



**STATE BOARD OF ELECTIONS  
AGENDA**

*DATE: November 20, 2017  
LOCATION: East Reading Room  
Patrick Henry Building  
Richmond, Virginia  
TIME: 9:30 a.m.*

**I. CALL TO ORDER**

*James B. Alcorn  
SBE Chair*

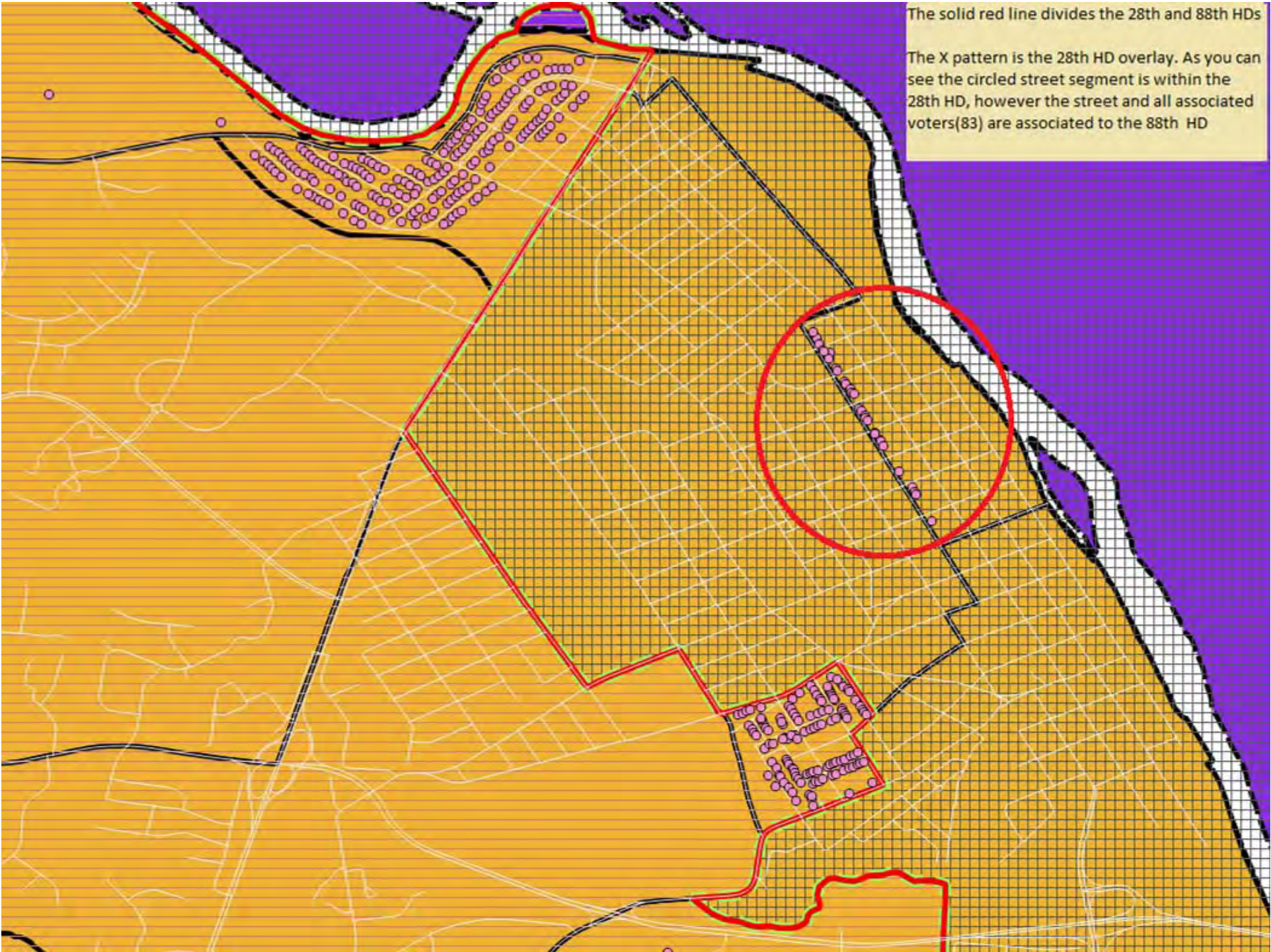
*SBE Board Members*

**II. NEW BUSINESS**

**A. Certification of November 7, 2017 General Election**

*Ellen Flory  
Elections Administrator*

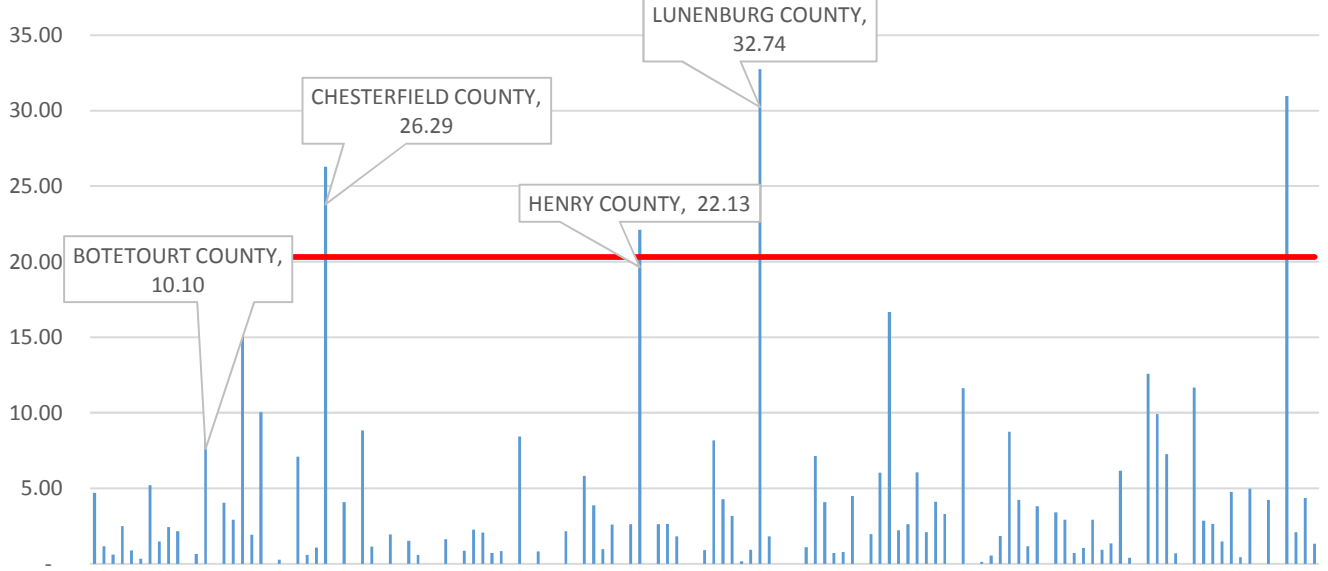
**III. ADJOURNMENT**



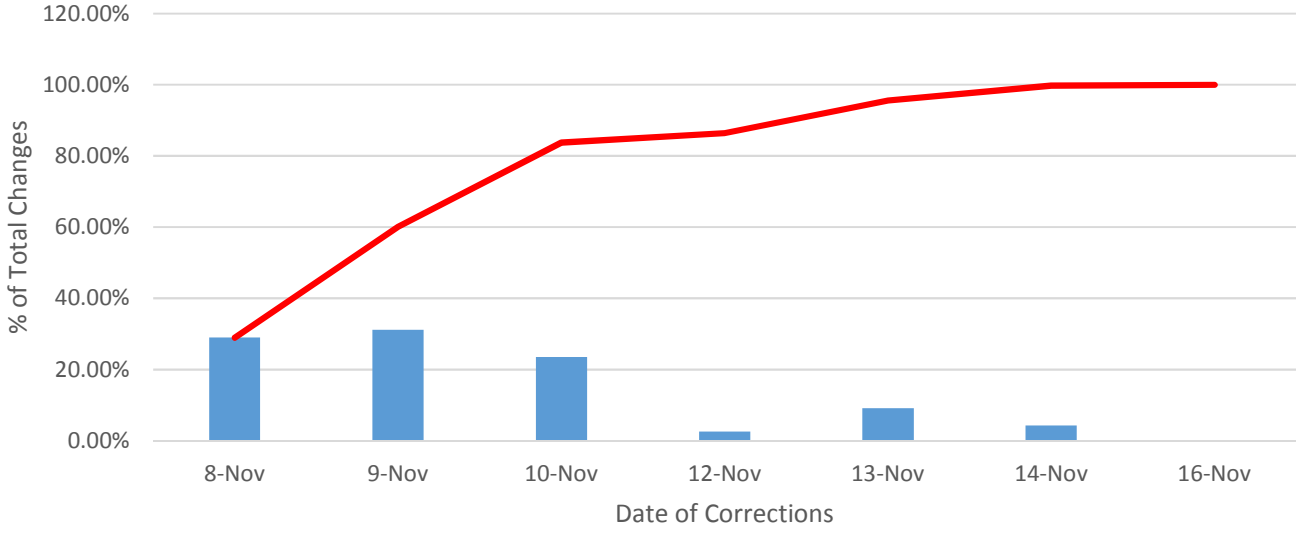
The solid red line divides the 28th and 88th HDs

The X pattern is the 28th HD overlay. As you can see the circled street segment is within the 28th HD, however the street and all associated voters(83) are associated to the 88th HD

### Corrections by Locality

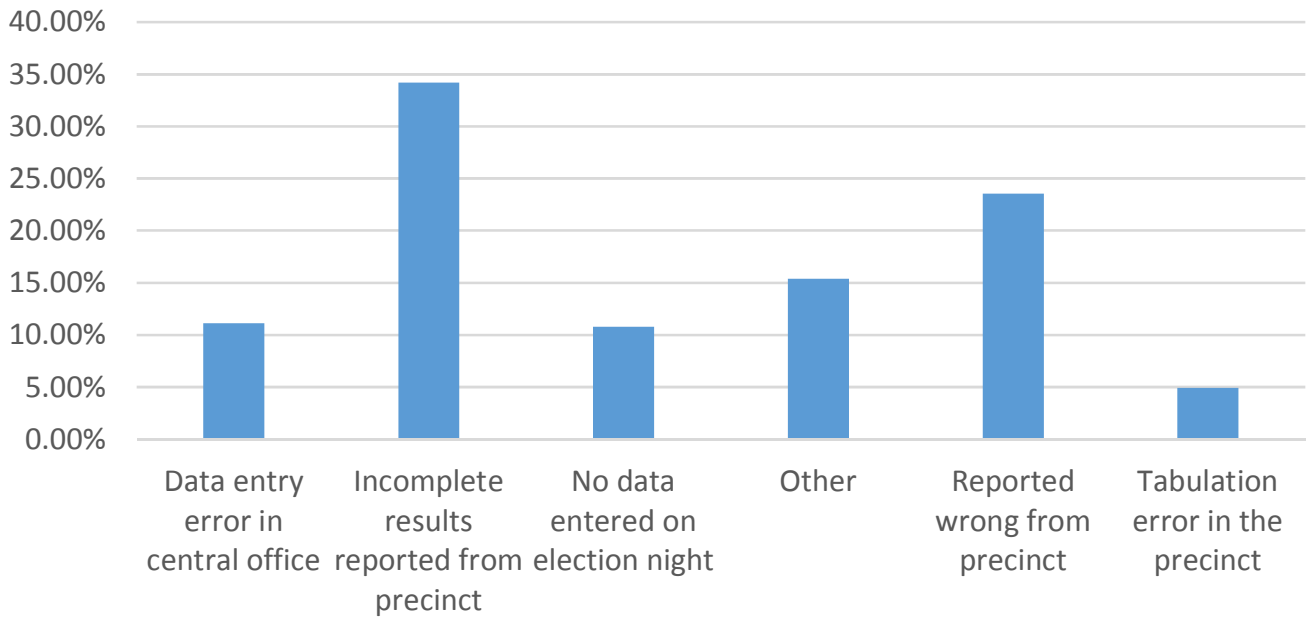


### Corrections over Time



■ % Corrections    — Running Total Changes

### Corrections by Reason





**Before Change**

| Street     | Type | PRE | POST | Low  | High | O/E/B | Zip   | LOC | PCT  | TOWN | CD | SD  | HD  |
|------------|------|-----|------|------|------|-------|-------|-----|------|------|----|-----|-----|
| Charles St |      |     |      | 1001 | 2607 | Odd   | 22401 | 630 | 0201 |      | 01 | 017 | 028 |

**After Change**

| Street     | Type | PRE | POST | Low  | High | O/E/B | Zip   | LOC | PCT  | TOWN | CD | SD  | HD  |
|------------|------|-----|------|------|------|-------|-------|-----|------|------|----|-----|-----|
| Charles St |      |     |      | 1001 | 1715 | Odd   | 22401 | 630 | 0402 |      | 01 | 017 | 088 |

Close

**Segment History**

| Action                 | Modified By | Date Modified         |
|------------------------|-------------|-----------------------|
| <a href="#">UPDATE</a> | jpitchford  | 4/29/2016 8:18:44 AM  |
| <a href="#">UPDATE</a> | jpitchford  | 4/29/2016 8:15:39 AM  |
| <a href="#">UPDATE</a> | jpitchford  | 4/29/2016 8:14:37 AM  |
| <a href="#">UPDATE</a> | jpitchford  | 4/28/2016 4:38:35 PM  |
| <a href="#">UPDATE</a> | jpitchford  | 4/28/2016 4:22:58 PM  |
| <a href="#">UPDATE</a> | jpitchford1 | 4/9/2015 6:45:37 PM   |
| <a href="#">UPDATE</a> | jpitchford1 | 4/9/2015 6:40:47 PM   |
| <a href="#">UPDATE</a> | jpitchford1 | 4/9/2015 6:39:59 PM   |
| <a href="#">UPDATE</a> | jpitchford1 | 4/9/2015 6:38:17 PM   |
| <a href="#">UPDATE</a> | jpitchford1 | 3/26/2015 12:04:07 PM |

# BakerHostetler

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November 17, 2017

## VIA E-MAIL

James B. Alcorn, Chairman  
Clara Belle Wheeler, Vice Chair  
Singleton B. McAllister, Secretary  
Virginia State Board of Elections  
Washington Building  
1100 Bank Street, First Floor  
Richmond, VA 23219

*Re: General Election Results for House of Delegates Districts 28 and 88*

Dear Chairman Alcorn, Vice Chair Wheeler, and Secretary McAllister:

We are counsel to the Virginia House of Delegates Republican Caucus. It has come to our attention that the Virginia House Democratic Caucus (“Democrat Caucus”) contacted you demanding that you exclude and disregard 668 valid votes cast in House District 88 on November 7, 2017. This is yet another misguided effort by Democrat operatives to impugn the integrity, not only of hardworking government officials, but also of the election as a whole. We ask that the Virginia State Board of Elections certify the results of this election on Monday, November 20, 2017 in accordance with the Code of Virginia and that the Board issue a strong statement defending the integrity of this election and its election administrators.

Democrat operatives have brought actions this week in both state and federal court in an effort to dilute the lawful votes cast by eligible voters. In both proceedings, the presiding judge found no evidence of problems or irregularities in the administration of the election. The second of those cases, the misguided effort by failed Democrat House candidate Joshua Cole to obtain a federal court order compelling the counting of late-filed absentee ballots, ended in a finding by United States District Judge Claude M. Hilton that there is “no indication of any kind of a problem,” adding, “I don’t find anything improper here.” Two courts have now clearly confirmed that election officials in Stafford County operated an open, fair, and honest election.

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

James B. Alcorn, Chairman  
Clara Belle Wheeler, Vice Chair  
Singleton B. McAllister, Secretary  
November 17, 2017  
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Now, the Democratic Caucus brings a third unjustified and meritless attack on the election that is particularly egregious because it demands that this Board exclude the lawful votes of valid voters. *See* November 15, 2017 Letter from Marc E. Elias to Virginia State Board of Elections, attached hereto as Exhibit A.<sup>1</sup> The draconian disenfranchisement sought by Mr. Elias is based on a misunderstanding of the law. Specifically, Mr. Elias contends that voters in two precincts in the City of Fredericksburg should only have received ballots for House District 28. Mr. Elias is wrong. Changes implemented by the City of Fredericksburg six years ago split these precincts so that some voters received ballots from House District 88 and some voters received ballots for House District 28. *See* Va. Code §24.2-304.03(b) (noting that while district lines stay the same, precincts could move during local redistricting); *see also* Code of Ordinances, City of Fredericksburg §§30-1 and 2. The root cause of this faulty legal analysis appears to be the result of a misreading of the Code of Virginia. We attribute no nefarious intent to Mr. Elias—some mistakes are forgivable.

What is not forgivable is the extreme efforts to disenfranchise voters such as those suggested by Mr. Elias. In his letter, Mr. Elias demands that this Board “exclude votes cast in Precincts 201 and 402 from the House District 88 certified totals.” *See* Letter at 2. The relief he seeks should neither be considered nor tolerated by this Board. We ask that this Board both disregard Mr. Elias’s unreasonable and unconstitutional demand and also make a strong statement that efforts to exclude the valid votes of lawful voters in the Commonwealth will not be tolerated.

Thank you for reviewing our letter, and we appreciate your service to the Commonwealth of Virginia. We respectfully request that you certify all results on Monday, November 20, 2017 in accordance with Va. Code §24.2-679. My clients will continue to fight for an open, fair, and honest election in which all of the votes lawfully cast by eligible voters are counted, and they will be ever vigilant in correcting the record on these matters before the public.

Sincerely,



Trevor M. Stanley  
Partner

cc: Edgardo Cortes  
Elizabeth Howard

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<sup>1</sup> It appears that, given the errors in the headings on pages 2 and 3 of Exhibit A, this letter was also sent to the City of Fredericksburg Electoral Board. We respectfully request that this communication be delivered to the appropriate individuals on the Fredericksburg Electoral Board as you see fit.



# EXHIBIT A

November 15, 2017

Marc E. Elias  
Melias@perkinscoie.com  
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F. +1.202.654.6211

**BY E-MAIL**

James B. Alcorn, Chairman  
Clara Belle Wheeler, Vice Chair  
Singleton B. McAllister, Secretary  
Virginia State Board of Elections  
Washington Building  
1100 Bank Street, First Floor  
Richmond, VA 23219

**Re: General Election Results for House of Delegates Districts 28 and 88**

Dear Chair Alcorn, Vice Chair Wheeler, and Secretary McAllister:

We write as counsel to the Virginia House Democratic Caucus to alert the Board to approximately 668 votes that appear to have been improperly cast for House District 88 in the City of Fredericksburg. As explained below, these votes should not be counted in the certified results for House District 88; instead these voters should have been allowed to cast ballots in House District 28. The Board must take all steps necessary to resolve these discrepancies.

In 2011, the General Assembly established the boundaries for all 100 districts for the Virginia House of Delegates. According to Virginia Code section 24.2-304.03, House Districts 28 and 88 contain the following precincts in the City of Fredericksburg:

- House District 28 includes “part of the City of Fredericksburg comprised of the District 2 (201) and District 4-Precinct 2 (402) and part of the District 4 (401) Precinct.”
- House District 88 includes “part of the City of Fredericksburg comprised of the District 1 (101) and District 2 (301) Precincts and part of the District 4 (401) Precinct.”

Thus, according to the General Assembly, the only precinct in the City of Fredericksburg that is a “split precinct” between House Districts 28 and 88 is Precinct 401.

However, according to the unofficial results of the general election held on November 7, 2017, the City of Fredericksburg split three precincts: Precincts 201, 401, and 402. These unofficial results can be viewed on the Virginia Department of Elections website, and are described as follows:

- According to Code section 24.2-304.03, there should not be any votes cast from precinct 402 in House District 88. Rather, the Code says that Precinct 402 is entirely within House District 28 and is not a split precinct. However, according to the unofficial results there were approximately **354 votes** cast in House District 88 from Precinct 402.<sup>1</sup>
- According to Code section 24.2-304.03, there should not be any votes cast from precinct 201 in House District 88. Rather, the Code says that Precinct 201 is entirely within House District 28 and is not a split precinct. However, according to the unofficial results there were approximately **314 votes** cast in House District 88 from Precinct 201.<sup>2</sup>

Because these 668 voters reside in precincts entirely within House District 28, these votes should have been cast in House District 28, *not* House District 88. These voters were denied their right to cast ballots for the Delegate who will represent them in the House of Delegates.

As you know, the Board is required to examine the certified abstracts of results from each locality; produce a statement of the votes cast for each member of the General Assembly; and certify that each statement of votes is correct. Va. Code § 24.2-679. The Board is also required to issue a certificate of election to the winning candidate in each General Assembly district. *Id.* § 24.2-680. Given that the margin of votes separating the two candidates in House District 28 is fewer than the number of voters who were denied a ballot in that election, we respectfully request that the Board:

1. Exclude votes cast in Precincts 201 and 402 from the House District 88 certified totals.
2. Decline to certify a winner in the election for House District 28, based on the fact that the number of voters that were improperly denied their right to vote for their Delegate in House District 28 exceeds the current margin between the two leading candidates.
3. Include a notation in its final certifications, reports, and/or meeting minutes that these votes were improper in House District 88 and not all voters in House District 28 had an opportunity to vote for their Delegate.
4. Take all other steps necessary to resolve these discrepancies and ensure all Virginians have an opportunity to exercise their right to cast a vote for the Delegate that represents them in the General Assembly.

We thank the Board for its prompt attention to this important matter. Please do not hesitate to contact us if you have any questions.

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<sup>1</sup>[http://results.elections.virginia.gov/vaelections/2017%20November%20General/Site/Locality/FREDERICKSBURG%20CITY/Member%20House%20of%20Delegates%20\(088\).html](http://results.elections.virginia.gov/vaelections/2017%20November%20General/Site/Locality/FREDERICKSBURG%20CITY/Member%20House%20of%20Delegates%20(088).html)

<sup>2</sup> *Id.*

City of Fredericksburg Electoral Board  
November 15, 2017  
Page 3

Very truly yours,

/s Marc E. Elias

Marc E. Elias  
Jonathan S. Berkon  
Counsel to Virginia House Democratic Caucus

cc: Edgardo Cortes  
Elizabeth Howard





# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ELECTIONS

Edgardo Cortés  
Commissioner

Elizabeth L. Howard  
Deputy Commissioner

### Memorandum

To: Chairman Alcorn, Vice Chair Wheeler, and Secretary McAllister  
From: Ellen Flory, Elections Administrator/Project Manager  
Date: November 20, 2017  
Re: Certification of Results for the **November 7, 2017 General Election**

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#### Applicable Code Sections:

- Va. Code § 24.2-679.A. "The State Board shall meet on the third Monday in November to ascertain the results of the November election."
- Va. Code § 24.2-680 "Subject to the requirements of § 24.2-948.2, the State Board shall without delay complete and transmit to each of the persons declared to be elected a certificate of his election, certified by it under its seal of office."

#### Background:

- Upon completion of the election, local general registrars (GRs) entered all relevant election data into the Virginia Election and Registration System (VERIS).
- In accordance with Va. Code § 24.2-671, within seven days after the election, local electoral boards conducted provisional ballot meetings and canvasses to ascertain and certify election results for their localities.
- Upon completion of canvass the GRs forwarded their localities certified Abstracts of Votes (Abstracts) and, when applicable, Write-In Certifications, to the Department of Elections (ELECT).
- Upon receipt of the localities Abstracts and Write-In Certifications, to ensure accuracy and completion, ELECT staff:
  - Confirmed all required Abstracts and Write-In Certifications were completed and submitted.
  - Ran Turnout vs. Votes Cast reports and asked localities to resolve and/or explain any issues identified.

- Compared the results listed in the Abstracts and Write-In Certifications to the results entered in VERIS to ensure accuracy.
  - Confirmed the Abstracts and Write-In Certifications were properly dated, signed, and sealed.
- Upon confirmation that all localities had correctly ascertained and certified their results, ELECT staff prepared the Abstracts of Votes and winner Certificates of Elections for the races that must be certified by the State Board of Elections (Board):
  - Governor
  - Lieutenant Governor
  - Attorney General
  - All 100 House of Delegates seats
  - Clerk of Court – Lexington City and Rockbridge County (shared constitutional office)
- All local Abstracts and Write-In Certifications are available at the board meeting for review by the Board, should the need arise.

November 15, 2017

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**BY E-MAIL**

James B. Alcorn, Chairman  
Clara Belle Wheeler, Vice Chair  
Singleton B. McAllister, Secretary  
Virginia State Board of Elections  
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We thank the Board for its prompt attention to this important matter. Please do not hesitate to contact us if you have any questions.

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<sup>2</sup> *Id.*



City of Fredericksburg Electoral Board  
November 15, 2017  
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Very truly yours,

/s Marc E. Elias

Marc E. Elias  
Jonathan S. Berkon  
Counsel to Virginia House Democratic Caucus

cc: Edgardo Cortes  
Elizabeth Howard

November 20, 2017

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**BY E-MAIL**

James B. Alcorn, Chairman  
Clara Belle Wheeler, Vice Chair  
Singleton B. McAllister, Secretary  
Virginia State Board of Elections  
Washington Building  
1100 Bank Street, First Floor  
Richmond, VA 23219

**Re: Certification for House of Delegates Districts 28 and 88**

Dear Chair Alcorn, Vice Chair Wheeler, and Secretary McAllister:

We write as counsel to the Virginia House Democratic Caucus urging the State Board of Elections (hereinafter, the “*Board*”) not to certify the election results in House District 28 or House District 88, until the Board has determined how many voters who reside in House District 28 were improperly denied their right to vote in that election and all sides have a reasonable opportunity to review that information.

Last week, we wrote to the City of Fredericksburg Board of Elections and the State Board of Elections regarding this issue. We have yet to receive a written response. While we understand that the re-drawing of city precincts in Fredericksburg following the 2011 election may explain part of the discrepancy that we identified in our letter, it does not explain all of it. For example:

- During the 2011 elections, which predated the re-drawing of precincts, more than 20 percent of the votes cast in Precinct 402 were in House District 88. Based on the statute, which put Precinct 402 entirely within House District 28, none of the votes should have been in House District 88.
- In 2013, which came after the re-drawing of precincts, all of the votes cast in Precinct 201 were in House District 28. But starting in 2015 and continuing in 2017, votes cast in Precinct 201 were split between House District 28 and House District 88.
- Last week, the *Washington Post* reported, “The Fredericksburg Electoral Board issued a statement Wednesday acknowledging that the board and registrar received complaints ‘regarding House Districts 28 and 88’ ... Cortés said Fredericksburg officials called his office late in the afternoon on Election Day, saying, ‘We may have an issue here.’ He

said the call came after a voter in one of the two precincts questioned whether he or she had been given the proper ballot.”

- We have two reports from the 2017 election of married couples living in the same household receiving different ballots – one receiving a House District 28 ballot and one receiving a House District 88 ballot.
- We understand that an initial review by the Virginia Department of Elections (the “Department”) suggests that voters were mis-assigned between House District 28 and House District 88, but we do not know the number of votes affected.

These serious irregularities appear to have resulted in House District 28 residents impermissibly casting ballots in the House District 88 election and being improperly denied the right to vote in their own election. As we did when we learned that 55 absentee ballots were wrongly excluded from the count in Stafford County, we are prepared to file a lawsuit to defend the voting rights of Virginians and ensure the integrity of the election.

The Board should not certify the results in House District 28 or House District 88, until the Department’s investigation has been completed and all sides have a reasonable opportunity to review the results. State law provides that “if, for any other reason, the Board is unable to ascertain the results on [the third Monday in November], the meeting shall stand adjourned from day to day for not more than three days until a quorum is present and the Board has ascertained the results as provided in this section.” Va. Code Ann. § 24.2-679(A). Based on the uncertainties involving this group of voters, the Board cannot ascertain the results of the election in House District 28 or 88. The Board should take the extra time to complete its investigation and provide all parties with an opportunity to review the results, prior to taking next steps.

We thank the Board for its prompt attention to this important matter. Please do not hesitate to contact us if you have any questions.

Very truly yours,

/s Marc E. Elias

/s Jonathan S. Berkon

Counsel to Virginia House Democratic Caucus

cc: Edgardo Cortes, Commissioner  
Elizabeth Howard, Deputy Commissioner