



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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August 26, 2016

Ms. Cherlyn Starlet Stevens  
Chair, City of Richmond Electoral Board  
900 East Broad Street, Room 105  
Richmond, Virginia 23219

Dear Chair Stevens:

I am in receipt of your August 23, 2016 letter, requesting my opinion on four questions related to the Electoral Board's duties "with respect to determining the eligibility of two individuals who seek to stand for election on November 8 to local offices in the City" of Richmond in light of the Supreme Court of Virginia's July 22, 2016 order in the matter of *Howell v. McAuliffe*.<sup>1</sup> Specifically, your letter requests guidance with respect to two factual scenarios.<sup>2</sup> I will respond to your questions in the order in which they are set forth in your August 23 letter.<sup>3</sup> Please note that your questions require fact-specific analysis; accordingly, you and your Electoral Board must review the facts in light of the information provided in this letter to determine how to proceed in each case.

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<sup>1</sup> No. 160784, 2016 Va. LEXIS 107 (July 22, 2016).

<sup>2</sup> According to your letter, the first factual scenario is as follows: Candidate A was previously convicted of a felony, had his rights purportedly restored by the Governor's Executive Orders, and subsequently registered to vote and qualified as a candidate for the School Board of the City of Richmond. After Candidate A qualified to appear on the ballot, the Supreme Court of Virginia found the Governor's Executive Orders unconstitutional in *Howell v. McAuliffe*, and Candidate A's voter registration was cancelled pursuant to the Court's Order.

Your second factual scenario is as follows: Candidate B seeks election to the office of Mayor of the City of Richmond. Candidate B submitted, among other required qualification documents, a petition containing a sufficient number of voter signatures and qualified as a candidate. Your letter notes that "[i]t has been reported by the media that the petition[] submitted by Candidate B contain[s] exactly 50 signatures from one of the nine election districts [in the City of Richmond] and that one such signature is that of a person whose restoration of civil rights was invalidated by the Virginia Supreme Court's decision, whose registration to vote was accordingly cancelled, and whose civil rights have now apparently been restored once again."

<sup>3</sup> You note that, with respect to Candidate A, you first sought guidance from the Department of Elections, and your letter references this guidance, in part, as advising that the Electoral Board "seek legal counsel prior to removing a candidate certified as qualified by your office . . ." Please note that this opinion is provided pursuant to the Attorney General's authority to issue official opinions as provided by § 2.2-505 of the *Code of Virginia*, and not in a capacity as counsel to the Electoral Board for the City of Richmond, as the Electoral Board is represented by the City Attorney for the City of Richmond.

**Question 1:** You inquire whether the Electoral Board is “legally required to remove the name of Candidate A from the ballot because his registration to vote was invalid at the time he filed his statement of qualification[,] or for any other reason.”

Section 22.1-29 of the *Code of Virginia* establishes the qualifications for membership on a school board. Pursuant to the statute, “[e]ach person appointed or elected to a school board shall, *at the time of his appointment or election*, be a qualified voter and a bona fide resident of the district from which he is selected if appointment or election is by district or of the school division if appointment or election is at large . . . .”<sup>4</sup>

In light of this statutory language, Candidate A will meet the requirements for election to the City of Richmond School Board if, at the time of the November 8 general election, Candidate A is (1) a qualified voter and (2) a bona fide resident of the appropriate district or school division. This is a factual, and not a legal determination, and the Electoral Board and General Registrar must ascertain whether Candidate A meets these requirements. In the event that the Electoral Board and General Registrar conclude that Candidate A meets these requirements, the Electoral Board is not required to remove Candidate A’s name from the ballot.

**Question 2:** You inquire whether the Electoral Board “legally [is] required to reexamine the signatures on all petitions submitted by candidates for office who are required by law to file with the general registrar of the City of Richmond.”

As noted in § 10.2.5.9 of the General Registrar and Electoral Board Handbook,<sup>5</sup> a “person who signs a candidate’s petition must be a registered voter . . . at the time the petition was filed by the candidate.” This language is consistent with a prior opinion of this Office, which concluded that the qualifications of individuals who sign or circulate candidate qualification petitions “are to be judged as of the day the petition was filed.”<sup>6</sup>

Numerous factors can lead to a change in voter registration status after candidates file petitions under § 24.2-506 of the *Code of Virginia*, and to require general registrars and electoral boards to review the registration status of voters who signed these petitions for all possible registration changes following the initial certification under § 24.2-506 would place both election officials and candidates in an ongoing state of uncertainty until election day arrived. Where the Electoral Board has examined the petitions submitted by candidates for office and concluded that these petitions contained the signatures of a

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<sup>4</sup> VA. CODE ANN. § 22.1-29 (2011) (emphasis added).

<sup>5</sup> The General Registrar and Electoral Board Handbook (also known as the “GREBook”) is a guidance document prepared by the Department of Elections, available at: [http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\132\GDoc\\_SBE\\_5273\\_v3.pdf](http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\132\GDoc_SBE_5273_v3.pdf).

<sup>6</sup> 1971-1972 Op. Att’y Gen. Va. 188, 189.

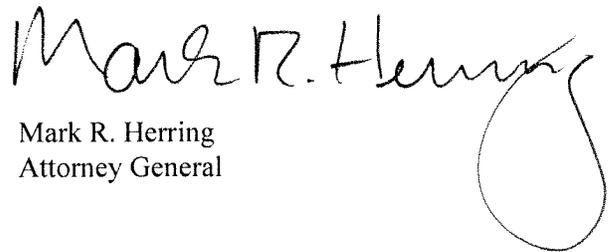
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sufficient number of registered voters, the Electoral Board is not legally required to reexamine the signatures due to later changes in status of the voters who signed those petitions.

Consistent with your request, because the answers to Questions 1 and 2 are not in the affirmative, it is not necessary for me to answer Questions 3 or 4. Additionally, as the answers to both Question 3 and 4 require the Electoral Board to consider factual information specific to the scenarios you have presented, I can express no opinion about the status of any individual candidate.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Mark R. Herring  
Attorney General