

R. I. STATE BOARD OF ELECTIONS
MINUTES OF MEETING
February 25, 2014

The Rhode Island State Board of Elections convened at 3:45 PM at the Rhode Island Board of Elections, a quorum included, Chairman Richard Pierce, Vice-Chairman William West, and Commissioners Frank Rego, and Richard DuBois. Executive Director Robert Kando and legal counsel Raymond Marcaccio were also in attendance.

The meeting was called to order by Chairman Pierce.

First order of business: Vice-Chairman William West moved to approve the minutes for Board of Elections meeting dated 1/16/14, seconded by Commissioner Richard DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed.

Next order of business: The Board considered the recommending to the legislature statutory amendments to the following statutes:

Amend R.I.G.L. 17-25-10(a) (1) and 17-25-10(c) to include the candidate as an allowable recipient of campaign contributions, consistent with language throughout other sections of Chapter 25. The Board heard testimony from Campaign Finance Director Richard Thornton who stated that while most of the statutes that comprise Chapter 25 allow both the candidate and treasurer to accept campaign contributions, the specific language of R.I.G.L. 17-25-10(a) (1) and 17-25-10(c) only refers to the treasurer and deputy treasurer, and is inconsistent with other sections of Chapter 25. Vice Chairman West moved to recommend to the legislature the amendment of R.I.G.L. 17-25-10(a) (1) and 17-25-10(c) to correct the inconsistencies, seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed.

Repeal 17-25-10(b). Campaign Finance Director Thornton testified that there is an ambiguity of reporting requirements for an independent advocate following the recent enactment of 17-25.3, and the failure to repeal the previous statute. Vice Chairman West moved to recommend to the legislature the repeal of 17-25-10(b) to correct the ambiguity, seconded by Commissioner Rego. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed.

Amend 17-25-11 which allows a candidate who does not make expenditures of more than \$1,000 in a calendar year nor accept contributions of more than \$1,000, to forgo filing campaign reports other than the 28th day after the election report, to permit a candidate to contribute more than \$100 to his or her own campaign and to allow the candidate to accept more than \$100 of in-kind party contributions. Campaign Finance Director

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Richard Thornton testified that the statute allows candidates who expend less than \$1,000 per year to file a single report 28 days after the election, as long as, the candidates do not accept more than \$100 from any single source in a calendar year. If the statute was amended to allow more than \$100 from the candidate to his/her own campaign and more than \$100 of party in-kind contributions, the exemption would be more widely used. Commissioner Rego moved to recommend to the legislature the amendment of R.I.G.L. 17-25-11 to allow more than \$100 from the candidate to his/her own campaign and more than \$100 of party in-kind contributions, seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed.

Amend 17-25-11(g) to cap total fines related to late or overdue campaign finance reports at \$1,000 and prohibit non-filers and candidates and committees with outstanding fines from declaring for office or accepting contributions or making expenditures until the non-compliance is remedied. Campaign Finance Director Richard Thornton and Executive Director Robert Kando testified that over-due fines have become a problem, that collecting fines through the legal process is cumbersome and many of the largest fines are from candidates who raised and expended little or no money, and just have not filed any reports, and who are being fined more than \$10 per day. Attorney Raymond Marcaccio stated that the Board would have no recourse if a statute prevented a person from declaring if he had two or more reports delinquent. He also stated that persons who were not allowed to accept contributions should receive hearings to avoid any due process issues. Chairman Pierce observed that there is a lack of respect for campaign finance laws by those who refuse to comply with statutory requirements and that capping fines isn't the right answer. He felt that the General Assembly should address this problem and that he did not agree with this proposal. Commissioner Rego stated that he was against reducing the authority of the Board. The American Civil Liberties Union, in written testimony stated that the R.I. Constitution set the general standards for running for office and that the standards can or should be changed.

John Marion from Common Cause addressed the Board and inquired if the cap would be retroactive, which he felt wasn't possible. He also said that the \$1,000 cap would permit candidates to raise millions of dollars with only a \$1,000 cap and be in a similar position of those candidates who raise limited funds. He also stated that if the courts found that a person could not legally be prevented from running for office, the situation would be worse than the present. Mr. Kando noted that the limitation for fines would be only for past due filings only, and would not limit the Board's authority otherwise. Vice-

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Chairman West moved to recommend the amendment without the limit on declaring for office. In the absence of a second, the item was passed not acted upon

Amend 17-20-2.1 – (regular mail ballot application) to make a mail ballot application a voter affirmation form for inactive voters who request a mail ballot from the address from which they are currently registered. Elections Director Robert Rapoza testified that when an inactive voter files an application for a mail ballot with the same address that is on file, the local board of canvassers must send a voter affirmation form to the voter, and delay processing the mail ballot application until the receipt of the voter affirmation form from the voter. If the mail ballot application could be accepted as a voter affirmation form, the local board could immediately process the mail ballot application and thereby eliminate a time-consuming step from the process. Commissioner Rego moved to recommend to the legislature the amendment of 17-20-2.1 to allow a mail ballot application to act as a voter affirmation form, seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Amend 17-20-2.2 - (emergency mail ballot application) to make a mail ballot application a voter affirmation form for inactive voters who request a mail ballot from the address from which they are currently registered and eliminate the language on the application that requires the voter to state what constitutes the emergency, and by signing affirms that the voter is requesting an emergency application because it is an emergency that occurred after the 20 day deadline. Election Director Robert Rapoza testified that this change would be to accomplish the same purpose as the amendment to 17-20-2.1 only for emergency ballots. Vice-Chairman West moved to recommend to the legislature the amendment of 17-20-2.2 to allow an emergency ballot application to act as a voter affirmation form, seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Amend 17-20-10 – to remove the specific street address (50 Branch Ave.) for the BOE, and instead requiring the envelopes be “addressed to the BOE.” Director Robert Rapoza testified that since the Board of Elections may move from its current address, the specific reference to 50 Branch Ave. should be amended. . Commissioner Rego moved to recommend to the legislature the amendment of 17-20-10 to read “current address of the Board of Elections” seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Amend 17-20-13.1 – (emergency mail ballot application) to remove the reason for the request to receive an emergency mail ballot, which is no longer necessary due to previous amendments to the mail ballot law. Election Director Robert Rapoza testified that the

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recent changes to the mail ballot statute eliminated the necessity to state a reason to receive a mail ballot and that no excuse was required. Vice-Chairman West moved to recommend to the legislature the amendment of 17-20-13.1 to remove the reason to receive a mail ballot, seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Amend 17-20-19 – to remove the specific street address (50 Branch Ave.) for the BOE. The ballot must be returned to the BOE. Election Director Robert Rapoza testified that this change is in contemplation of the Board moving from its current location. Vice-Chairman West moved to recommend to the legislature the amendment of 17-20-19 to read “current address of the Board of Elections” seconded by Commissioner Rego. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Amend 17-20-23 – to remove the language that the oath envelope has to be sealed in the outer envelope. This requirement is unnecessary if a ballot is cast in a nursing home since they are transported by BOE staff. Additionally, the change in the mail ballot law in 2011 eliminated the need for the BOE to know if a ballot was mailed from out of state and also changes the time the ballot must be received by the BOE so as to match other statutes that state when polls close or when ballots must be received by the BOE. Elections Director Robert Rapoza testified that the required use of the outer envelopes were unnecessary since nursing home ballots are hand-delivered and the change in the mail ballot law eliminated the requirement to post a mail ballot from out-of-state. Commissioner DuBois moved to recommend the amendment to the legislature, seconded by Vice-Chairman West. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Amend 17-20-26 – to (1) remove the requirement that the BOE must advertise certifications in a newspaper of general circulation, instead allowing the BOE to post the certification on the SOS open meetings website; (2) remove the requirement to notify candidates for state and federal offices and instead allow notification to the recognized political parties; (3) eliminate the language that the outer envelope must be attached to the oath envelope since it is no longer relevant if ballots were mailed from out of state due to the change in the mail ballot law; (4) and amend the reference to tabulating ballots into the central count optical scan unit. Elections Director Robert Rapoza testified that posting the notice on the website of the Board of Elections and with the Office of the Secretary of State would result in a cost savings, be more streamlined, and that it is impossible to notify all candidates of each mail ballot certification session, but party

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notification could be easily accomplished. He also stated that the change to eliminate the reference to the outer envelopes was the result of the change to the mail ballot law, and that changing count to tabulate, would allow for earlier mail ballot results. The American Civil Liberties Union in written testimony stated that it recognized the cost savings rationale behind to advertise on the internet, that a significant number of Rhode Island residents did not have internet access and that limiting advertising would not fully answer the notification requirements. ACLU also stated that individual notification of mail ballot certification to candidates is key to the candidates themselves and individual notification should remain. Commissioner Rego moved to recommend to the legislature the amendment of 17-20-26 seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Amend 17-20-27 – to change the length of time required to store mail ballots after an election to be consistent with federal law (currently 22 months). Elections Director Robert Rapoza stated that this change would make Rhode Island law consistent with federal law. Commissioner DuBois moved to recommend the amendment to the legislature, seconded by Commissioner Rego. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

Repeal 17-23-2 – The Office of the Attorney General has determined that this statute is unconstitutional. *See McIntyre v. Ohio Elections Commission* 514 U S 334. Executive Director Kando testified that the Office of the Attorney General has determined that this statute is unconstitutional. The American Civil Liberties Union in written testimony supported the repeal citing *McIntyre v. Ohio Elections Commission* 514 U S 334 (1995) and noted that the a recent criminal case under this statute was dismissed and that no person should be arrested for violating a law that shouldn't be on the books in the first place. Commissioner DuBois moved to recommend the repeal of 17-23-2 to the legislature, seconded by Vice-Chairman West. Chairman Richard Pierce, Vice-Chairman William West, Commissioner Frank Rego, and Commissioner Richard DuBois voting in the affirmative, no dissenting votes, and motion passed

At 5:10 PM, Commissioner Rego moved to adjourn, seconded by Commissioner DuBois. Chairman Pierce, Vice-Chairman West, Commissioners Frank Rego and Richard DuBois voting in the affirmative, no dissenting votes, and motion passed.

Andreza Skipworth