

Joe Walton, District One
Powhatan County Board of Supervisors
October 14th, 2009

District 2 Supervisor Appointment

This is my position and opinion only. Some or all of this may be shared by others. They can speak for themselves.

Given two known major issues facing the county and untold other issues in the next year it is no small matter to try and sort this appointment process out. The very concept of four people elected to represent four electoral districts having to choose a fifth person from another district for such a long period of time and having no electoral recourse for 13 months violates many precepts of democracy I hold dear. To think of the profound consequences we know we are facing makes the situation worse. And yet there it is, plain as day in the Commonwealth of Virginia's code of laws.

I consider this decision BY FAR the most significant decision I will make on the Board of Supervisors for emotional reasons related to my friend Charlie Green; and emotional and personal reasons related to democracy and the foundations of our republic.

It is critical that the process be as expeditious and effective as possible so the appointee has time to get up to speed, converse with the community, and get his or her mind around the issues. This seat is not a placeholder. Were the appointment for a few months until a special election could be held I would consider the task in front of me on completely different terms.

The Board of Supervisors cannot have an American-style democratic election in 45 days. Or, we could leave it to the circuit court to take some other course with no time limit – who knows what could happen. But I sincerely believe leaving this issue to the circuit court would be a dereliction of the Powhatan County Board of Supervisors' duty.

It is not appropriate to rely on who shouts the loudest or gets the most letters to the editor written extolling their virtues to fill this appointment. It is not appropriate to hold a public forum and use an applause-o-meter to determine who should "win". It is not appropriate to sift through applications, resumes, or other material in a public meeting and conduct interviews in a public meeting. Regardless of how many applicants and interviews; how much the applicants desire the position; how much they think they are right for the position; or bizarre notions of party affiliations or lack thereof – the Board or the potential appointees being publicly exhorted by earnest individuals or entities in some sort of caucus format is not an appropriate way to consider filling this appointment.

The notion of holding a mass meeting or a caucus is not fair to the voters in District 2 who deserve a secret ballot, if we are going to get scientific at all. But even still, the planning, notice, minor campaigning/canvassing, monitoring, and certifying of a mass meeting or caucus would be tantamount to a secret ballot anyway and is inferior nonetheless.

Were there not such an ideal candidate for appointment (see below), then I would be interested in a quick application acceptance period, closed meeting reviews and/or

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interviews, and an announced selection. That path has the greatest chance of a successful and productive outcome. It is used for all manner of appointee and employment decisions.

The only representative democracy I recognize is a secret ballot at an open election; on an appropriately announced election day; with sufficient time prior for candidates to campaign/canvass; and a neutral monitoring entity to setup, monitor, and certify the results.

But this was not prescribed by the state code. The code is silent on the method but not on the time for the Board of Supervisors to appoint – therefore it implicitly rules out certain methods. The Board appoints in 45 days. Thus, it is up to our discretion and judgment on the criteria, the process to determine, AND the appointment itself. If that discretion and judgment can be implemented without a full application collection/review/interview process, then so much the better. For me, it does not matter who may be interested which I do not know about because my choice - as explained below - is superlative for reasons that are significant.

As far as I am concerned, were my initial choice not available then I would have perhaps explored other methods. But, if one's first choice is available why create an administrative process and waste people's time. No amount of rationalization or extensive lobbying for the position by any other candidate or their supporter(s) would alter the fact that I consider my first choice to be the best choice by far.

This is like a Planning Commission appointment or any other appointment we must make. It is part of the responsibility we accepted when we took the oath and part of the consequences of the last election.

In my mind the state code provides a floor and a ceiling for what we can and should do. Saying the process is "legal" refers to both the minimum we must do and also the implications of the code as the maximum we can do. Thus we are neither shirking our responsibility nor exceeding the bounds set out. We do not have any options that bring greater certainty in 45 days.

I have tried to compartmentalize the issues we have before us, discharging our duty with forethought, great consideration, and my utmost discretion. But after all that is considered, I take serious issue with the state code as it applies to Powhatan County and will express my discomfort with it to the proper policy makers. I will encourage Powhatan County and Virginia Association of Counties to add this to our legislative agendas to press for a change to the code by the General Assembly. Larger localities have options to include a special election and so should the County of Powhatan. I can see no negative consequences from allowing localities the option of holding a special election in due course of time. The squeaky wheel gets the grease and I'll press for a change so in the future no county has to go through what Powhatan is going through.

As for Why Mr. Bustos

I do not feel obligated to publicly explain the selection because, like all the other appointments I must make, my appointees should (and I expect them to) speak for

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themselves verbally and through their actions. But, in this case, since it is a proxy for representative democracy, I will explain my selection.

Furthermore, I can and will refer to my consideration of Charlie's replacement with respect to and for the man himself because Charlie Green was my colleague, my friend, and a shining example of integrity, service, and humility. That he sets the bar for public servants to come in the future is one of the best legacies for which a person can hope. Charlie did just that among many other accomplishments.

The District 2 election in 2007 was a plurality. No candidate received 50% plus one vote, or more. Many valid arguments exist for that, in and of itself, to require a run-off to achieve representative democracy; and at least a majority of votes for a winner; but that is not the case in Virginia.

Nonetheless, Mr. Green received approximately 43% and Mr. Bustos received approximately 29%.

While I would not normally jump at awarding the runner-up the prize, at least based on the plurality nature of the election, it is not outrageous to do so.

But the significant and compelling part of this story is that Charlie Green, from Election Day in 2007 forward, developed a great relationship with Mr. Bustos. My observations indicate that the relationship started as friendly while working the polls on Election Day 2007, but became collegial and even evolved into friends as well over time. Becoming friends with Charlie is not unusual; but, given the circumstance of their acquaintance, it is remarkable for *BOTH* men.

Charlie always spoke very highly of Mr. Bustos. There was mutual respect and frequent communication between the two of them. Mr. Bustos was Charlie's appointee to the Transportation Study Group among other support and assistance capacities to Charlie. Indeed, Mr. Bustos met with Charlie at his house and elsewhere on several occasions to discuss the county, the issues, and life.

I cannot recall the number of times Charlie spoke about his high regard for Mr. Bustos and his interest in Mr. Bustos being a part of Powhatan County's future; but it occurred nearly every time Charlie and I spoke at any length. I never doubted Charlie's judgment on anything and certainly not on this.

Thus, this is the compelling case for Mr. Bustos - Charlie Green, who did win the election in 2007, would not have hesitated to have Mr. Bustos stand in his place. That fact coupled with Mr. Bustos' own poll results (which speak volumes), leave me absolutely comfortable that District 2 is getting the best representative under the circumstances.

Charlie Green may or may not have agreed with any particular position of Mr. Bustos but he unequivocally believed that Mr. Bustos cared about public service and the County for the right reasons; and that Mr. Bustos would always represent himself, Charlie Green, the District, and the County to the best of his ability.

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In addition, my own observations are that Mr. Bustos is intelligent, competent, and possessing of great humility. Mr. Bustos' position on any particular issue in the past or the future has no bearing on my comfort with his appointment.

In short, no one else but Marsell Bustos is as close a representative democratic proxy for District 2.

On the “terms” of the appointment, tradition, precedence, and politics

Some folks are upset about hyperbolic political pap “on the Internet” because of the supposed poisoned atmosphere it creates. Um, this is America for better AND for worse. If an association with a group containing a member that uttered hyperbolic political pap were a disqualification for public service then we are all in some trouble.

Political parties played no part for or against my decision to choose Mr. Bustos nor should they. Political parties are not representative democracy and cannot be used to obtain representative democracy – Thomas Jefferson - the father of democracy as we know it - hated political parties for some reason. He must have known something.

Political parties play a part in the campaign process, but do not deserve nor have the “rights” to an elective office in any way, shape, or form. In elections, candidates win, place, or show, not campaigns or political parties. Interestingly, the campaign literature and signage for the present election cycle around Powhatan and statewide has glancing little reference (if any) to any particular political party.

Some have indicated a precedence or tradition that exists for certain aspects of this process involving agreements to “not run” or some notion of thumbing through applications, conducting interviews, or questioning interviewees in full public meetings like some brutal political sport. The former item I will address directly below and the latter two items are addressed by extension and above.

Foremost, precedence is a useful guide but nothing more. No strengthening of any system could ever be accomplished were it not for changes and improvements – leaving precedence and tradition behind is sometimes helpful because of new considerations and discoveries or fundamental changes/differences in circumstances. Indeed, our own Declaration of Independence broke precedents. Certainly the amendments to the U.S. Constitution, of which the first ten were the Bill of Rights, broke the precedence of the Constitution, which itself broke precedence.

Closer to home, the need to change the Comprehensive Plan and Zoning Ordinances to accommodate changing development patterns breaks precedence in some ways. We do not necessarily throw everything out, but we certainly challenge every previously held assumption for merit. And we are doing it with gusto.

So, while original and prior experiments in democracy and public policy are helpful, they were built upon previous experiments and will continue to be the basis on which future

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changes are made. Don't believe that? Even folks who want to roll back to 1787 want to undo the way things that have been done recently. Re-establishing earlier precedents breaks precedence.

Additionally, the argument for or against change must always be weighed fairly and only after subtracting inertial effects. Stasis without merit is unacceptable.

To that end, I have not specifically asked Mr. Bustos whether or not he will run for the District 2 seat in 2010 after having been appointed in the interim; nor have I suggested it should or should not be done. It is entirely up to him and ultimately the citizens who reside in District 2.

The reason is simple - requesting or "requiring" the appointee to NOT run is antithetical to the overarching goal of appointing someone with as great a representation, politics, and democracy nexus as possible.

Specifically, I believe it is a disservice to District 2, the county as a whole, and democracy in general to insist the interim appointee not have the option to seek election to the office. The beauty of our democracy is that representatives' decisions have consequences. It sharpens the focus of those in office. To urge the stepping aside of the interim appointee invites an appointee whose reputation and decisions rest outside of the democratic and political processes. While this is an understandable position for less authoritative positions (staff, Planning Commission, etc.), it would be a mistake in the case of a member of the Board of Supervisors (the ultimate decision makers) given the length of the appointment in the present case and the known and potential issues that must be decided during the 13 month appointment term.

District 2 and the whole county need a representative acutely focused on effectively representing District 2. That will occur if the appointee has "skin in the game" and any hope of successful actual election to the office.

Frankly, I would rather have a 13 month representative fully immersed in the nitty-gritty, political aspects of representation than "supposedly" not involved. To think we could find an appointee who would somehow be above politics is ludicrous and - because elections provide feedback and focus behavior - also detrimental.

Let us call it like it is and get on with it. The activities the appointee must perform for 13 months are inherently political and having someone who has the option to run for election in 2010 is the best motivation for effective representation, which is the best deal for the residents of District 2 for the next 13 months and the whole county in the long run.

Furthermore, the November 2010 election for the District 2 seat will be a critical referendum on the performance of the interim appointee AND the appropriateness of the Board's choice of appointee. Were the appointee NOT to get involved in the political process and a new batch of candidates seek election in 2010, the District and the County would not have the option of "doubling down" or rejecting the appointee and the record that appointee creates. That is a big mistake for us all.

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The argument that the appointee who opts to run in 2010 will have a “leg-up” on his or her fellow candidates is simplistic. Incumbency only grants the candidate a track record and that may or may not be an asset as we have all seen in nearly every election cycle ever held. Incumbency can be a curse regardless of the quality of the incumbent or his or her decisions.

We know the appointee will have to decide on a Walmart and a Comprehensive Plan. Therefore, any challenger in 2010 might have an easier time campaigning than the appointee who decides to seek election. Furthermore, the appointee-candidate must seek election in 2010 and, if successful, turn around and do it again in 2011. All in all, the appointee-candidate faces quite a gauntlet and nothing to be envied.

Finally, we have all heard and seen the occasional appointee around the state and country waffle on whether they will maintain their initial promise to not run. This is an unnecessary distraction to the focused attention that should be paid the constituents.

In short, having democracy and politics take a hiatus for 13 months is a disservice to District 2 specifically and the County as a whole. Unfortunately, we can't accomplish a legitimate election on the front end of the appointment. We can make up for it by having one at the end of the appointment.

In summation

Mr. Bustos' plurality performance in November 2007 and his indubitable proxy for his plurality superior, Charlie Green; coupled with the prospect or option of running for the seat in 2010, is as close to effective representation, politics, and democracy as we can get for District 2. Furthermore, it is far and away better than any alternative.

One can call the above laid out thought process *lack of ethics*, *lack of morals* or *lack of common sense*, or *lack of fairness*. It makes no difference to me. Such assessments are incorrect.

It comes down to who I think can best represent District 2 and best represent my friend, Charlie Green, for 13 months. It comes down to who I think can best get rolling quickly so the district and the county have the best shot at effective representation.

That choice is easy. It is Marsell Bustos.