYS -- 28  
 Anderson Crockett Stark Langmiller Penlander, Bill, Richard P. Dudenhofer, Marshall, DYC Ransauan Ball, Robert B. Edmunds, Marshall, R.G. Ransome Byron  
 Parris May Stolle Cline Grant Merricks Watson Cole Hugo Morehead Will Cox, J.A. Landes Poyge Wright  
 ABSTENTIONS - 1 Ingram NOT VOTING - 5 Herald Johnson Ward Inaunou Pitney

Are we losing our children to Todd Gilbert and Beverly Sherwood's morally corrupt world view? Do you want an activist judge's agenda taught to our kids in our schools? I don't care what the so-called Family Foundation of Virginia says. They refused to report Bob Marshall's vote on Life at Convention in 2007 because party boss Howell honored Marshall from GOP Leadership. Gilbert sold out to party boss Howell for 30 pieces of GOP silver. Sadly, the Family Foundation represents GOP party boss Howell to YOU not YOU to the GOP establishment. What's a judge does in private is NONE OF OUR BUSINESS. But it is the duty of every pastor, parent and teacher who loves children to oppose him as an activist. Vote for Prince and Berg on June 11th. Send the message that establishing the church and families of the valley in the past will NOT BE TOLERATED.

Paid for by Mike McHugh, PO Box 1599, Front Royal, VA 22630. For information email Aaron at blood\_bought\_sinner888@yahoo.com

# Todd Gilbert and Bev Sherwood's Vision for Valley Children?



Only You Can Protect Children and Families by Voting for Mark Prince and Mark Berg on Tuesday, June 11 in the REPUBLICAN PRIMARY

Mike McHugh  
PO Box 1599  
Front Royal, VA 22630

**Patrons of the Valley!** PLEASE stand up and remember preacher/soldier Reverend Peter Muhlenberg. His statue stands in front of the courthouse in Woodstock. On June 11th vote for Marine Major Mark Prince, and Dr. Mark Berg. Send the message that you do NOT buy **Todd Gilbert and Bev Sherwood's**. Let us do evil that good may come "excuse for voting for a radical activist judges agenda for our kids. Jesus doesn't" — Isaiah 5:20 and Romans 3:11

**VOTE** for 100% Pro-Life, RTM, Pro-Gun, Cut Spending, Protect Families, **Mark Prince and Mark Berg** on June 11th.

Send a message to Todd Gilbert that refusing to sponsor Bob Marshall's 2007 Life at Conception Act for 6 years is as UNACCEPTABLE as spouting with Barry Bess Howell to Kill Bob Marshall's 2013 Bill HB 2340-VA Firearms Protection Act.

Do you want a delegate that opens PARTY 8055 Speaker Bill Howell while helping local politicians grind the face of the poor with massive tax increases thru gross violations of the VA Constitution? — Isaiah 1:17 and Amos 5:15

[www.VirginiansProtectingChildren.info](http://www.VirginiansProtectingChildren.info)

SitePages (3) | [Statement: Bill Gilbert Calls Out Governor's Behavior!](#) | [PDF of "Can You Afford?"](#) | [Video: Gilbert and Sherwood's Own Author Speaks in with Bev Ernie!](#)

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# Mike McHugh Express Advocacy Activities

## June 2013 Primary Races in HD 15 & HD 29

1 – This establishes a reasonable belief that the expenditures by Mr. McHugh in his express advocacy efforts exceeded the \$200 personal limit (VA Code 24.2-945.2) requiring filings and disclosures with the Virginia Board of Elections:

*14k pieces x \$.46/piece = \$6,440 in first class postage expenditures for the "Kissing Men" postcard.*

The postcard mailing (original enclosed) with the live first class stamp seems to have been done with the help of Mr. Mike McCool of National Media Services in Front Royal, Virginia (540-635-4121). Mr. McCool is running as the Republican nominee for Commissioner of Revenue in Warren County. Mr. McCool seems to have acted only as a vendor to McHugh's de facto Political Action Committee (enclosure #1 text of email from McHugh).

2 – This establishes that McHugh placed radio ads. The audio of the ad is available in an email sent out by McHugh and is available for listening at "The River 95.3 WZRV" with offices at the location shown on enclosure #3. The "Public File" at the station shows that McHugh paid \$468 for radio ads expressly advocating the defeat of Gilbert/Sherwood and the election of Prince/Berg (enclosure #1 text of email from McHugh).

3 – This further establishes that Mr. McHugh in his express advocacy efforts exceeded the \$200 personal limit (VA Code 24.2-945.2) requiring filings and disclosures with the Virginia Board of Elections (enclosure #1 text of email from McHugh).

4 – This statement in Mr. McHugh's widely broadcast email indicates that he was running a de facto Political Action Committee and publicly soliciting donations to his effort while trying claim they are his personal funds. Mr. McHugh should be required to file a statement of organization for a Political Action Committee with the Virginia Board of Elections. Those persons who donated to his effort should be disclosed in filings Mr. McHugh is required to make as a Political Action Committee (enclosure #1 text of email from McHugh).

The additional enclosures represent evidence of other express advocacy actions taken by McHugh including several versions of flyers (enclosures #2 & #4) and a web site (enclosure #1 text of 2<sup>nd</sup> email from McHugh on reverse side) presented to the general public in HD 15, HD 29 and across Virginia.

----- Original message -----

Subject: From McHugh: I need your help  
From: Mike McHugh <mchugh1952@gmail.com>  
To: mchugh1952@gmail.com  
Cc:

I need your help holding dangerous Republicans accountable in next Tuesday's election.

- ① The attached mail piece goes to 14 thousand households
- ② The attached radio spot is a radio spot on Limbaugh, Hannity, Levine, Bennett, County and 95.3 oldies on the River.
- ③ I have put about 15 k on my credit card to pay for this fight to restore moral integrity and sanity

It costs money and lots of it to hold the so-called most conservative guy in the Virginia House of Delegates accountable for stabbing us in the back.

He has already spent about 100k defending his pathetic political seat. He has refused to debate and the reporters are picking up on that.

If our founding fathers literally gave their lives, fortunes, and sacred honor to give us the earthly liberty that we have it really is not much of a sacrifice for you and me to try and preserve it.

But political warfare is like real warfare. You have to pay for the ammunition before the fight. This current fight is over this Tuesday June 11<sup>th</sup>.

So please, would you open your heart and wallet to make out a check to either Mike McHugh or Virginians Protecting Children and Families [www.VirginiansProtectingChildren.info](http://www.VirginiansProtectingChildren.info)

It can be mailed to Mike McHugh PO Box 1599, Front Royal, VA 22630.

- ④ If you have already been one of those that have given a gift to help me pay about 3K of the 15 thousand I thank you. Anything else you can throw in would be greatly appreciated by my family.

If you have not yet been able or have promised but not been able to fulfill that promise, please do so.

This is my personal project and it all comes out of my own personal funds.

Please forward this to your family and friends and ask them to consider helping.

I consider this that important.

You and I need to help wake our family, churches and friends up to the real nature of politics and politicians.

My own family members have expressed shock at how compromised and corrupt the Christians in the legislature are and how hard it is to unravel and decipher their hidden games and schemes.

Hosea 4:6-7 is the problem and Psalm 127:5 is the solution so that we give the Lord a reason to assist us. Duty belongs to us the results to God.

Mike McHugh

P.S. If we have talked on the phone I will call soon.

P.S.S. the program I am running is of the same type we ran in Vermont in 2000 when the Vermont House went Republican for the first time in decades because of the Civil Unions Vote

**2 attachments** — [Download all attachments](#)

**Gilbert\_Kiss\_Piece.doc.docx**

 665K [View](#) [Download](#)

**Mike-McHugh-06-06-2013.wav**

 5169K [Download](#)

Begin forwarded message:

**From:** "Mike McHugh" <mchugh1952@gmail.com>  
**Date:** June 3, 2013, 12:39:11 PM EDT  
**To:** <mchugh1952@gmail.com>  
**Subject:** from Mike McHugh: Urgent

Dear McHugh family and friends

please go to the link and read

[www.virginiansprotectingchildren.info](http://www.virginiansprotectingchildren.info)

the same article is also attached

I will call you about it this afternoon or evening

Love mike

---

 **Gilbert Kiss Piece.pdf**  
4621K

**Pastors of the Valley!** PLEASE stand up and remember preacher/soldier Reverend Peter Muhlenberg. His statue stands in front of the courthouse in Woodstock. **ON JUNE 11<sup>th</sup>** Vote for Marine Major Mark Prince. Send the message that you do NOT buy Todd Gilbert's "Let us do evil that good may come" excuse for voting for a radical activist judge's agenda for our kids. Jesus doesn't -- Isaiah 5:20 and Romans 3:11

**Todd Gilbert  
Bev Sherwood  
and  
Michael Weibert's  
Vision for  
The Valley?**



**Only You Can Protect  
Children and Families  
By Voting PRO-FAMILY  
June 11 in the  
REPUBLICAN PRIMARY**

**Prince v. Gilbert  
Berg v. Sherwood  
TBA v. Weibert**

Held for 11:00am Protection Children and the Family of East Panel VA 23220

VOTE for 100% Pro-Life, RTW, Pro-Gun, Cut Spending, Protect Families, Marine Major Mark Prince on June 11<sup>th</sup> and send a message to Todd Gilbert that refusing to sponsor Bob Marshall's 2007 Life at Conception Act for 6 years is UNACCEPTABLE as voting to Kill Bob Marshall's 2013 Stop Obama /Holder Private Data Base Bill HB 2340. Do you want a delegate that obeys PARTY BOSS Speaker Bill Howell while helping local politicians grind the face of the poor with massive tax increases thru gross violations of the VA Constitution? Isaiah 1:17 and Amos 5:15

Do NOT be Ashamed of the Name of Jesus Christ when you speak in the gates (Psalm 127:5; Hosea 4:6-7, Colossians 3:17 or He will deny of us and continue giving us over to what we deserve -- Luke 12:9

McHugh Radio Ads Run on...

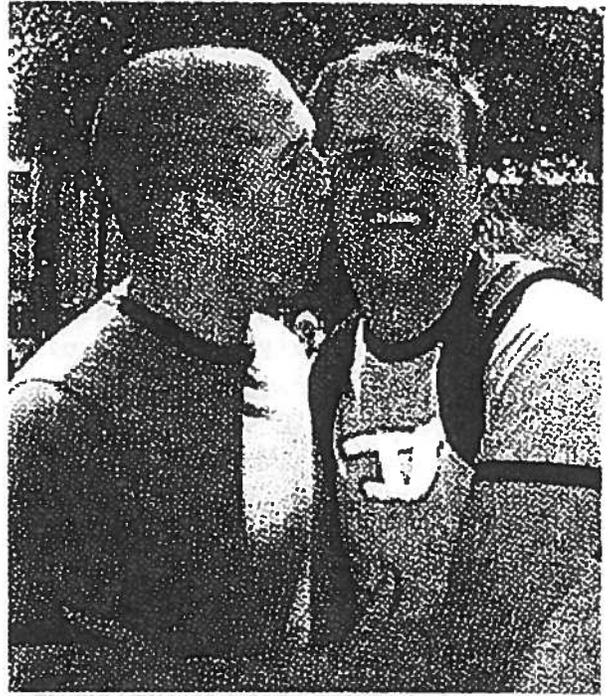
Name: The River 95.3 WZRV  
Coverage Area: Northern Shenandoah Valley of Virginia  
Address: 1106 Elm St.  
Front Royal, VA 22630-3736  
Office Phone: 1-540-635-4121  
Second Phone: 1-540-665-9595  
Office Fax: 1-540-635-9387  
<http://www.theriver953online.com/>

McHugh Self-Mailer Printed at...

National Media Services, Inc.  
613 N. Commerce Avenue  
Front Royal, VA 22630  
(540) 635-4181  
Fax: (540) 636-4240  
<http://www.nationalmediaservices.com/>

**Pastors of the Valley!** PLEASE stand up and remember preacher/soldier Reverend Peter Muhlenberg. His statue stands in front of the courthouse in Woodstock. On June 11th Vote for Marine Major Mark Prince, and Dr. Mark Berg. Send the message that you do NOT buy Todd Gilbert and Bev Sherwood's "Let us do evil that good may come" excuse for voting for a radical activist judge's agenda for our kids. Jesus doesn't — Isaiah 5:20 and Romans 3:11

# Todd Gilbert and Bev Sherwood's Vision for Valley Children?



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Families by Voting for Mark Prince and  
Mark Berg on Tuesday, June 11 in the  
REPUBLICAN PRIMARY**

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Do you want a delegate that obeys PARTY BOSS Speaker Bill Howell while helping local politicians grind the face of the poor with massive tax increases thru gross violations of the VA Constitution?

Isaiah 1:17 and Amos 5:15

**Paid for by Mike McHugh, DBA Virginians Protecting Children & Families  
For information email Aaron at [blood\\_bought\\_sinner888@yahoo.com](mailto:blood_bought_sinner888@yahoo.com)**

**#4**

## Why are so-called Pro-Family Delegates Voting for an Activist Homosexual Judge to be a Role Model for our Children?

HOUSE OF DELEGATES RCS# 32GENERAL ASSEMBLY OF VIRGINIA2013 REGULAR  
SESSION 1/15/2013 12:52:58 PM JUDICIAL ELECTION

TRACY THORNE-BEGLAND 13TH JUDICIAL DISTRICT

YEAS-- 66 NAYS-- 28 RULE 69-- 1 NOT VOTING-- 5 \*PASSED\*

YEAS - 66

Albo Hodges McQuinn Sickles BaCote Hope Miller Spruill  
Brink Howell, A.T. Minchew Surovell Bulova Iaquinto Morris Tata  
Carr James Morrissey Dorian Comstock Jones O'Bannon Toscana  
Cosgrove Kea O'Quinn Tyler Cox, M.K. Kilgore Orrick Villanueva  
Dance Knight Peace Ware, O. Farrell Kory Plum Ware, R.L.  
Filler-Corn Krupicka Purkey Watts Gilbert LeMunyon Robinson Webert  
Greason Lewis Rush Yancey Habeeb Lopez Rust Yost Helsel Loupassi  
Scott, E.T. Bill Howell, Mr. Speaker, Herring Massie Scott, J.M.  
Hester McClellan Sherwood

NAYS - 28

Anderson Crockett-Stark Lingamfelter Poindexter Bell, Richard P.  
Dudenhefer Marshall, D.W. Ramadan Bell, Robert B. Edmunds Marshall,  
R.G. Ransone Byron Fariss May Stolle Cline Garrett Merricks Watson  
Cole Hugo Morefield Wilt Cox, J.A. Landes Pogge Wright

ABSTENTIONS - 1 Ingram NOT VOTING - 5 Head Johnson Ward Joannou Putney

Are we losing our children to Todd Gilbert and Beverly Sherwood's morally corrupt worldview? Do you want an activist judge's agenda taught to our kids in our schools? I don't care what the so-called Family Foundation of Virginia says. They refused to report Bob Marshall's vote on Life at Conception in 2007 because party boss Howell booted Marshall from GOP Leadership. Gilbert sold out to party boss Howell for 30 pieces of GOP silver. Sadly, the Family Foundation represents GOP party boss Howell to YOU not YOU to the GOP establishment. What a judge does in private is NONE OF OUR BUSINESS. But it is the duty of every pastor, parent and teacher who loves children to oppose him as an activist. Vote for Prince and Berg on June 11<sup>th</sup>. Send the message that stabbing the church and families of the valley in the back will NOT BE TOLERATED.

# Todd Gilbert and Bev Sherwood's Vision for Valley Children?



Mike Mchugh  
PO Box 1599  
Front Royal, VA 22630



MAURERTOWN, VA 22644

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Only You Can Protect Children and Families  
by Voting for Mark Prince and Mark Berg  
on Tuesday, June 11 in the  
**REPUBLICAN PRIMARY**

[www.VirginiansProtectingChildren.info](http://www.VirginiansProtectingChildren.info)

# Do You Approve of So-Called Pro-Family Delegates Voting for an Activist Homosexual Judge to Be a Role Model for Our Children?

HOUSE OF DELEGATES RCS# 32GENERAL ASSEMBLY OF VIRGINIA2013 REGULAR SESSION 1/15/2013 12:52:58 PM  
JUDICIAL ELECTION OF TRACY THORNE-BEGLAND 13TH JUDICIAL DISTRICT

YEAS -- 66

Albo Hodges McQuinn Sickles BaCote Hope Miller Spruill

Brink Howell, A. T. Minchew Surovell Bulova Jaquinto Morris Tata Carr James Morrissey Dorian Comstock Jones O'Bannon Toscana Cosgrove Kea O'Quinn Tyler Cox, M.K. Kilgore Orrick Villanuova Dance Knight Peace Ware, O. Farrell Kory Plum Ware, R.L.

Filler-Corn Krupicka Purkey Wats **Gilbert** LeMunyon Robinson Webert

Greason Lewis Rush Yancey Habeeb Lopez Rust Yost Helsel Loupassi Scott, E. T. Bill Howell, Mr. Speaker, Herring Massie Scott, J.M. Hester McClellan **Sherwood NAYS -- 28**

Anderson Crockett-Stark Lingamfelter Poindexter Bell, Richard P. Dudenhefer Marshall, D.W. Ramadan Bell, Robert B. Edmunds Marshall, R. G. Ransone Byron Fariss May Stolle Cline Garrett Merricks Watson Cole Hugo Morefield Wilt Cox, J.A. Landes Pogge Wright

**ABSTENTIONS - 1** Ingram **NOT VOTING - 5** Head Johnson Ward Joannou Putney

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Paid for by Mike McHugh, PO Box 1599, Front Royal, VA 22630. For information email Aaron at [blood\\_bought\\_sinner888@yahoo.com](mailto:blood_bought_sinner888@yahoo.com)



## Are You Tired Of Establishment Republicans Like Pete Snyder Masquerading As Defenders Of The 2nd Amendment?

### I CERTAINLY AM!

And I am asking you to speak up and help VGOC do something about it. VGOC won't tolerate any politician of any party who dares to stand on the dead bodies of innocent little kids in our schools or colleges to further their pathetic political careers. So please, tell Lt. Governor Candidate PETE SNYDER to stop carrying Gun Ban Governor Bob McDonnell's gun grab water pail onto the campus of William and Mary.

I am Mike McHugh, President of VGOC - Virginia's ONLY state-level, No-More-Excuses Gun Lobby.

Stephens City, VA 22655

As an alumnus of VA Tech who spent a week on campus helping with counseling and ministry through churches to the survivors, I grieve the slaughter of 32 of my future alumni. As a Hokie I have nothing but disdain for PRESIDENT OBAMA and GUN BAN GOV. BOB MCDONNELL'S POLICY of supporting the current federal OPEN SEASON ON INNOCENT LITTLE KIDS ACT that disarms teachers and school staff in our schools - unlike Israeli schools that don't have school massacres but policies that actually protect their kids.

↓ Continued on other side. ↓

GUN BAN BOB and party boss speaker BILL HOWELL teamed up to ram SB 1378, a back door gun registration scheme, down our throats in a lopsided 84-11 vote in final minutes of the 2013 session via a last minute Governor's bill by Senators Tom Garrett-R and George Barker.

SB 1378 was so dangerous to Delegate Todd Gilbert's political health in the upcoming June republican primary challenge from pro-gun Combat Marine Major Mark Prince, that he gave a free pass from speaker Howell to vote against it while Sherwood, Cosgrove, May and AG candidate Rob Bell voted for it. That is impressive since Gilbert has a history of voting on both sides of gun control to provide political cover for his party bosses.

**SB 1378 YEAS - 84, NAYS - 11**

**Gun Ban Bob** appointed his trusted buddy PETE SNYDER to the Board of Visitors of William and Mary to promote and protect his dangerous and badly misguided criminal safe zone policies.

**JUDGE THE SIMPLE FACTS** for yourself. Via the Freedom of Information Act, I have the board minutes of William and Mary College dated December 7-9, 2011.

PETE SNYDER voted multiple times to prohibit law-abiding teachers, students and visitors from carrying any weapon for self-defense. Pete even disarmed our brave combat veterans who attend school on the G.I. bill at William and Mary.

I have pages of board minutes of discussion and there is NOT one record of Pete IN ANY OPEN SESSION even so much as raising a concern for the safety of teachers, students and visitors.

**BUT WHAT REALLY OFFENDS ME IS ALL OF PETE SNYDER'S TALK ABOUT BEING PRO-GUN AND CARING ABOUT KIDS** when he refuses to lead, follow, or get out of the way.

You see, prior to the William and Mary April 2013 Board of Visitors meeting Pete Snyder told the Green County GOP that he would have the William and Mary board re-visit the issue. But he didn't. Fool us once Pete, shame on you. Fool us twice, shame on us.

Can Pete Snyder be trusted? I don't think so. Wise old King Solomon said you become like those you hang around, Proverbs 13:20. And who are Pete's buddies? Gun Ban Bob and Gun Grab Mitt are Pete's buddies.

Clearly, Pete Snyder has been hanging around the wrong people for a guy who wants to be viewed as a leader on gun rights. Gun Ban Bob is Pete's college buddy and Gun Grab Mitt Romney had Pete Snyder run his disastrous presidential campaign in Virginia that flip-flopped on every issue any American cares about.

When you see Pete Snyder at the May 18th Republican Convention, tell him to apologize for banning guns and doing NOTHING to protect innocent kids. And if you see Scott Linghamfelter, tell him to come clean and answer my survey. Jackson, Stewart, Stimpson, Martin and Snyder did. Tell Scott it does not become a VMI grad to duck and run.

At least Jean Marie Davis has been up front about teaming up with New York City mayor Michael Bloomberg to bring New York style guns ban to VA. And she had the integrity NOT to answer my survey with useless political promises. Help Pete Snyder see the light by feeling the heat of your love for protecting little kids.

For Liberty,

*Mike*

**Tell Pete Snyder your 2nd Amendment rights don't stop at the edge of a college campus.**



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# Other Business & Public Comment

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BOARD WORKING PAPERS



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# Good of the Order

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BOARD WORKING PAPERS



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# Adjournment

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BOARD WORKING PAPERS



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# BOARD MEETING

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Friday, August 23, 2013  
General Assembly Building  
Room D  
10:00 AM

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BOARD WORKING PAPERS

Master Copy  
Prepared by Rose Mansfield  
Executive Assistant to the Board