

State Board of Elections Policy 2008-007

A meeting of the Virginia State Board of Elections was held on October 14, 2008 whereby a policy was proposed and approved by the Board:

Definition of “exhibit other campaign material”

WHEREAS, the Code of Virginia, § 24.2-604 states, in part:

During the times the polls are open and ballots are being counted, it shall be unlawful for any person (i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote... (Emphasis added.)

WHEREAS, the Code of Virginia does not define “exhibit;” and

WHEREAS, “In the absence of a statutory definition, the plain and ordinary meaning of the term is controlling.” *See Sansom v. Bd. of Supvrs.*, 257 Va. 589, (1999); *Commonwealth v. Orange-Madison Coop.*, 220 Va. 655, 658 (1980); 1999 Op. Va. Att’y Gen. 10, 11; and

WHEREAS, Merriam-Webster dictionary defines “exhibit” as: “**a:** to present to view; as **a:** to show or display outwardly especially by visible signs or actions; **b:** to have as a readily discernible quality or feature; **c:** to show publicly especially for purposes of competition or demonstration;” and

WHEREAS, the Code of Virginia does not define “other campaign material;” and

WHEREAS, Merriam-Webster dictionary defines “material” as: “the elements, constituents, or substances of which something is composed or can be made;” and

WHEREAS, campaign materials are materials distributed by or for campaigns and the Code of Virginia, § 24.2-945.1, was amended in 2007 to adopt the express advocacy standard for campaign contributions and advertisements; and

WHEREAS, courts applying the express advocacy standard have held subject to regulation communications that cannot reasonably be interpreted other than as expressly advocating the election or defeat of clearly identified candidate. *See F.E.C. v. Wis. Right to Life, Inc.*, 127 S.Ct. 2652 (2007); *Real Truth About Obama, Inc v. FEC*, 2008 U.S. Dist. LEXIS 73551 (E.D. Va. Sept. 24, 2008);

WHEREAS, the Code of Virginia recognizes sample ballots may be a form of prohibited campaign material if exhibited within the prohibited area; § 24.2-622 states, in part:

Voters may take sample ballots into the voting booth or enclosure, but shall not give, tender or exhibit such ballot to any person, other than an

assistant designated under § 24.2-629, while inside the polling place or within the prohibited areas designated by § 24.2-604.

Now therefore be it

RESOLVED, by the State Board of Elections under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to § 24.2-103, that

The phrase, “it shall be unlawful for any person... to...exhibit... other campaign material” within the Code of Virginia, § 24.2-604 shall be interpreted as:

No person shall show, display, or exhibit any material, object, item, advertisement, or piece of apparel, which has the purpose of expressly advocating the election or defeat of a clearly identified candidate or issue.

Any person who does so shall be asked by the officers to cease from showing, displaying or exhibiting the material, object, item, advertisement, or piece of apparel, or to remove or cover it until they leave the prohibited area and polling place.

Nothing in this policy shall prohibit any person from bringing but not exhibiting any campaign material within 40 feet of any entrance of any polling place.

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