

1 MINUTES

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3 The State Board of Elections board meeting was held on Monday, November 19,
4 2018 in Senate Room 3 of the Virginia State Capitol, Richmond, Virginia. In attendance:
5 James Alcorn, Chairman, Clara Belle Wheeler, Vice Chair, and Singleton McAllister,
6 Secretary, represented the State Board of Elections (“The Board”). On behalf of the
7 Department of Elections (“ELECT”) was Christopher E. “Chris” Piper, Commissioner, and
8 Jessica Bowman, Deputy Commissioner. Heather Hays Lockerman and Alex West
9 represented the Office of the Attorney General (“OAG”). Chairman Alcorn called the
10 meeting to order at 9:10 AM.

11 Chairman Alcorn explained that the meeting time had moved from the originally
12 scheduled 11:00 a.m. time due to a personal matter. The Chairman recognized that
13 candidates and candidate representatives had been notified that they would have Stand By
14 Your Ad (“SBYA”) hearings during this meeting at 11:30 a.m.; therefore the Board would
15 certify the November election, recess, and then reconvene at 11:00 a.m. to hear SBYA
16 complaints. Chairman Alcorn stated that the Board normally had a review and discussion
17 of an election on the meeting after the election, but that ELECT staff was compiling a
18 thorough report for presentation during the December 21, 2018 meeting; therefore, the
19 Board would hold that discussion during the next meeting.

20 The first order of business was the approval of the October 9, 2018 Board meeting
21 minutes, presented by Secretary McAllister. The Secretary moved *the Board approve the*
22 *minutes from the October 9, 2018 Board meeting.* Vice Chair Wheeler seconded the
23 motion, and the motion passed unanimously.

24 The next order of business was the Commissioner’s report, presented by
25 Commissioner Piper. The Commissioner stated that ELECT staff was gathering evidence-
26 based information to create a full report for presentation to the Board for the December 21st
27 meeting, including recommendations for improvements that could be implemented moving
28 forward. Commissioner Piper said the November 6 General Election went relatively
29 smooth, with a nearly unprecedented turnout for a midterm election. The Commissioner
30 recognized the hard work of general registrars (“GRs”), electoral board (“EB”) members,
31 and ELECT staff. Commissioner Piper thanked the members of the Board for their

32 presence in the ELECT office on election day. There were some issues, but they were
33 resolved quickly. Commissioner Piper asked the Board to send any concerns, suggestions,
34 or questions they may have to him by email so the points could be addressed in the report
35 to be presented on December 21.

36 As a result of the November election, there were two special elections scheduled:
37 one on December 18 for the 24th House of Delegates seat, and one on January 8 for State
38 Senate. The Board was going to meet on December 21 to certify the December 18 special
39 election, and on January 11 to certify the January 8 special election. Commissioner Piper
40 also informed the audience that if any individual was early for the SBYA hearings, to sign
41 a sign-in sheet so their hearings could be held first. Chairman Alcorn asked the
42 Commissioner when the Board should send their concerns and suggestions to him for
43 inclusion in the report, and the Commissioner suggested Monday, November 26.

44 Vice Chair Wheeler said that during the November election, many localities did an
45 exceptional job; but that a number of localities had very serious issues. The Vice Chair
46 stated that in these localities there were a number of Code violations, and that the localities
47 were not prepared for the high turnout. Vice Chair Wheeler recognized the hard work and
48 success of the majority of localities. Chairman Alcorn agreed, stating most localities did
49 an excellent job to run a smooth, non-partisan election, but that there were some localities
50 and issues to discuss at the December 21 meeting.

51 Commissioner Piper recognized two new staff members with ELECT. The first
52 was Keith Balmer, who joined the liaison division. Mr. Balmer was formerly a staff
53 member with the City of Richmond GR. The Commissioner said the liaison division was
54 the primary pipeline for communication between ELECT and localities, and that Mr.
55 Balmer would be a valuable addition to the team. The second new staff member was Paul
56 Kyber, who joined the communication division. Mr. Kyber previously worked with
57 various media organizations, including the Richmond-Times Dispatch. Mr. Kyber would
58 be assisting with social media and handling the press room.

59 The next order of business was for the Board to certify the November General
60 Election. Matt Abell, Elections Administrator, presented the item. Mr. Abell stated that
61 the presented results from the November election were for the U.S. Senate, U.S. House of
62 Representatives, two proposed constitutional amendments, and the House of Delegates

63 race in the 8th district of Virginia. Mr. Abell presented the Board with packets that included
64 the totals for each race, and the certificates of election for their signature. Chairman Alcorn
65 recalled when the Board would previously read out the totals for each race line-by-line
66 during the meeting, but stated the Board changed this procedure to save time during the
67 meetings. The Board then signed each certificate of election and reviewed the abstracts.
68 Chairman Alcorn asked why there were multiple copies of the certificates, and Mr. Abell
69 stated that one copy was to go the Clerk's office, one would go to the winner of the election,
70 and one would be kept by ELECT as a record. Vice Chair Wheeler reminded the audience
71 that if they had concerns or suggestions, to submit those using ELECT's online voter
72 complaint process. Chairman Alcorn stated that the new online voter complaint process
73 allowed ELECT staff to track all complaints and questions down to the precinct level, and
74 to follow up on each one. Chairman Alcorn then moved, after reviewing the abstracts of
75 votes cast in the November 6, 2018 General and Special Elections, *that the Board certify*
76 *the results as presented and sign the certificates of election.* Secretary McAllister seconded
77 the motion and the motion passed unanimously.

78 Chairman Alcorn moved *the Board recess until 11:00 a.m.* Vice Chair Wheeler
79 seconded the motion, and the motion passed unanimously.

80 The Chairman moved *the Board reconvene.* Vice Chair Wheeler seconded the
81 motion and the motion passed unanimously. The Board reconvened at 11:05 a.m. The
82 next order of business was SBYA hearings, presented by Arielle A. Schneider, Policy
83 Analyst.

84 The first complaint was against Kelly Burke for Mayor. The advertisement in
85 question was a large hanging flyer. ELECT did not receive an image of the backside of
86 the flyer so could not attest if the backside had a disclaimer. The ad contained express
87 advocacy. Ms. Schneider recommended the Board find a violation and assess a \$100 civil
88 penalty. Kelly Burke, the candidate, informed the Board that the sign was created after she
89 donated money to the high school. The high school designed the sign and hung it up; Ms.
90 Burke stated she had no control over the sign's design or its lack of disclaimer. Upon
91 discovering that the sign was missing a disclaimer, Ms. Burke created an additional sign to
92 attach to the large hanging sign with the proper disclaimer on it. Ms. Burke stated the high
93 school said that the sign would not include the words "vote for," since that would constitute

94 advocacy, but did include Ms. Burke’s website, which included the words “vote for” in the
95 URL.

96 Vice Chair Wheeler asked if Ms. Burke had children that went to the school. Ms.
97 Burke replied her children had gone there previously. Ms. Burke apologized for the absent
98 disclaimer. Chairman Alcorn asked if Ms. Burke saw a proof of the sign before it was put
99 up, and Ms. Burke said she did not. The Chairman asked if Ms. Burke donated money
100 knowing it would result in a sign, and Ms. Burke said yes. Chairman Alcorn asked the
101 OAG counsel if there had to be intent for express advocacy on behalf of the candidate
102 paying for the advertisement. Ms. Lockerman said that intent did not factor into whether
103 or not a violation occurred. Ms. Schneider noted that ELECT was not aware that Ms. Burke
104 attempted to ameliorate the situation, so changed her recommendation for a civil penalty
105 of \$50, rather than the originally proposed \$100. Chairman Alcorn moved *subject to the*
106 *Board’s authority under the Code of Virginia §24.2-955.3, to find Kelly Burke for Mayor*
107 *in violation of Stand By Your Ad with regard to one print media advertisement and to assess*
108 *a \$50 penalty.* Vice Chair Wheeler seconded the motion and the motion passed
109 unanimously.

110 The next complaint was against Paloma Saucedo de la Pena. Ms. Schneider
111 presented the Board with the complaint in question, which was a yard sign for Paloma for
112 City Council. Ms. Schneider stated the complaint was submitted before the 14 day period
113 before the election that would double the penalty, and recommended a \$100 penalty for a
114 first time violation. Vice Chair Wheeler asked when the sign was reported and Ms.
115 Schneider said ELECT received the complaint in the middle of September.

116 Teresa Hinkley, the treasurer for Ms. de la Pena’s campaign, addressed the Board
117 and apologized for the oversight. Ms. Hinkley explained that the campaign staff was
118 inexperienced, and upon realizing the disclaimer was missing, put labels on all signs with
119 the proper disclaimer. Chairman Alcorn asked Ms. Hinkley if this was her first campaign,
120 and she said that it was. Vice Chair Wheeler asked if Ms. Hinkley went to the GR’s office
121 with the candidate to discuss candidate requirements, and Ms. Hinkley said she did not, but
122 went with the candidate to set up all bank accounts. Chairman Alcorn moved *subject to*
123 *the Board’s authority under the Code of Virginia §24.2-955.3, to find Paloma Saucedo de*
124 *la Pena in violation of Stand By Your Ad with regard to one print media advertisement and*

125 *to assess a \$50 penalty.* Secretary McAllister seconded the motion, and the motion passed
126 unanimously.

127 The next complaint was against Tony Zevgolis. Ms. Schneider presented the sign
128 in question, and informed the Board that ELECT received the complaint directly before the
129 election, doubling the fine due to proximity to the election; the advertisement also
130 contained express advocacy and was missing the required disclosure. Tony Zevgolis,
131 candidate, addressed the Board. Mr. Zevgolis explained that he originally ordered 250
132 signs for his campaign in 2014, when SBYA did not exist; therefore, originally, the
133 disclaimer was not required. Mr. Zevgolis had 172 signs remaining from the 2014 election,
134 so reused the signs during the 2018 election. Mr. Zevgolis attested he marked every sign
135 with marker with the required disclaimer, and stated that the disclosure was likely on the
136 other side of the sign in the picture included in the complaint. Mr. Zevgolis further
137 explained that he was harassed during his campaign, and believed the complaint could be
138 connected with the harassment.

139 Chairman Alcorn asked if the disclosure was required on both sides of the sign.
140 Ms. Schneider said it was not, but stated that if the signs were purchased prior to 2015,
141 they were exempt from the provisions of SBYA as per the definition in §24.2-955.1 which
142 stated that, “yard signs paid for or distributed prior to July 1, 2015, shall not be subject to
143 the provisions of §§ 24.2-956 and 24.2-956.1.” Chairman Alcorn asked if Mr. Zevgolis
144 could provide evidence that the signs were indeed purchased prior to 2015, and Mr.
145 Zevgolis said he could and would send the evidence to Ms. Schneider. The Chairman
146 suggested tabling the hearing for a future meeting; upon receipt of the evidence, the Board
147 could dismiss the charges. Vice Chair Wheeler thanked Mr. Zevgolis for reusing signs.
148 Chairman Alcorn moved *the Board table the complaint against Tony Zevgolis for the day.*
149 Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

150 The next complaint was against Marc T. Aveni. Ms. Schneider informed the Board
151 that there were four undisclosed yard signs included in the complaint. Ms. Schneider noted
152 two of the signs were reported on August 24, and were subject to \$100 civil penalties each
153 for first time violations. The other two signs were reported on October 28, which was
154 within 14 days of the election; therefore, the penalties were doubled due to proximity to
155 the election. Ms. Schneider recommended a \$200 penalty for each. The complaint

156 therefore would result in a \$600 penalty. Vice Chair Wheeler asked if there was any
157 attempt to remediate the issues, and Ms. Schneider said ELECT was not made aware of
158 any attempts.

159 Marc Aveni, candidate, addressed the board. Mr. Aveni stated he did not receive
160 notice of the violations until after the election, so was not given an opportunity to remedy
161 the signs before the penalties were doubled. Mr. Aveni said the first sign was put in a ball
162 field and put up after he gave a donation to the field. Mr. Aveni attested he was not
163 involved in the design of the sign, so was not aware that it was missing the required
164 disclaimer. Mr. Aveni said both the first and second signs were taken down before the
165 election, as the first was taken down at the request of the governing body and the second
166 was on a lot that was sold. All of the signs were printed by a volunteer who worked with
167 a local printer that did not regularly print campaign materials, so was not aware of the
168 disclosure requirements. Mr. Aveni admitted he should have provided more oversight, and
169 stated he would have remedied the situation had he known of the violations prior to his
170 notification of the hearing.

171 Vice Chair Wheeler asked if Mr. Aveni saw any of the signs during his travel for
172 his campaign, and Mr. Aveni said he did but was always too far away to notice whether or
173 not there was proper disclosure. Mr. Aveni noted that the website listed on the signs, there
174 was proper disclosure. Mr. Aveni took responsibility for the oversight, but asked for
175 leniency, particularly for those where the penalty was doubled because he was not made
176 aware of the mistake until after the election. Chairman Alcorn asked when ELECT was
177 made aware of the violations. Ms. Schneider stated ELECT received a complaint for all of
178 the signs at once after October 28, so was unable to provide Mr. Aveni notice earlier.

179 Chairman Alcorn moved *subject to the Board's authority under the Code of*
180 *Virginia §24.2-955.3, to find Marc Aveni in violation of Stand By Your Ad with regard to*
181 *four print media advertisements and to assess a \$600 penalty.* Vice Chair Wheeler
182 seconded the motion. Secretary McAllister asked the Board be more lenient, given it was
183 a first time violation and because the complainant did not give Mr. Aveni an opportunity
184 to remedy the situation after noticing the August 24 signs were not disclosed. The
185 Secretary suggested a \$50 penalty for each sign, but was open to other recommendations.
186 Chairman Alcorn suggested a \$300 penalty, as the October 28 ads would still be doubled

187 due to proximity to the election. Vice Chair Wheeler agreed with reducing the fine, but
188 stated that candidates had to be more careful when working with any printer or volunteers
189 to ensure that the proper disclosure was put on all signs. Chairman Alcorn amended the
190 motion to change the \$600 civil penalty to a \$300 civil penalty; with \$50 penalties for the
191 first two signs for a first time violation with an explanation, and \$100 penalties for the other
192 two signs for a first time penalty with explanation, doubled due to proximity to the election.
193 Vice Chair Wheeler seconded the motion and the motion passed unanimously.

194 The next complaint was against Victoria Manning for Virginia Beach School
195 Board. Ms. Schneider stated the advertisement contained no express advocacy under the
196 current definition, so recommended the Board find no violation. Chairman Alcorn moved
197 *the Board dismiss the complaint against Victoria Manning for Virginia Beach School*
198 *Board*. Secretary McAllister seconded the motion and the motion passed unanimously.

199 The next complaint was against Paul Milde. Ms. Schneider noted the
200 advertisements in question did constitute express advocacy, but also contained the proper
201 disclosure, albeit in two parts. Ms. Schneider noted the first side of the advertisement
202 included “Paid for by Friends of Paul Milde, Authorized by Paul Milde,” and the second
203 side included “Not authorized by any other candidate or Committee”; together, these two
204 disclaimers made a complete proper disclosure. Chairman Alcorn moved *the Board*
205 *dismiss the complaint against Paul Milde*. Vice Chair Wheeler seconded the motion and
206 the motion passed unanimously.

207 The next complaint was against Preston Banks for City Council. Ms. Schneider
208 presented the series of images submitted with the complaint; the complaint consisted of a
209 website and a hand card. Ms. Schneider stated the website was disclosed at some point
210 after the complaint was submitted, so recommended a \$50 penalty for a first time violation
211 with remedial action. Ms. Schneider said ELECT received no evidence that there was an
212 attempt to ameliorate the hand card, so recommended a \$100 penalty for a first time
213 violation, totaling in a \$150 civil penalty.

214 Preston Banks, candidate, addressed the Board. Mr. Banks stated the website
215 submitted as part of the complaint was not a campaign website, but rather, the website from
216 when he was in office which served as a resource for constituents. Upon updating the
217 website when he was once again a candidate, he added the required disclosure. Mr. Banks

218 presented a second printing the hand card submitted as part of the complaint as evidence
219 that he did add a disclosure upon being notified that it did not have it initially. Mr. Banks
220 stated his local GR notified him of the missing disclosure in August or September.

221 Chairman Alcorn recommended dropping the \$100 recommended penalty for the
222 hand card to a \$50 penalty as Mr. Banks added the required disclosure. The Chairman
223 asked if the website contained express advocacy. Ms. Schneider noted the URL for the
224 website was "VoteforBanks.com," which contained the "magic words" necessary to
225 constitute express advocacy; because the website did not contain the disclosure at the time
226 of the complaint, it was in violation of SBYA until Mr. Banks updated the website upon
227 his candidacy with the required disclosure. Mr. Banks stated he did not change the URL
228 as "VoteforBanks" was the URL that his constituents were familiar with. Vice Chair
229 Wheeler asked how long Mr. Banks had served on city council, and Mr. Banks said it was
230 his third term. Vice Chair Wheeler stated the website as submitted in the complaint, which
231 was Mr. Banks's website when he was in office, was not a campaign tool and rather was a
232 resource for constituents.

233 Deputy Commissioner Bowman asked who paid for the website when Mr. Banks
234 was in office. Mr. Banks said he did. The Deputy Commissioner asked if Mr. Banks
235 included the website in his campaign finance report during those years, and Mr. Banks said
236 no, as he was not campaigning. The Vice Chair stated she did not see a violation, as the
237 website was paid for with Mr. Banks's own funding when he was not campaigning, and
238 included the proper disclosure when he was campaigning. Chairman Alcorn said he felt
239 the website still was in violation, as "VoteforBanks" was still the URL and contained
240 express advocacy, even though Mr. Banks was not actively campaigning. The Chairman
241 stated Mr. Banks could have changed the URL while in office to avoid this issue. Mr.
242 Banks disagreed as it was the URL his constituents were familiar with, but the Chairman
243 stated there were plenty of alternatives that could have been used. The Chairman
244 recommended a \$50 penalty for the website, as it had been remediated, as well as a \$50 for
245 the hand card. Chairman Alcorn moved *subject to the Board's authority under the Code*
246 *of Virginia §24.2-955.3, to find Preston Banks for City Council in violation of Stand By*
247 *Your Ad with regard to two advertisements and to assess a \$100 penalty.* Secretary
248 McAllister seconded the motion and the motion passed unanimously.

249 Chairman Alcorn left the meeting for a personal matter. Ms. Schneider suggested
250 the Board table the rest of the SBYA hearings until January 11 as no other candidates or
251 representatives were currently present. Vice Chair Wheeler noted that all the candidates
252 had been given notice that there would be a hearing during this meeting, but chose not to
253 appear. Secretary McAllister moved *the Board table the rest of the SBYA hearings until*
254 *the January 11 meeting.* Vice Chair Wheeler seconded the motion and the motion passed
255 2:0.

256 The meeting then opened to public comment. William Card, a member of the
257 Prince William County Republican Committee, addressed the Board. Mr. Card stated he
258 forwarded a letter to the Board members, Commissioner Piper, the Commonwealth's
259 Attorney, the OAG, and the GR regarding the topic he was about to discuss. Mr. Card
260 stated that during the Prince William County School Board election, there were three
261 candidates, with two candidates endorsed by a political party. Alyson Satterwhite was
262 endorsed by the Republican Party, Babur Lateef was endorsed by the Democratic Party,
263 and Stanley Bender was running as an independent candidate. Mr. Card attested that Mr.
264 Bender did not raise money or campaign, and only participated in two of the three forums.
265 Mr. Card stated that on October 24, Harry Wiggins, past Chairman of the Democratic
266 Committee in Prince William County, registered a political action committee ("PAC")
267 called "Republicans for Stanley Bender."

268 Mr. Card stated that the Republican Committee was made aware of the PAC on
269 November 6, during the election, when the Committee began to receive pictures from
270 around the county showing yard signs that read "Republicans for Stanley Bender." The
271 Committee did not remove the signs. Mr. Card stated that because voters believed that Mr.
272 Bender was a Republican candidate, that votes were driven away from Ms. Satterwhite and
273 to the Democratic candidate. Mr. Card said it was not possible to know how many voters
274 were impacted or influenced by the "Republicans for Stanley Bender" signs, but believed
275 that the actions of Mr. Wiggins and the PAC influenced the results of the election and were
276 a violation of §24.2-949.3.

277 Mr. Card said that Mr. Bender stated in a newspaper that he had no knowledge that
278 his name was being used by the PAC, and that there was a signed affidavit from Mr. Bender
279 attesting to such in the packet sent to the Board. Vice Chair Wheeler agreed with Mr. Card

280 that there was a violation and that there had been an egregious action made.
281 Commissioner Piper said ELECT informed Mr. Card they were investigating the matter,
282 and would present a full report upon investigation to the Board during the December 21
283 meeting. The Commissioner said that ELECT had to develop procedures and policies
284 around the matter, and would need to work with the OAG on the issue. Mr. Card
285 acknowledged the Board and ELECT only received his letter on Friday, but wanted to
286 voice his concern during the meeting. Secretary McAllister thanked Mr. Card for bringing
287 the issue to the Board's attention, and assured that there would be a full report on the matter
288 during the December 21 meeting.

289 Vice Chair Wheeler then moved to adjourn the meeting. Secretary McAllister
290 seconded the motion, and the motion passed 2:0. The meeting was adjourned at
291 approximately 12:27 PM. The next Board meeting will be on December 21, 2018 at 2:00
292 p.m.

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Secretary

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Chair

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Vice Chair