

1 MINUTES

2
3 The State Board of Elections board meeting was held on Tuesday, June 27, 2017.
4 The meeting was held in Senate Room 3 in the Virginia State Capitol in Richmond,
5 Virginia.

6 In attendance, representing the State Board of Elections (the Board) was James
7 Alcorn, Chairman; Clara Belle Wheeler, Vice-Chair; and Singleton McAllister, Secretary.
8 Also in attendance, representing the Department of Elections (ELECT) was Elizabeth
9 Howard, Deputy Commissioner; and Martin Mash, Confidential Policy Advisor. Anna
10 Birkenheier, Assistant Attorney General, was also in attendance. Chairman Alcorn called
11 the meeting to order at 10:52AM.

12 The first order of business was to approve previous Board minutes, but Vice Chair
13 Wheeler noted additional corrections to be made before approval. The item was tabled
14 until the next meeting, after the minutes have been corrected.

15 The next order of business was the Certification of the Electronic Pollbook (EPB),
16 presented by Matthew Davis, Chief Information Officer (CIO) at ELECT. Mr. Davis
17 reviewed the requests the Board made at the May 1, 2017 meeting regarding concerns that
18 Chesterfield County staff had about the EPB. Mr. Davis stated ELECT staff went to
19 Chesterfield County, reviewed the pollbook solution with Chesterfield staff, implemented
20 changes that had been previously requested by the locality, and asked Chesterfield County
21 for a letter reviewing the changes made to the EPB. ELECT had not yet received the
22 requested letter. Mr. Davis reviewed Chesterfield County's initial concerns, namely
23 concerns regarding printer screen set-up and font size. Mr. Davis stated that all of these
24 concerns were addressed, and that the EPB went through two pilot elections and a testing
25 lab, in addition to steps taken in May.

26 Chairman Alcorn commented that he considered the concerns the Board had at the
27 May meeting adequately addressed. Vice Chair Wheeler noted the only locality to test the
28 EPB was New Kent County, which uses primarily paper pollbooks. The Vice Chair
29 expressed a need to hear directly from New Kent about their experience using the EPB,
30 and also stated the Board asked for confirmation or assessment from Chesterfield County,
31 which they did not receive.

32 Mr. Davis stated the EPB in question is a standard solution, made to meet the state
33 requirements; additionally, ELECT's EBP solution requires minimal technical support and
34 minimal training. Vice Chair Wheeler then asked if ELECT could provide a cost of how
35 much the solution took to develop, and Mr. Davis said yes. The Vice Chair also asked
36 about the cost of maintenance, and Mr. Davis replied that because the solution is a software
37 solution that is built into the Department's current system, there will be no additional cost
38 to support it. The Vice Chair asked if there will be updates or changes to it, and Mr. Davis
39 said only if there are legal requirements or changes that need to be met in the future.

40 Vice Chair Wheeler then referred back to Chesterfield County's concerns regarding
41 the EPB's font size, and asked if the issue was addressed. Mr. Davis stated that the font
42 size had been increased and would be adjustable.

43 Robin Lind, an Electoral Board member from Goochland County, then spoke. Mr.
44 Lind noted that this pollbook would be used primarily by smaller localities, and addressed
45 concerns about localities' ability to address security concerns with a smaller budget. Mr.
46 Davis said that because the pollbook is a state solution, it will have state protections and
47 standards, which other vendors may not. Paul Stenbjorn, Director of Election Services at
48 ELECT, then spoke and reaffirmed Mr. Davis's statements, adding that these security
49 concerns were included in the development of the system. Cameron Sasnett, Fairfax
50 County General Registrar, made a comment that vendor-provided-solutions also meet state
51 security standards and requirements.

52 Chairman Alcorn then *moved for the Board to certify the Department of Elections'*
53 *EBP solution for use in elections in the Commonwealth of Virginia, pursuant to the state's*
54 *certification of electronic pollbook procedures and system requirements.* Secretary
55 McAllister seconded the motion. Vice Chair Wheeler stated that the Board asked for
56 comments from New Kent County, as well as an evaluation from
57 Chesterfield County. The Vice Chair commented that this was first discussed in the
58 meeting on May 1, and noted that ELECT staff did not visit Chesterfield County until June
59 9, when the office was preparing for the June 13 dual primary elections. Vice Chair
60 Wheeler stated that she would like to hear from Chesterfield County and New Kent County
61 before the Board approved the solution. Chairman Alcorn acknowledged her concerns,

62 and called a vote. Chairman Alcorn and Secretary McAllister voted for certification. Vice
63 Chair Wheeler reiterated her concerns and voted against. The motion passed two to one.

64 The next order of business was reviewing Stand by Your Ad (SBYA) violations,
65 presented by Elizabeth Howard, Deputy Commissioner at the Department of Elections.
66 The first complaint before the Board was against Awareness Manassas PAC. The five
67 complaints received included the failure to file a timely Statement of Organization (SOO)
68 with the ELECT. Chairman Alcorn noted the complaint would fall under campaign finance
69 violations. The complaint stated that Awareness Manassas's SOO was due within ten (10)
70 days of the start of campaigning, and that the SOO was not filed in a timely manner.
71 Chairman Alcorn noted it is not required that notice be provided for the imposition of
72 penalties, so if the complaint was found correct, there would be a \$100 penalty per §13.2
73 of the summary of the campaign finance violations. Chairman Alcorn noted this was not
74 included in the ELECT staff recommendations, and that the Board delegated it to ELECT
75 staff to assess these complaints. The Chairman stated the SOO reports were not attached
76 to Board materials provided.

77 Vice Chair Wheeler inquired as to why the ELECT staff member who routinely
78 investigated complaints and provided campaign finance background to the Board was not
79 present, and if that staff member still handled campaign finance and SBYA complaints.
80 Deputy Commissioner Howard noted that the Board does not have investigatory powers,
81 and stated that the ELECT staff member does still handle campaign finance-related
82 complaints. Vice Chair Wheeler clarified the staff member was not present. The Deputy
83 Commissioner confirmed they were not present. Vice Chair Wheeler inquired as to why.
84 Deputy Commissioner Howard assured the Board that she was given all the necessary
85 information to answer any questions regarding the complaints and stated the staff member
86 was unable to attend.

87 Chairman Alcorn asked if ELECT verified the facts in the complaint in regards to
88 the SOO. The Deputy Commissioner noted once again that the Board does not have
89 investigatory authority, so ELECT only provided the information provided to them in
90 regards to the SOO portion of the complaint. Deputy Commissioner Howard also added
91 that in the past the Board had the authority to assess SBYA violations, and that any
92 complaints or violations outside of SBYA were referred to the Commonwealth's Attorney.

93 Chairman Alcorn disagreed, asserting that the Board has the right to assess civil penalties
94 related to campaign finance; the Chairman stated this right is included in the campaign
95 finance violations summary posted on the ELECT website, pointing §13.2 which refers to
96 the Board's authority to give civil penalties for untimely SOOs. Secretary McAllister noted
97 this matter was discussed at the last meeting, and agreed with the Vice Chair about the
98 proficiency and helpfulness of the ELECT staff member who previously provided guidance
99 to the Board. Chairman Alcorn clarified the difference between investigating and
100 providing SOO reports available to ELECT in order to see what dates the SOOs were filed.
101 Chairman Alcorn then asked if ELECT staff pulled the reports that pertain to the complaint
102 in question.

103 Deputy Commissioner Howard noted ELECT's agreement that the Board has the
104 ability to levy penalties in the event of SBYA violations, but reiterated that any other
105 complaints are referred to the Commonwealth's Attorney. Chairman Alcorn asked if these
106 complaints to be heard at the meeting had been referred to the Commonwealth's Attorney.
107 Deputy Commissioner Howard said all individuals that filed a complaint were instructed
108 to contact the Commonwealth's Attorney about non-SBYA violations. The Chairman
109 clarified that the individuals submitted the complaints, not ELECT. The Deputy
110 Commissioner confirmed. Chairman Alcorn asked counsel from Anna Birkenheier,
111 Assistant Attorney General, asking if the Board has the authority, under the Code of
112 Virginia §24.2 and the summary of the campaign finance laws adopted by the Board and
113 available on ELECT's website, to assess civil penalties for campaign finance violations.
114 Ms. Birkenheier stated that matter is controlled by the delegation of authority, and that
115 while there are provisions that have some effect on the answer, counsel would need to first
116 understand how the penalties are normally assessed within that delegation.

117 Chairman Alcorn asked if a duty was delegated to ELECT, would the Board still
118 have authority to perform those actions? The Chairman also noted that if the Board
119 delegated authority to staff, then the Board had that authority originally and staff should
120 follow through according to the Board's recommendations. Ms. Birkenheier noted that it
121 may be helpful to bifurcate the non-SBYA violations to determine what the status of those
122 were in order to determine how those violations were assessed. Ms. Birkenheier requested
123 more information on that process in order to give counsel.

124 Vice Chair Wheeler noted the Board heard campaign finance violations and SBYA
125 violations, and perhaps filing violations, in the past. The Vice Chair questioned when and
126 why the the Board's ability to review campaign violations changed. Chairman Alcorn
127 echoed the confusion, but noted the Board should move forward in reviewing the
128 complaints. The Chairman stated the Board should have authority to assess campaign
129 finance violations, including those regarding expenditure and contribution reports, SOO
130 reports, and SBYA complaints, and then suggested tabling SOO complaints in order to
131 move forward with the others until the matter was settled with counsel.

132 The second complaint in regard to Awareness Manassas PAC regarded false
133 information on the original SOO. Chairman Alcorn stated that false information usually
134 falls into two categories: late or incomplete reports and false statements. Late or
135 incomplete reports have a pathway before the Board, which requires notice to the alleged
136 violator to give time to respond or amend; whereas false statements are a criminal issue
137 that would be sent to the Commonwealth's Attorney. The Chairman noted the Board could
138 not assess a civil penalty today, as if the complaint was regarding a late or incomplete
139 report, notice is required; and if the complaint is a false statement, it will need to be referred
140 to the Commonwealth's Attorney.

141 The third complaint was in regard to a SBYA violation in the form of a set of three
142 mailers. Chairman Alcorn directed the Board to the first two mailers, and noted that
143 ELECT did not recommend penalties as there was no express advocacy on them. The
144 Chairman explained that ELECT was using the guidelines of the "magic words" of express
145 advocacy, including words like "vote for," "defeat," etc., which are expressed in the
146 campaign finance summaries adopted by the Board. Chairman Alcorn noted that using
147 those guidelines, the first two mailers did not meet the standards of express advocacy. Vice
148 Chair asked for clarification. Chairman Alcorn clarified that the first two mailers were not
149 in violation as they did not contain express advocacy as defined by the Board in the past or
150 in the campaign finance summary. The Chairman noted in the past the Board did not define
151 express advocacy through regulation or policy, but defined it in the campaign finance
152 summaries where the definition contained the use of the "magic words" definition. Using
153 that definition, the first two mailers did not meet the standards for express advocacy.

154 Secretary McAllister asked to hear from the Deputy Commissioner in regards to
155 the staff recommendation. Deputy Commissioner Howard clarified the Chairman's
156 interpretation is the ELECT'S position; the first two mailers did not contain express
157 advocacy, and therefore, did not require disclaimers. Chairman Alcorn directed the Board
158 to the third mailer, which did contain express advocacy. The Chairman clarified the people
159 present in the audience were those who filed the complaint against Awareness Manassas.
160 The Chairman noted the difference between a first-time offense with a \$100 civil penalty,
161 and a remedial offense, where the offender apologized or remediated, with a \$50 civil
162 penalty. Chairman Alcorn observed that no member or representative of Awareness
163 Manassas was present, and that no apology or remedy was made on behalf of the PAC.

164 Deputy Commissioner Howard directed the Board's attention to an email from
165 Integrity Manassas, wherein the entity claimed the SBYA disclaimer errors were
166 unintentional. Chairman Alcorn considered the email an apology; therefore, as stated in
167 the campaign finance summaries, the violation would result in a reduced \$50 civil penalty.
168 Vice Chair Wheeler voiced concern with the policy regarding apologies; Chairman Alcorn
169 acknowledged the concerns, but reiterated the importance of adhering to past practices of
170 the Board.

171 The fourth and fifth complaints were in regards to SOOs; as such, these complaints
172 were tabled until the next meeting. The Chairman summarized the complaints against
173 Awareness Manassas thus far, noting items one and four were tabled until a conversation
174 with counsel about the Board's authorities could happen; items two and five were given to
175 staff to see if notice needs to be given if evaluated as late or incomplete and/or if the
176 complaints need to be sent to the Commonwealth's Attorney; item three, which was a
177 complaint about the disclaimers, contained mailers one and two which had no express
178 advocacy resulting in no civil penalty; and item three, constituted of mailer three, did
179 contain express advocacy for which the Board assessed a first time offender's penalty of
180 \$100. However, considering the apology, the Board assessed a reduced \$50 civil penalty.

181 Steve Hersch, a constituent from Manassas who filed the complaint against
182 Awareness Manassas, then spoke. Mr. Hersch addressed the express advocacy issue, and
183 encouraged the Board to use the definition of express advocacy from 11 CFR, §100.22 b.
184 The definition includes, in addition to the "magic words" language, the functional

185 equivalent of express advocacy; the definition of which reads: “When taken as a whole and
186 with limited reference to external events, such as the proximity to the election, could only
187 be interpreted by a reasonable person as containing advocacy of the election or defeat of
188 one or more clearly identified candidate (s) because – (1) The electoral portion of the
189 communication is unmistakable, unambiguous, and suggestive of only one meaning; and
190 (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat
191 one or more clearly identified candidate (s) or encourages some other kind of action.”

192 Mr. Hersch also requested the Board direct campaign finance violations to the
193 Commonwealth’s Attorney, rather than instructing individuals to do so. Chairman Alcorn
194 thanked Mr. Hersch and agreed on both fronts, but discussed the Board’s need to be
195 transparent and follow due process, current policies, and regulations, especially in regards
196 to express advocacy. Vice Chair Wheeler asked Mr. Hersch when the first complaint was
197 submitted to ELECT, and Mr. Hersch replied that he submitted an informal complaint just
198 after the November 8, 2016 election, and a formal complaint in February. Chairman Alcorn
199 *moved the Board assess a civil penalty of \$50 against Awareness Manassas.* Secretary
200 McAllister seconded the motion. The motion passed unanimously.

201 The next order of business was to review the complaint against Friends of Team
202 Manassas. The violation was a SBYA violation, and Chairman Alcorn and ELECT staff
203 found that the ad contained express advocacy. Chairman Alcorn noted there was a
204 disclaimer on the ad, but there also needed to be an authorization disclaimer. ELECT staff
205 recommended a \$100 civil penalty for a first time offense. The Chairman then asked Mr.
206 Hersch how many ads the complaint contained.

207 Mr. Hersch then spoke, clarifying that the complaint encompassed the website for
208 Friends of Team Manassas, the Facebook page for Friends of Team Manassas, the Youtube
209 page for Friends of Team Manassas, and three separate direct mail pieces; making for a
210 total of 6 ads. Chairman Alcorn directed the Board to the website advertisement and one
211 of the mailers. Consistent with the staff recommendation, the Board found express
212 advocacy in both ads, and while each had the required “paid for” disclaimer, they did not
213 contain the required authorization disclaimer. The Chairman then asked if the Board
214 should treat these two ads as a first and second violation, and the Vice Chair and Secretary
215 recommended treating them as two different violations.

216 Mr. Hersch then added that the mailings were sent out close to the election.
217 Chairman Alcorn stated that if a violation occurred within the fourteen (14) days prior to
218 or on Election Day, penalties will be doubled. Mr. Hersch stated he could provide
219 additional information showing these mailings occurred within that timeframe. Ms.
220 Birkenheier noted that if there was additional information, that the additional information
221 would need to be sent to Friends of Team Manassas for due process. Chairman Alcorn
222 suggested tabling the discussion until Mr. Hersch provided the additional information and
223 Friends of Team Manassas received proper notice.

224 Mr. Hersch stated he could provide additional information in regards to Awareness
225 Manassas and the timing of their mailers, proving they were sent within the fourteen (14)
226 days prior to or on Election Day. Chairman Alcorn stated that would affect the civil
227 penalty, and that proper notice would need to be given to that committee as well. Mr.
228 Hersch provided a document showing Awareness Manassas's mailing dates from the
229 United States Postal Service (USPS). Vice Chair Wheeler asked if Awareness Manassas
230 was provided with this information, and Deputy Commissioner Howard noted that while
231 they were sent a copy of the complaint, they were not sent that particular piece of
232 information. The Vice Chair then asked if Awareness Manassas aware of the complaint
233 against them and that it was to be heard during the May 1 SBE meeting. The Vice Chair
234 also asked if they responded. Deputy Commissioner Howard answered Awareness
235 Manassas did respond and was aware the complaint would be heard during the meeting.

236 Chairman Alcorn asked Ms. Birkenheier if the Board could use the USPS
237 information as evidence the ads were sent within fourteen (14) days of the election. Ms.
238 Birkenhier suggested Awareness Manassas be provided the information and given an
239 opportunity to respond, but if the Board wanted to make a decision on the other complaints,
240 considering Awareness Manassas was aware of the rest of them, that would be appropriate
241 as well. Vice Chair Wheeler stated this serves as an example of why the Board should
242 receive SBYA complaints when they are first received by ELECT, and requested to receive
243 those requests when first submitted.

244 Chairman Alcorn *moved to reconsider the earlier approved motion to assess a civil*
245 *penalty of \$50.* Secretary McAllister seconded the motion. The Chairman suggested the
246 Board amend the previously assessed penalty based on the fact the violation was within the

247 fourteen (14) days before or on Election Day. Violations that occur within fourteen days
248 result in doubled penalties, so the civil penalty was doubled, resulting in a civil penalty of
249 \$100. Chairman Alcorn *moved for the Board to assess a \$100 civil penalty to Awareness*
250 *Manassas*. Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

251 The next order of business was to assess the SBYA complaint against Brandon
252 Howard. The Board found that everyone listed on the advertisement, including local, state,
253 or federal candidates, would need to be included in the required disclaimer. As the
254 advertisement did not include all of the named candidates, the Board found it to be a first
255 time offense for print media, for a civil penalty of \$100. Ms. Birkenheier pointed out,
256 however, that the Board previously discussed Mr. Howard's case, and had dismissed it.

257 The next complaint discussed was against Joe Lindsey for Senate. The Board found
258 the advertisement did fit the definition of express advocacy, and that the advertisement was
259 missing the required disclaimer. ELECT staff recommended a \$100 civil penalty for a first
260 time offense for print media. Chairman Alcorn found, however, that the complaint was
261 first received on June 16, 2016, which was over a year from this meeting. The statute of
262 limitations for SBYA violations is one year, so the Board could assess no penalty for the
263 violation. The Chairman checked with Ms. Birkenheier, who agreed with the assessment.
264 Chairman Alcorn *moved the Board find there is a violation but assess no civil penalty due*
265 *to the statute of limitations in the complaint against Joe Lindsey for Senate*. Vice Chair
266 Wheeler seconded the motion, and the motion passed unanimously.

267 The next complaint before the Board was against the Daniels Campaign. ELECT
268 staff found the advertisement did not contain express advocacy, and therefore
269 recommended no penalty. Chairman Alcorn checked the assessment with Deputy
270 Commissioner Howard, who confirmed it. The Chairman agreed with the assessment, and
271 also noted that this complaint was close to exceeding the statute of limitation, as it was
272 submitted in July of 2016. Chairman Alcorn *moved the Board find no violation and assess*
273 *no penalty in the complaint against the Daniels Campaign*. Secretary McAllister seconded
274 the motion, and the motion passed unanimously.

275 The next complaint before the Board was against Councilwoman Ellen F.
276 Robertson. Chairman Alcorn began with a pamphlet, where the Board found there was no
277 express advocacy and therefore, no disclaimer was necessary. Deputy Commissioner

278 Howard noted ELECT staff received two possible violations – the pamphlet and three
279 letters, contained in a single envelope. Both were received in September of 2016.
280 Chairman Alcorn found the letters contained no express advocacy, but the envelope did.
281 Therefore, the Board found a disclaimer was necessary. Chairman Alcorn *moved the Board*
282 *assess a civil penalty of \$100 for a first time offense of the print media disclaimer*
283 *requirements against the Ellen Robertson campaign.* Vice Chair Wheeler seconded the
284 motion, and the motion passed unanimously.

285 The next complaint before the Board was against Friends of Candidate Coleman.
286 The Board found two separate violations, as the advertisements each contained express
287 advocacy but no disclaimers. The Board assessed a first time civil penalty of \$100, and a
288 second time civil penalty of \$250, making for a total civil penalty of \$350. Chairman
289 Alcorn *moved the Board assess a civil penalty in the amount of \$350 against Friends of*
290 *Candidate Coleman.* Vice Chair Wheeler seconded the motion, and the motion passed
291 unanimously.

292 The next complaint before the Board was against Hassan J. Fountain for 3rd District.
293 The Board found three advertisements included as part of the complaint against Mr.
294 Fountain, and that all three advertisements contained express advocacy, as defined in the
295 campaign finance summaries posted on ELECT's website. Mr. Fountain responded to the
296 complaint in a letter, sending pictures that allegedly showed that two of the items did in
297 fact have disclaimers. Chairman Alcorn noted the size of the disclaimers, and stated the
298 Code of Virginia states disclaimers must be conspicuous. The Chairman argued one of the
299 disclaimers Mr. Fountain provided was an appropriate size, while the other was not.
300 ELECT staff's recommendation stated neither disclaimer was conspicuous. Chairman
301 Alcorn suggested penalizing two of the items, with a \$100 civil penalty for a first time
302 violation and \$250 for a second, resulting in a total of a \$350 civil penalty. Chairman
303 Alcorn *moved the Board assess a civil penalty in the amount of \$350 against Hassan J.*
304 *Fountain for the 3rd District Campaign.* Vice Chair Wheeler seconded the motion, and the
305 motion passed unanimously.

306 The next complaint before the Board was against Joe Morrissey for Mayor during
307 the November 8, 2016 General Election. The Board examined a sample ballot, submitted
308 as part of the complaint, and noted sample ballots are included under the Code of Virginia

309 under §24.2-622 as advertisements that can be penalized. Chairman Alcorn noted Mr.
310 Morrissey's campaign provided a letter, explaining there was an error during the printing
311 process. Chairman Alcorn stated previously the Board found campaigns liable for any
312 materials that went out, even if the error was a printer's error. Secretary McAllister agreed
313 the Chairman's assessment was consistent with past practices. The Chairman asked
314 Deputy Commissioner Howard if this was a first time SBYA offense from Mr. Morrissey.
315 The Deputy Commissioner noted there were no prior offenses in Mr. Morrissey's mayoral
316 or general election campaigns. Chairman Alcorn suggested a \$100 penalty for a first time
317 violation, but asked the Board if the letter provided by the Morrissey campaign should
318 count as an apology or explanation.

319 Georgina Cannan, Voter Protection & Policy Director for the Democratic Party of
320 Virginia, then spoke, noting the sample ballot was not a proper Richmond City Democratic
321 sample ballot. Ms. Cannan noted that on the letter and sample ballot Mr. Morrissey claimed
322 to be the Democratic Party's endorsed candidate, despite Levar Stoney being the true
323 endorsee. Ms. Cannan further noted the other candidates listed on the sample ballot did
324 not sign off for the use of their names, and though the ballot claimed to be from the
325 Democratic Party, it was not.

326 Chairman Alcorn readdressed the letter that Mr. Morrissey's campaign sent as a
327 possible explanation or apology. Vice Chair Wheeler noted if the complaint was originally
328 heard on the May 1, 2017 SBE meeting, as it was scheduled to be, the Board would not
329 have received the letter. Deputy Commissioner Howard added notice for the May 1, 2017
330 meeting was not properly delivered to the Morrissey campaign due to an incorrect address,
331 but notice for the June 27, 2017 meeting was properly received.

332 The Chairman assessed the letter could count as an explanation, which would result
333 in the \$100 first time penalty being reduced to \$50, and Secretary McAllister agreed.
334 Chairman Alcorn then *moved the State Board of Elections assess a civil penalty of \$50*
335 *against the Joe Morrissey for Mayor campaign.* Vice Chair Wheeler seconded the motion,
336 and the motion passed unanimously.

337 The next complaint to be heard by the Board was against Singh for Mayor. The
338 Board found the following in regards to the seven mailers included from several
339 complainants as alleged violations:

- 340 • The first and third mailers contained express advocacy, and did not have the
341 required disclaimer. As they were the same advertisement, they collectively
342 represented a first time offense, which carries a \$100 civil penalty.
- 343 • The second mailer contained express advocacy, and did not have the
344 required disclaimer, making it a second violation for a \$250 civil penalty.
- 345 • The fourth and sixth mailers contained express advocacy, and did not have
346 the required disclaimer, making a third violation for a \$500 civil penalty.
- 347 • The fifth and seventh mailer each contained express advocacy, and did not
348 have the required disclaimers, making a fourth and fifth violation. Penalties
349 for four or more violations are \$1,000 each, making these violations \$2,000.

350 The Board assessed a \$2,850 civil penalty for five violations. Deputy
351 Commissioner Howard noted Mr. Singh wrote a letter in response. Chairman Alcorn
352 reviewed the explanations Mr. Singh provided, but the Board did not find the explanations
353 to fit the Code definitions to reduce the fine. Ms. Birkenheier pointed out the letter sent to
354 Mr. Singh suggested that civil penalties could not exceed \$2,500. Chairman Alcorn *moved*
355 *the Board assess a civil penalty of \$2,500 for Singh for Mayor.* Vice Chair Wheeler
356 seconded the motion, and the motion passed unanimously.

357 The next complaint before the board was against Friends of BJ Brown. Chairman
358 Alcorn summarized the complaints, including a complaint that was tabled as it related to
359 the timeliness of the SOO and a complaint that was to be forwarded to the
360 Commonwealth's Attorney. The Board found no express advocacy in the complaint
361 pertaining to SBYA, so, in accordance with ELECT staff's recommendation, suggested no
362 penalty. Chairman Alcorn *moved the Board find no violation and assess no civil penalty*
363 *against BJ Brown for the advertisement in question.* Secretary McAllister seconded the
364 motion, and the motion passed unanimously.

365 The next complaint heard by the Board was against Linwood Johnson, III. The
366 complaint concerned a business card and letter. The Board found the complaints fell under
367 the Board's definition of express advocacy, and that the advertisements did not have the
368 required disclaimers. Chairman Alcorn found the advertisements violated the print media
369 requirements, and assessed a civil penalty of \$100 for first time offense. The Chairman
370 noted, however, that the complaint was submitted in April of 2016, putting it past the 1-

371 year statute of limitation. Chairman Alcorn *moved the Board found a violation exists, but*
372 *assess no civil penalty because of the statute of limitations.* Secretary McAllister seconded
373 the motion, and the motion passed unanimously.

374 Chairman Alcorn *moved the Board recess for 15 minutes, to reconvene at 1:15PM.*
375 Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

376 Chairman Alcorn *moved the Board reconvene.* Vice Chair seconded the motion,
377 and the motion passed unanimously. The SBE reconvened at 1:30PM. The next order of
378 business was the ballot order drawing, presented by Ellen Flory, Elections
379 Administrator/Project Manager for ELECT. The Board drew from the following possible
380 political parties for the ballot order for the November General Election: Democratic,
381 Republican, Constitution, Green, Independent Green, and Libertarian. State law requires
382 the two recognized political parties be drawn first, and then other political groups. After
383 randomly drawing from the party names, enclosed in film canisters and mixed in a crystal
384 bowl, the ballot order is as follows:

385 First: Democratic

386 Second: Republican

387 Third: Constitution

388 Fourth: Libertarian

389 Fifth: Green

390 Sixth: Independent Green

391 Chairman Alcorn *moved the Board certify the determinations by law of the ballot*
392 *order for the general and special elections being held on November 7, 2017 and all other*
393 *special elections being held between today and November 7, 2017.* Secretary McAllister
394 seconded the motion, and the motion passed unanimously.

395 The next order of business was to certify the results of the June 13, 2017 Dual
396 Primary Election, presented by Ellen Flory, Elections Administrator/Project Manager. Ms.
397 Flory presented the abstracts for certification, and the Board decided to physically sign
398 them after the meeting. Chairman Alcorn asked if there were any lessons learned, and
399 Deputy Commissioner Howard replied that the election ran smoothly.

400 John Findlay, Executive Director of the Republican Party of Virginia, then spoke.
401 Mr. Findlay attributed part of the success to the proper number of ballots being printed.

402 Deputy Commissioner Howard agreed, and thanked the parties, local Electoral Boards, and
403 local General Registrars throughout the elections community who helped during the
404 election; the Deputy Commissioner also mentioned that the turnouts for the primary
405 elections were higher than originally predicted. After analyzing absentee ballot rates and
406 comparing predictions to the number of ballots each locality ordered, ELECT encouraged
407 localities to order more ballots, and the localities did so.

408 Vice Chair Wheeler then invited Gary Fox, Customer Service Manager for
409 PrintElect's Virginia office, to speak. Mr. Fox recounted working with Cameron Sasnett,
410 Fairfax County General Registrar, to provide enough ballots for Fairfax County's primary
411 elections. Mr. Fox detailed other efforts Printelect took to ensure all additional ballots
412 ordered were delivered to multiple localities within 24 hours. Mr. Fox noted Printelect
413 printed a total of 36,377 ballots for those localities. Mr. Sasnett then commented, and
414 reiterated Mr. Fox's comments. Mr. Sasnett recalled Fairfax County's efforts to monitor
415 their ballot number and anticipate ballot needs, and noted Mr. Fox's significant help.

416 Chairman Alcorn then *moved the Board certify the results of the June 13, 2017*
417 *primaries as presented and declare the winners of each primary to be that party's nominee.*

418 Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

419 Chairman Alcorn notified the Board of legislation related to exemptions from the
420 Administrative Procedure Act (APA), a federal law that, among other functions, requires
421 executive agencies to submit changes to regulations for public comment. The State Board
422 of Elections has an exemption from the APA public comment period under law; as part of
423 a planned periodic review, the General Assembly asked the Board to explain why it would
424 like to continue to have this exemption from the typical APA public comment period.
425 Chairman Alcorn noted that the deadline is later in the summer (August 1), and planned to
426 draft something to have at the next Board meeting for approval. The Chairman explained
427 the Board is exempt from public comment because, as a nonpartisan board, there could be
428 potential for political influence through public comment. The Chairman noted, however,
429 the importance of public comment for transparency; as the Board is a public board, the
430 public should have the ability to comment. Secretary McAllister requested a copy of the
431 rationale before the next Board meeting, and Chairman Alcorn agreed. Vice Chair Wheeler
432 also voiced support for public comment.

433 Chairman Alcorn next discussed the definition of “express advocacy”, and
434 suggested that the best way to define the topic was through regulation; he suggested that
435 the Board hold a future meeting to discuss regulation that would broaden the definition of
436 express advocacy beyond the “magic words” definition. The Chairman also discussed the
437 need to clarify the Board’s authority on campaign finance violations. The Chairman stated
438 the Board should have authority, and also reiterated the Board’s request to receive
439 campaign finance complaints sooner so that the statute of limitations would not come into
440 play. Vice Chair Wheeler agreed, and the Chairman further requested the Board receive a
441 copy of the notice that goes to the candidate or committee with the complaint against them,
442 as well as any related complaint materials as soon as the materials are received by ELECT.
443 Secretary McAllister commented on the need for an ELECT staff member responsible for
444 campaign finance or SBYA violations to be present at future Board meetings to assist the
445 Board in that regard. Chairman Alcorn *moved the Commissioner instruct his staff to send*
446 *copies of any complaints related to campaign finance or political advertisements to the*
447 *Board within one (1) week of receipt at the agency, and similarly send copies to all three*
448 *Board members whenever notifications regarding campaign finance or Stand by Your Ad*
449 *violations are sent to alleged defendants.* Vice Chair Wheeler seconded the motion, and
450 the motion passed unanimously.

451 The meeting then opened to public comment. John Findlay, Executive Director of
452 the Republican Party of Virginia, spoke again to discuss a letter sent to the Commissioner
453 of ELECT, on which Vice Chair Wheeler was copied, which was then forwarded to the
454 Deputy Commissioner. Mr. Findlay noted that the Party Chairman in Spotsylvania County
455 did not file the required documents to certify Chris “Yak” Yakabouski, the prospective
456 Republican candidate for the Battlefield Board of Supervisors, by the statutory deadline.
457 Mr. Findlay requested the Board move, as permitted by section 2 of §24.2-511, that Chris
458 Yakabouski be named the Republican candidate for the Battlefield Board of Supervisors
459 election in November 2017. Chairman Alcorn *moved under §24.2-511, sub-paragraph B,*
460 *to certify Chris Yakabouski as the Republican nominee for the Spotsylvania County*
461 *Battlefield District Board of Supervisors.* Vice Chair Wheeler seconded the motion. Ms.
462 Birkenheier then asked if the nominating event happened before the deadline. Mr. Findlay
463 said yes, the nominating event did happen before the deadline. Mr. Findlay explained that

464 Mr. Yakabouski was the only candidate to file, which should have made him the nominee,
465 but the nominating party at the mass meeting decided to remove him from the nomination
466 in violation of the party's by-laws. The matter was appealed through the party's internal
467 appeals process, and arrived to the State Central Committee on June 24, 2017, where the
468 Committee decided Mr. Yakabouski's name should be put in as the certified nominee.
469 Chairman Alcorn noted there was both a motion and a second, and the motion passed
470 unanimously.

471 Robin Lind, Electoral Board member from Goochland County and Secretary of the
472 General Registrar and Electoral Board (GREB) Workgroup, then spoke. Mr. Lind
473 discussed a 2016 report from the GREB Workgroup that was submitted to the Board in
474 January, and noted the group received no reply from either the Board or ELECT. Mr. Lind
475 stated that he had also appeared before the Board on this topic during the May 1, 2017
476 meeting; Mr. Lind noted the Workgroup includes three former presidents of the Virginia
477 Registrars Association, three former presidents of the Electoral Board Association, and two
478 current presidents of VRAV and VEBA. Mr. Lind pointed out that in 2015, the State Board
479 acted on and adopted the recommendations from the GREB Workgroup's report, so is
480 seeking an answer as to why neither the Board nor ELECT has responded to the 2016
481 Report. Mr. Lind also stated that if the Board does not want to answer, the Workgroup can
482 take the report to the legislature.

483 Chairman Alcorn apologized, and asked the report go to the Board rather than the
484 legislature. Mr. Lind asked for a response to the report, and the Chairman stated the report
485 should be on the next Board agenda for discussion. Mr. Lind asked for reassurance to be
486 on the agenda, and the Chairman gave reassurance. Secretary McAllister suggested
487 sending the report to ELECT staff for feedback to provide the Board before the next Board
488 meeting, and Deputy Commissioner Howard agreed to bring the suggestion to the
489 Commissioner.

490 Cameron Sasnett, Fairfax County General Registrar, then spoke, to discuss the
491 letter sent to the Board in April regarding non-citizens that identified through the
492 Department of Motor Vehicles (DMV) in 2016 and subsequently loaded into the Virginia
493 Election and Registration System (VERIS) in the spring of 2017. Mr. Sasnett asked the
494 Board if the letter was received, and if the letter would be answered. Chairman Alcorn

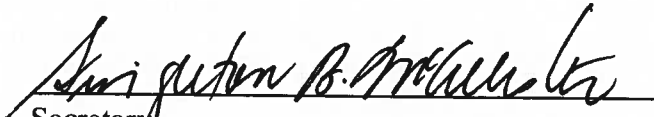
495 deferred to ELECT to respond to the letter, and will respond if there is a specific question
496 to answer.


497 Vice Chair Wheeler noted the DMV submitted the names of people DMV flagged
498 as non-citizens before the November 2016 election. The Vice Chair further noted the
499 Board asked the Commissioner, after being notified in February, for information regarding
500 this. Vice Chair Wheeler requested clarification on how the DMV comes up with these
501 names, how those names are loaded into VERIS, and why local registrars were not given
502 those names until after the November election. Mr. Sasnett noted without an explanation,
503 voters may be disenfranchised, and described situations where Fairfax County provided
504 provisional ballots to voters who were caught up in this delayed information transmittance.
505 Chairman Alcorn stated the Board would follow up with the Commissioner and ELECT.

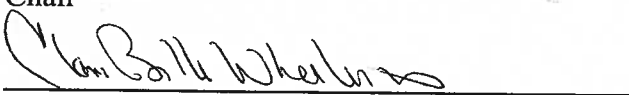
506 William Bell, Electoral Board member from Isle of Wight County, spoke and
507 recalled issues in Isle of Wight County with the DMV. Mr. Bell noted their registrar's
508 office gets at an average of twenty (20) DMV related issues with voter registration and
509 non-citizen statuses a month. Chairman Alcorn encouraged Mr. Bell to send the issues
510 detailed to Matthew Davis, CIO at ELECT.

511 Vice Chair Wheeler reiterated the seriousness of the issue, and Chairman Alcorn
512 acknowledged the problems brought up by all present, but stated ELECT was responsible
513 for working with DMV to fix it. Vice Chair Wheeler asked again for the list of information
514 on the DMV process from ELECT, and Deputy Commissioner Howard agreed to remind
515 the Commissioner to provide it.

516 Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler
517 seconded the motion. Chairman Alcorn then adjourned the meeting. The meeting was
518 adjourned at approximately 1:55PM. The Board did not set the date and time of its next
519 meeting.

520
521 
522 Secretary

523
524 
525 Chair

526
527 

528
529

Vice Chair