

1 MINUTES

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3 The State Board of Elections board meeting was held on Monday, May 21, 2018.  
4 The meeting was held in Senate Room 3 in the Virginia State Capitol in Richmond,  
5 Virginia.

6 In attendance: James Alcorn, Chairman; Clara Belle Wheeler, Vice Chair; and  
7 Singleton McAllister, Secretary represented the State Board of Elections (“The Board”).  
8 On behalf of the Department of Elections (“ELECT”) was Christopher E. “Chris” Piper,  
9 Commissioner. In attendance, representing the Office of the Attorney General (“OAG”),  
10 was Anna Birkenheier, Assistant Attorney General. Chairman Alcorn called the meeting  
11 to order at 10:38 AM.

12 The first order of business was to approve the minutes from the April 25, 2018  
13 meeting. Secretary McAllister *moved the Board approve the minutes as presented for the*  
14 *April 25, 2018 meeting.* Chairman Alcorn seconded the motion, and the motion passed  
15 unanimously.

16 The next order of business was the Commissioner’s report, presented by  
17 Commissioner Piper. The Commissioner reminded the Board that the last day to register  
18 to vote in the June 12 primary was May 21, and said there was a statewide senate primary  
19 for the Republican party and some congressional primaries; there would be some dual  
20 primaries in a number of localities, but ELECT and local staff were prepared.  
21 Commissioner Piper discussed meeting with continuity of operations partners to discuss  
22 and prepare communication and possible threats for the upcoming election day.

23 Commissioner Piper addressed the post-election audits the Board approved during  
24 the April 25 meeting. The post-election audits, requested by Prince William County and  
25 the City of Norfolk, were to take place following the May 1 election; but after the May 1  
26 election, ELECT discovered issues that would have prevented successful audits. The  
27 Commissioner noted that Prince William County wanted to run four different types of  
28 audits on four different precincts. §24.2-671.1, subsection C, required, however, that the  
29 margin between the top two candidates for each office on the ballot exceeds 10 percent. In  
30 three of the four precincts Prince William County planned to audit, that was not the case.  
31 Virginia Code also requires that the statutory period of time after an election during which

32 a recount may be requested must expire before an audit can be conducted. For both Prince  
33 William County and the City of Norfolk, the time to request a recount had not expired  
34 before the planned audit. Commissioner Piper stated ELECT reviewed the procedures  
35 provided by the localities and believed the procedures required additional work before use.  
36 Both Prince William County and the City of Norfolk agreed to plan their post-election  
37 audits to review the results of the June primary in July, and would work with ELECT staff  
38 to be fully prepared. Commissioner Piper informed the Board that after July 1, ELECT  
39 would have a report for the Board on the procedures and results of the audit.

40 The Commissioner introduced James Heo, the Confidential Policy Advisor at  
41 ELECT, who started on May 1, 2018. Mr. Heo's primary responsibility would be to work  
42 with Information Services to provide communication both internally and externally on their  
43 activities, including changes in VERIS, working with policy and other divisions, and  
44 communications with the elections community as a whole. Mr. Heo would also take the  
45 lead on the post-election audit reviews, and assist in developing procedures for the Board  
46 to consider. The Commissioner introduced Tammy Alexander, a former Petersburg  
47 Electoral Board ("EB") member, who joined ELECT as the new Campaign Finance  
48 Program Analyst. Ms. Alexander began as an electoral board member in 2010, and the  
49 Commissioner shared that Ms. Alexander's experience working with candidates on  
50 campaign finance would be helpful to ELECT, in addition to the campaign finance work  
51 already done by Risé Miller. Vice Chair Wheeler said Ms. Alexander's experience as an  
52 EB member would bring a new perspective to the Department.

53 Commissioner Piper addressed recent news articles relating to the issue of mis-  
54 assigned and misplaced voters. The Commissioner said that ELECT would prepare a  
55 Powerpoint presentation for the next Board meeting to explain the situation and to cover  
56 the work ELECT has done so far. Commissioner Piper noted that while many lessons had  
57 been learned, much work remains to be done in this area; the Commissioner also said that  
58 ELECT was working with localities to address the issue. Chairman Alcorn said that the  
59 Washington Post identified a number of mis-assigned voters, and asked if the paper sent  
60 ELECT lists of other voters who were similarly mis-assigned. The Chairman recalled that  
61 a list was sent to ELECT's previous administration, but that the list may have been lost  
62 during the transition of administrations. Commissioner Piper stated that ELECT did its

63 own review, including a thorough review of all congressional districts as the priority due  
64 to the upcoming elections. Because ELECT was conducting an ongoing review, along with  
65 localities conducting reviews of their own, the number of possibly mis-assigned voters was  
66 constantly changing. Commissioner Piper thanked ELECT staff and localities for the work  
67 done.

68 Chairman Alcorn suggested ELECT contact the Washington Post to see if they have  
69 a list of mis-assigned and misidentified voters that could help with the process. Vice Chair  
70 Wheeler noted after a meeting with the previous Commissioner of ELECT, Edgardo  
71 Cortés, that Mr. Cortés stated ELECT knew of many mis-assigned voters but did not fix  
72 the issue. Vice Chair Wheeler stated that ELECT knew of the mis-assigned voters issue  
73 for two years, and referenced a bill in the recent legislative session that would have required  
74 localities to work with ELECT to be sure their districts were accurate and that voters were  
75 properly assigned. Chairman Alcorn mentioned the work that Commissioner Piper said  
76 was being done to remedy the situation currently, and acknowledged the enormity of the  
77 project. The Vice Chair offered the Board's assistance to ELECT and the localities in the  
78 undertaking. Commissioner Piper assured the Board a more in-depth update at the next  
79 meeting, and said that ELECT would continue to work with legislators and localities on  
80 solutions.

81 The Commissioner informed the Board that Friday, May 18, was Matthew Davis's  
82 last day as ELECT's Chief Information Officer. The Commissioner commended Mr.  
83 Davis's work in the eight years he worked for the Department, notably the enormous  
84 improvements in the Virginia Election and Registration Information System ("VERIS").  
85 Secretary McAllister thanked Mr. Davis for the hard work that's been done, and asked that  
86 ELECT move quickly to fill the position in his absence. Commissioner Piper assured the  
87 Board that ELECT was working closely with the Department of Human Resource  
88 Management ("DHRM"), the Governor's office, and the Virginia Information Technology  
89 Agency ("VITA"), to find a successor in an expedited manner.

90 Commissioner Piper then updated the Board on issues that arose in mid-April, when  
91 ELECT learned that the City of Hopewell General Registrar (GR) had resigned and that  
92 the Hopewell electoral board had not identified a replacement general registrar. ELECT  
93 worked closely to ensure that operations continued in the GR's absence; the Department

94 contacted former James City County GR, AJ Cole, asking that he serve as temporary  
95 Deputy GR so that operations would continue until the EB appointed a full-time GR.  
96 Commissioner Piper also mentioned that the City of Galax used Kaspersky software. The  
97 Department of Homeland Security had previously identified Kaspersky software as a  
98 threat, so ELECT worked with the locality to remove and replace the software.

99 Chairman Alcorn asked the Commissioner if there were any updates on the Virginia  
100 Elections Benchmark Index Workgroup, a workgroup which the Board formed during the  
101 April 25, 2018 Board meeting. Commissioner Piper informed the Board that the first  
102 meeting of the Workgroup would take place on June 25, 2018, at 5 PM, following annual  
103 training. The Commissioner said the members of the Workgroup had been identified, and  
104 that ELECT was in the process of hiring a data analyst, who would serve as the additional  
105 staff member in the Workgroup. Commissioner Piper stated the group had experience  
106 developing strategic plans, and would conduct a full review of elections to create  
107 benchmarks for the entire elections community.

108 Vice Chair Wheeler revisited the topic of Hopewell, noting the amount of work that  
109 went into remedying the situation. The Vice Chair underscored the serious nature of the  
110 problem, and the importance for EBs to appoint GRs well in advance of a transition. Vice  
111 Chair Wheeler discussed the lack of background checks in hiring processes, noting  
112 particularly that background checks are not required for local elections officials. The Vice  
113 Chair noted that these local elections staff have access to VERIS, and therefore have access  
114 to the name, date of birth, address, and social security number for all registered Virginians.  
115 The Vice Chair suggested ELECT and the Board examine how people are hired for these  
116 roles, and create and maintain a list of former GRs that would be willing to work in a  
117 locality during an emergency. Chairman Alcorn mentioned that the GREB Handbook used  
118 to have a section that gave advice and best practices regarding hiring general registrars.  
119 Commissioner Piper noted that section was still in the Handbook, and also mentioned that  
120 the Handbook was being updated with a target release date of June 1. The revised  
121 Handbook would be improved in terms of usability and information, and was sent to  
122 different localities for feedback. The Commissioner also said all liaisons at ELECT were  
123 Virginia Registered Election Official (VREO) certified, and receive additional training to  
124 assist and train new GRs. Commissioner Piper discussed the idea of a web-access training

125 in the web learning management system that newly appointed GR and EB members could  
126 access and complete. The Benchmark Index Workgroup would focus on what training  
127 would be needed throughout the year so all the crucial training could extend beyond annual  
128 training. Vice Chair Wheeler noted the same issue happened in a previous year. The Vice  
129 Chair encouraged the idea of additional training, and offered Board support in the efforts.

130 The next order of business was to review memos regarding Stand By Your Ad  
131 (“SBYA”) complaints, presented by Arielle A. Schneider, Policy Analyst with ELECT.  
132 Ms. Schneider reviewed the first memo, regarding express advocacy. This memo proposed  
133 that the Board move to adopt a policy re-defining express advocacy. The proposed  
134 definition mirrors the definition of express advocacy as defined in Federal Election  
135 Commission (“FEC”)’s regulation 11 C.F.R. §100.22, (52 U.S.C. 30101 (17)). Ms.  
136 Schneider informed the Board that the FEC’s definition was upheld twice in the 10<sup>th</sup> and  
137 4<sup>th</sup> circuits as constitutional and consistent with the First Amendment. Ms. Schneider noted  
138 that the suggested motion to adopt the revised definition of express advocacy as stated in  
139 the working papers must be amended. The original motion suggested that the Board adopt  
140 the definition as a policy by majority vote, but due to a consensus by ELECT and the Board  
141 that the definition of express advocacy should established through regulation rather than  
142 policy, the motion should be amended to provide that the definition be submitted through  
143 the regulatory process to become a new regulation. Although the Board enjoys an  
144 exemption from the Virginia Administrative Process Act for regulations that related to the  
145 conduct of elections, according to a 2014 OAG opinion, any regulations concerning §24.2-  
146 9.3 through §24.2-9.5 do not relate to the conduct of elections, and therefore are not exempt  
147 from the regulatory process.

148 Chairman Alcorn discussed the importance of revising the Board’s definition of  
149 express advocacy, noting the number of hearings in previous years using the current  
150 definitions that led to frustration and confusion. The Chairman discussed speaking with  
151 the Commissioner about moving forward with redefining express advocacy through the  
152 Administrative Process Act (APA), so that the Board can remain transparent and deliberate  
153 while also providing consistency for future Boards. Secretary McAllister inquired about  
154 the process to do this, and the Chairman said there would need to be public comment, a  
155 review from OAG and Governor’s office, and a number of other steps before the Board

156 could change their definition. Ms. Birkenheier said she could give a more thorough  
157 explanation to the Board separately if needed. Chairman Alcorn suggested that the  
158 proposal put up for public comment include more background about the issue so the public  
159 is fully informed of the situation before commenting. Vice Chair Wheeler also suggested  
160 emphasizing that the definition was pulled from federal guidelines.

161 The Chairman *moved that the Board submit this revised definition of express*  
162 *advocacy to the public for comment as required by the Virginia Administrative Process*  
163 *Act.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

164 The next memo Ms. Schneider covered outlined a proposed policy for the conduct  
165 of SBYA hearings. The proposed policy covered how the Board would conduct SBYA  
166 hearings. Chairman Alcorn voiced support of the memo. Vice Chair Wheeler asked if the  
167 memo had any information on timing and deadlines, noting the issues that arose with the  
168 previous administration on timeliness. Ms. Schneider directed the Board to the memo  
169 approved by the Board on standard operating procedures for SBYA on March 23, 2018.  
170 The March 23 memo outlined that all complaints must be forwarded to the Board within  
171 one week of receipt as well as requirements regarding scheduling the hearing. Chairman  
172 Alcorn asked Ms. Schneider where she drew the line between operating procedure and  
173 policy, and Ms. Schneider replied that operating procedures were written for ELECT staff  
174 to follow, whereas the proposed policy provides guidance to the Board on how to  
175 standardize SBYA hearings.

176 Vice Chair Wheeler suggested that language requiring ELECT staff to provide  
177 SBYA complaints to the Board within one week of receipt be added to the proposed SBYA  
178 Hearings policy. Commissioner Piper noted that adding the ELECT staff requirement to  
179 the SBYA Hearings policy may be repetitive but expressed willingness to add it to the  
180 policy if the Board wanted it there. Chairman Alcorn requested an offline discussion on  
181 the structure of the documents so the Board could focus on the SBYA hearings scheduled  
182 for the day. The Chairman asked if holding off approving the memo would affect the  
183 hearings, and Ms. Schneider replied it would not. Chairman Alcorn suggested waiting on  
184 approval until the changes could be made.

185 The next order of business was the SBYA hearings. Commissioner Piper directed  
186 the Board to the letter in the working papers from the Democratic Party of Virginia (DPVA)

187 and Republican Party of Virginia (RPVA), wherein both parties asked to withdraw their  
188 complaints against Ed Gillespie and Ralph Northam. Chairman Alcorn stated that a request  
189 for withdrawal should not factor into the Board's discussion of potential violations. The  
190 Chairman added that whether or not the complainant wished to pursue the complaint, a  
191 violation could still have happened. Chairman Alcorn stated that campaign finance and  
192 Stand by Your Ad laws exist to protect the voter, rather than to protect the candidates. Vice  
193 Chair Wheeler added that there could be value in discussing the allegations and making  
194 decisions that could act as guidance for others regarding the issue brought up by the  
195 complaint. Secretary McAllister agreed, noting it would be in the public interest to hear  
196 the complaints regardless of the complainants' requests to withdraw, in order to be  
197 transparent about rules, regulations, and policies and to help form a path in decision making  
198 for violations in the future. Chairman Alcorn asked Ms. Birkenheier if the law prevented  
199 the Board from hearing a complaint if the complainant withdrew, and Ms. Birkenheier said  
200 there was not. The Chairman suggested adding the Board's decision to consider the  
201 complaints without regard to the withdrawal request, to the operating procedures and  
202 proposed policy. Commission Piper agreed.

203 Chairman Alcorn recommended that complaints against individuals in attendance  
204 at the Board meeting be heard first, and Ms. Schneider noted that that practice would  
205 conflict with the provisions that were proposed in the previously discussed memo on  
206 proposed policies, and on docket for later approval pending changes. The proposed policy  
207 stated hearings would be heard in alphabetical order.

208 The first complaint heard was against Bart Randall for School Board. Ms.  
209 Schneider summarized the complaint, noting photographs provided as evidence as well as  
210 a letter Mr. Randall sent to ELECT on Sunday, May 20. Ms. Schneider read the letter for  
211 the Board; in the letter, Mr. Randall explained that he enlisted the help of a political  
212 consultant who did not make him aware of the disclosure requirements: when he was made  
213 aware of the requirements, he attempted to add the disclosure to his signs but was unable to  
214 find each one; Mr. Randall said he added the disclosure to three signs located at polling  
215 places on Election Day. Chairman Alcorn asked the Board if there was a violation, noting  
216 he did not see any attempted disclosure in the provided photographic evidence. The  
217 Chairman observed that Ms. Schneider recommended a fine of \$400, and asked how staff

218 counted the number of violations. Ms. Schneider explained the number of violations came  
219 from the number of signs reported in the complaint, which included the three polling place  
220 signs and one sign in front of the complainant's house.

221 Chairman Alcorn asked if that fining structure was different from previous Board  
222 procedures. Vice Chair Wheeler recalled that the Board decided that in the case of a  
223 newspaper ad, mailers, and flyers, an ad was only considered as one violation, regardless  
224 of the number of times it was printed. The Vice Chair noted, however, that with yard signs,  
225 the candidate would be aware of how many were ordered; therefore, the violations should  
226 count per sign. Secretary McAllister recalled similar proceedings. Vice Chair Wheeler  
227 said in this case someone notified Mr. Randall of the mistake, and that Mr. Randall tried to  
228 rectify it. Chairman Alcorn asked Commissioner Piper how occurrences were counted in  
229 the past. The Commissioner stated the only time "per occurrence" was mentioned in the  
230 Code was regarding television and radio advertisements, and that there was no solid rule  
231 regarding print media. The Commissioner left it up to the Board's discretion how  
232 occurrences should count.

233 Ms. Birkenheier asked how many signs were provided in the evidence, noting that  
234 all pictures could be of the same sign. Ms. Schneider said that in Mr. Randall's letter three  
235 undisclosed signs were mentioned at the polling places, and that the complainant  
236 mentioned the sign in their own yard. Vice Chair Wheeler said normally candidates knew  
237 if yard signs were placed at polling places, so asked why the three Mr. Randall mentioned  
238 were not changed. Ms. Schneider noted that Mr. Randall said he attempted to provide  
239 proper disclosure on Election Day, and said since it was Mr. Randall's first violation, she  
240 recommended a \$50 fine for the first violation, doubled to \$100 for the proximity to the  
241 election. Therefore, the fine was a first time violation with an apology/explanation from  
242 Mr. Randall, doubled due to proximity to the election, with four occurrences, resulting in  
243 a \$400 fine. Chairman Alcorn moved *subject to the Board's authority under the Code of*  
244 *Virginia §24.2-955.3, to find Bart Randall in violation of §24.2-956 Stand by Your Ad print*  
245 *media disclosure requirements with regard to four advertisements, and is hereby assessed*  
246 *\$400.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

247 The next hearing was against Cheryl Turpin for Delegate. Ms. Schneider  
248 recommended the Board find a violation because of a failure to properly disclose. Ms.



249 Schneider noted there was a disclaimer, but the disclaimer was not complete because the  
250 advertisement referenced another clearly identified candidate, Rocky Holcomb. §24.2-  
251 956.2 provides that “in an advertisement sponsored by a candidate or candidate campaign  
252 committee that makes reference to any other clearly identified candidate who is not  
253 sponsoring the advertisement, the sponsor shall state whether it is authorized by the  
254 candidate not sponsoring the advertisement. The visual legend in the advertisement shall  
255 state either “Authorized by [Name of candidate], candidate for [Name of office]” or “Not  
256 authorized by any other candidate.”” Chairman Alcorn asked for clarification, noting that  
257 Delegate Turpin’s ad did say “paid for and authorized by Cheryl Turpin for VB.” Ms.  
258 Schneider clarified, stating that proper disclosure would have included Delegate Turpin’s  
259 name, rather than the name of her campaign committee. Further, Ms. Schneider noted that  
260 advertisements that reference another candidate must also include a second disclosure  
261 statement, stating whether the ad was “authorized by any other candidate.” Ms. Schneider  
262 recommended counting the violation as one occurrence, as only one yard sign was provided  
263 as evidence. Because of the proximity to the election, ELECT recommended the fine was  
264 doubled; Delegate Turpin also provided a letter, but gave no apology or explanation and  
265 did not describe attempts at remediation.

266 Trevor Southerland, Executive Director for the Virginia House Democrats, spoke  
267 on behalf of Delegate Turpin, noting that the evidence provided in the complaint was the  
268 front and back of a flyer, rather than a yard sign. Mr. Southerland directed the Board to  
269 Delegate Turpin’s written response, noting the complaint did not have a code section  
270 included in it. Chairman Alcorn mentioned the related memos and description about  
271 substantial compliance and asked how that would or would not apply to the complaint. Ms.  
272 Schneider mentioned a memo the Board passed in 2015, and noted an ad would be  
273 substantially compliant if the disclosure unambiguously conveyed all required  
274 information. Chairman Alcorn clarified that the disclosure required the candidate and the  
275 office they’re running for to be part of the disclaimer. Ms. Schneider agreed, and added  
276 that the disclosure must also state “Not authorized by any other candidate.” Chairman  
277 Alcorn moved *subject to the Board’s authority under the Code of Virginia §24.2-955.3, to*  
278 *find Cheryl Turpin in violation of §24.2-956 Stand By Your Ad print media disclosure*  
279 *requirements with regard to one advertisement, and is hereby assessed \$200.* Vice Chair

280 Wheeler seconded the motion. Chairman Alcorn stated that the ad in question fell under  
281 print media, and that the fine was \$200— \$100 for the violation without apologies or  
282 remediation, which was then doubled for being within fourteen days prior to the election.  
283 The motion passed unanimously.

284 The next hearing was against Elizabeth Guzman for Delegate. Ms. Schneider  
285 presented the Board with a mailer sent by Delegate Guzman. The mailer did not include  
286 the required disclaimer, but Ms. Schneider noted that the violation was a first time offense  
287 early in the campaign, and subsequent literature was properly disclosed. Ms. Schneider  
288 also said that the violation did not occur within 14 days before an election, and therefore a  
289 fine of \$50 would be appropriate for a first time offense with an apology; however, Ms.  
290 Schneider also observed that the written statement sent by Delegate Guzman to the Board  
291 did not include an apology, giving the Board discretion to fine \$100 as per the penalty  
292 schedule provided in the campaign finance summaries. Chairman Alcorn stated he did not  
293 see an apology or explanation in Delegate Guzman's letter, and Vice Chair Wheeler agreed.  
294 Chairman Alcorn moved *subject to the Board's authority under the Code of Virginia §24.2-*  
295 *955.3, to find Elizabeth Guzman in violation of §24.2-956 Stand By Your Ad print media*  
296 *disclosure requirements with regard to an advertisement, and is hereby assessed \$100.*  
297 Vice Chair Wheeler seconded the motion.

298 An unidentified attendee asked the Board what constituted an apology. Chairman  
299 Alcorn explained that the Board asks candidates to take ownership of their actions, admit  
300 lessons learned, or something of that matter; it also could include remedial actions that  
301 were taken. The motion then passed unanimously.

302 The next hearing was against Friends of Team Manassas. Ms. Schneider said the  
303 Board would find a transcript from the June 27, 2017 Board meeting, provided by Stephen  
304 Hersch, the complainant, in their materials. The first mailer Mr. Hersch provided was  
305 distributed on an unknown date in 2016, and had no visible disclaimer. Because this mailer  
306 constituted as a first violation and was not alleged to be distributed during the 14 days prior  
307 to the election, Ms. Schneider recommended a \$100 fine. Chairman Alcorn noted an  
308 attempt at disclosure, and Ms. Schneider explained that under print media ad disclosure  
309 requirements, an ad referencing a clearly identified individual must disclose whether or not  
310 candidates authorized it. Therefore, even though no candidates authorized the ad in this

311 case, the ad must state as much. Ms. Schneider said there were two different occurrences  
312 of this ad, with one of the occurrences happening within 14 days of the election. Ms.  
313 Schneider recommended the second occurrence, which would constitute a second  
314 violation, be fined \$200 due to its distribution time.

315 The third complaint was of the same mailer's distribution online. Ms. Schneider  
316 said websites fall under print media disclosure requirements, and that one side of the mailer  
317 was posted online within 14 days prior to the election date. Ms. Schneider recommended  
318 a fine of \$200, as the appropriate fine, as the usual \$100 fine assessed for a second-time  
319 violation should be doubled due to its proximity to the election. The fourth complaint  
320 pertained to a second mailer, which Mr. Hersh alleged was delivered a week before  
321 Halloween in 2017, which was within 14 days of the election. Ms. Schneider  
322 recommended a fine of \$200, with the \$100 fine doubled due to its proximity to the  
323 election. Vice Chair Wheeler asked for clarification that these fines were appropriate  
324 because the challenged advertisements were sponsored by candidates and mentioned  
325 clearly identified candidates. Ms. Schneider clarified that Friends of Team Manassas is a  
326 non-candidate committee, and that a non-candidate committee must disclose whether an  
327 ad is authorized by any candidate if the advertisement clearly references any candidate.

328 Secretary McAllister asked for clarification on who would be fined in this case, as  
329 traditionally the person facing allegations was the candidate. Ms. Schneider explained the  
330 political committee, Friends of Team Manassas, would be fined, as a committee governed  
331 by §24.2-956.1. Ms. Schneider said it would be difficult to say there was coordination  
332 between the committee and a particular candidate, notably as neither ELECT nor the Board  
333 have investigatory authority.

334 The fifth violation was regarding a video on YouTube, which qualified as a print  
335 media disclosure requirements because the video was posted on a website. The video was  
336 posted on October 14, 2016, which was not within 14 days of the election; although the  
337 video remained posted throughout the election, Ms. Schneider recommended a \$100 fine  
338 for this video for a second offense, which should not be doubled due to the proximity to  
339 the election. The sixth violation was regarding a second video, which was posted on  
340 Facebook on October 31, 2016. This violation was considered a second occurrence, and  
341 Ms. Schneider recommended a \$200 violation fine—the \$100 violation penalty, doubled

342 due to the proximity to the election. Before moving forward, Ms. Schneider said the Board  
343 may want to reconsider the aggravated penalties that occur in multiple violations as  
344 outlined in campaign finance summaries, in case the Board wanted to assess a higher fine  
345 for the multiple occurrences. Chairman Alcorn suggested waiting to consider aggravated  
346 penalties until all the violations were heard.

347 The seventh violation was the same video as the sixth violation, but posted to the  
348 Team Manassas website on October 31, 2016, which was within the 14 day period prior to  
349 the election. Ms. Schneider said she had not seen the Board assess more than a 2<sup>nd</sup> time  
350 violation, so it remained unclear if a second violation constituted a second election in which  
351 the violations took place or if it would be defined in another way. Commissioner Piper  
352 said a second time violation was if the Board assessed a penalty against a candidate or  
353 committee and the candidate or committee then reoffended; in the case of Friends of Team  
354 Manassas, however, each item was a first time violation.

355 Chairman Alcorn asked if there was a SBYA violation conversation in 2017 when  
356 the Board first discussed Friends of Team Manassas, or if the conversation only concerned  
357 the filing their Statement of Organization. Ms. Schneider informed the Board that the  
358 Board had already heard each of these complaints, but held the determination and  
359 assessment pending assurance that the information provided was provided to both the  
360 complainant and respondent. Chairman Alcorn stated that meant that this is the first time  
361 the Board would be giving them feedback, making it reasonable to treat these offenses as  
362 first time violations. The Chairman moved *subject to the Board's authority under the Code*  
363 *of Virginia §24.2-955.3, to find Friends of Team Manassas in violation of §24.2-956 Stand*  
364 *By Your Ad print media disclosure requirements with regard to seven advertisements and*  
365 *is hereby assessed \$1,200. Secretary McAllister seconded the motion.*

366 Stephen Hersch, complainant, then informed the Board that the video on YouTube  
367 was still running as of the date of the meeting. Mr. Hersch noted that Friends of Team  
368 Manassas received notice of violation in 2017 when the Board first heard the case, and then  
369 again in advance of this meeting, and yet the video remained posted. Mr. Hersch also  
370 directed the Board to two other videos he provided as evidence in the working papers. Ms.  
371 Schneider asked to amend the Chairman's motion to include that the Board found 7  
372 advertisements in violation.

373 Vice Chair Wheeler expressed concern at the idea of Friends of Team Manassas  
374 facing such a fine as a group of organized citizens, as opposed to a committee, and  
375 discussed the importance of educating people on more the nuanced rules of campaign  
376 finance such as those discussed in this case. Commissioner Piper said ELECT hired Ms.  
377 Alexander as a Campaign Finance Program Specialist to travel and train candidates,  
378 committees, and campaign committees on campaign finance laws and rules, including  
379 Stand By Your Ad. Vice Chair Wheeler stated that she did not know anyone involved in  
380 this case, but wanted to ask the Board to consider a lower fine considering the Board was  
381 hearing the violations so far from the dates of offense. Mr. Hersch informed the Board that  
382 Friends of Team Manassas was created and financed by candidates, not by a group of  
383 organized citizens. Mr. Hersch alleged that the treasurer of Friends of Team Manassas was  
384 one of the candidates the group supported, and none of the disclosure of who funded the  
385 group became apparent until after the election. Mr. Hersch further stated that these  
386 candidates started a number of committees, including Friends of Team Manassas and  
387 Awareness Manassas (a group the Board heard complaints against in 2017), with the intent  
388 to obfuscate information from the public. The motion presented earlier by the Chairman  
389 passed unanimously.

390 The next complaint heard was against Hannah for Hope. Ms. Schneider directed  
391 the Board to materials provided by Ms. Rishq to ELECT on May 18, 2018. In the  
392 materials, Ms. Rishq made clear that the materials in violation were never intended to be  
393 distributed and provided evidence that Ms. Rishq's team gave clear instructions to the  
394 printer to include the disclosure, as well as their immediate response upon receiving  
395 materials without the disclaimer. Ms. Schneider recommended, given this information,  
396 that the fine be no more than \$50. Chairman Alcorn clarified that the original  
397 recommendation given by ELECT was for \$100 for a first time offense, but because Ms.  
398 Rishq provided an explanation and apology, that Ms. Schneider was amending her  
399 recommendation to \$50. Ms. Schneider agreed with the clarification, but explained  
400 because that the distribution of the undisclosed materials took place on Election Day, the  
401 \$50 fine \$50 for a first violation, should be doubled due to its proximity to the election,  
402 but that she recommended a reduced fine of \$50 due to the context Ms. Rishq provided.  
403 Chairman Alcorn asked why \$50 was the amount originally fined, stating the original fine

404 for a first time violation should have been \$100, doubled to \$200. The Chairman then  
405 asked if the materials were distributed or not.

406 Ms. Rishq, present at the meeting, stated that the materials were not authorized for  
407 distribution. The undisclosed materials were set aside by the campaign on Election Day,  
408 but Ms. Rishq suspected, due to the amount of volunteers going through the campaign  
409 office that day, they were accidentally picked up and distributed. Ms. Rishq made clear  
410 that whoever distributed them was not authorized to, and that staff did not hand out the  
411 undisclosed materials. Vice Chair Wheeler clarified that the materials were in the  
412 campaign headquarters, and Ms. Rishq said yes, and recognized the staff should not have  
413 kept the ones to be discarded in the office. Ms. Rishq discussed the evidence she provided  
414 on May 18, which included a detailed account of communications with the printer; a formal  
415 letter sent to the printer that stated that the campaign would not pay for any literature that  
416 was printed without the disclosure; an email from Ms. Rishq's manager to the printer; an  
417 email with the approved and disclosed literature; other items the campaign used with the  
418 proper disclosure; and bank statements proving that Ms. Rishq did not pay for the unused,  
419 undisclosed items.

420 Chairman Alcorn asked that because the campaign did not pay for the undisclosed  
421 items that were distributed if the items then met the definition of an expenditure and were  
422 therefore subject to SBYA. Ms. Schneider noted there was the contract between Ms.  
423 Rishq and the printer, but that both sides breached contract. Ms. Schneider said it could  
424 be argued that the materials constituted a contribution of value. Vice Chair Wheeler noted  
425 a previous discussion by the Board that if campaigns were not going to use literature, that  
426 that literature be sealed up and marked as "do not use." Chairman Alcorn agreed, stating  
427 that the fact the campaign did not pay for it does not matter. The Chairman found a  
428 violation of print media disclosure requirements, and asked if the materials and letter from  
429 Ms. Rishq constituted an explanation. Chairman Alcorn suggested a fine of \$50,  
430 considering the materials Ms. Rishq provided. Vice Chair Wheeler stated a lesson learned  
431 in getting rid of materials that should not be distributed, and Ms. Rishq explained that she  
432 had a staff of two people that did not have time to handle it before Election Day. Chairman  
433 Alcorn moved *subject to the Board's authority under the Code of Virginia §24.2-955.3, to*  
434 *find Hannah Rishq in violation of §24.2-956 Stand By Your Ad print media disclosure*

435 *requirements with regard to an advertisement and is hereby assessed \$50.* Vice Chair  
436 Wheeler seconded the motion. Chairman Alcorn voted yea, Vice Chair Wheeler voted yea,  
437 and Secretary McAllister did not vote, as she was absent from the room, and the motion  
438 carried 2 to 0.

439 Chairman Alcorn moved *the Board recess to reconvene at 1:00 PM.* Vice Chair  
440 Wheeler seconded the motion. The Board recessed at 12:45 PM and reconvened at 1:08  
441 PM.

442 The next complaint heard was against the National Right to Work Committee. Ms.  
443 Schneider provided the Board with pages 1 and 3 of a 4-page letter, and stated based off  
444 these parts of the letter that ELECT received, there was no violation of Stand By Your Ad.  
445 Ms. Birkenheier asked if ELECT received pages 2 and 4, and Ms. Schneider confirmed  
446 they did not. Chairman Alcorn moved *subject to the Board's authority under the Code of*  
447 *Virginia §24.2-955.3, to find the National Right to Work committee not in violation of*  
448 *Virginia's campaign finance Stand By Your Ad laws.* Vice Chair Wheeler seconded the  
449 motion, and the motion passed unanimously.

450 The next complaints heard were against Ned Gallaway. Ms. Schneider said there  
451 were two complaints against the Gallaway campaign; one was from an individual who  
452 reported 8 signs, along with photographic evidence, and the other was from Mr. Gallaway,  
453 who self-reported a total of 48 signs without disclosure. Mr. Gallaway's complaint  
454 explained the steps taken to try and fix the situation with the signs that could be found. Ms.  
455 Schneider said that a recommended fine was not provided because the evidence was of  
456 yard signs, and with the number of reported signs and with the violation happening within  
457 14 days of the election, the maximum penalty could not exceed \$2,500. Secretary  
458 McAllister asked what Ms. Schneider's recommendation would be, and Ms. Schneider  
459 suggested fining Mr. Gallaway for the signs provided with photographic evidence, but not  
460 for those that Mr. Gallaway self-reported, so as not to discourage candidates from self-  
461 reporting. Ms. Schneider recommended an \$800 penalty, with a \$50 fine for the first time  
462 violation with remediation attempts, doubled due to the proximity to the election, for each  
463 of the 8 signs reported by the other complainant. Chairman Alcorn moved *subject to the*  
464 *Board's authority under the Code of Virginia §24.2-955.3, to find Ned Gallaway in*  
465 *violation of §24.2-956 Stand By Your Ad print media disclosure requirements with regard*

466 *to 8 advertisements, and is hereby assessed \$800.* Secretary McAllister seconded the  
467 motion.

468 Ned Gallaway, respondent, spoke and clarified that his campaign ordered 50 signs  
469 in total. Mr. Gallaway was running unopposed; however, upon hearing that a write-in  
470 candidate was mounting a campaign, Mr. Gallaway ordered signs to have a name presence  
471 at the polls and the signs were displayed on Election Day only. Upon realizing the lack of  
472 disclaimer, Mr. Gallaway stated the campaign wrote the disclosure statement upon labels  
473 and added them on the undisclosed signs they could find. Mr. Gallaway agreed with the  
474 Vice Chair's point about improving education for candidates, and said any policies that  
475 could outline what were best practices for candidates would be helpful. When Mr.  
476 Gallaway realized the violation, he submitted a formal complaint against himself stating  
477 the violation and actions taken to remedy the situation. Vice Chair Wheeler noted Mr.  
478 Gallaway attempted to fix the signs, and that the signs were only displayed on Election  
479 Day. Ms. Schneider apologized for not including Mr. Gallaway's self-reported complaint  
480 in the working papers; the complaint included the remediation actions, which constitutes  
481 an apology by Board standards. Vice Chair Wheeler asked if the Board would consider  
482 reducing the fine. Chairman Alcorn agreed there should be some credit given for self-  
483 reporting, and asked Ms. Birkenheier, as counsel to the Board, for advice. Secretary  
484 McAllister asked if the Board had any discretion in the matter.

485 Commissioner Piper noted the Board had full discretion, with the knowledge that  
486 the Board tends to act on precedent so the decision made during today's meeting would be  
487 binding on or persuasive for the Board when deciding subsequent cases with similar issues  
488 or facts. The Commissioner stated in his time working with the Department in campaign  
489 finance matters that he could not recall another candidate self-reporting, and commended  
490 Mr. Gallaway for doing so. Ms. Schneider informed the Board that there was another  
491 instance of self-reporting, to be heard later in the meeting. Vice Chair Wheeler  
492 acknowledged that Mr. Gallaway self-reported, but noted that ELECT received another  
493 complaint about a possible violation by Mr. Gallaway on Election Day. Secretary  
494 McAllister acknowledged the Commissioner's comments regarding setting precedents for  
495 subsequent rulings and suggested lowering the fine to \$400, given that Mr. Gallaway self-  
496 reported and attempted remediation. Both the Vice Chair and Chairman agreed. The



497 Secretary suggested an amendment to the Chairman's motion to substitute the penalty of  
498 \$800 to \$400, and Vice Chair Wheeler seconded the amendment. The motion passed  
499 unanimously.

500 The next complaints heard were against Pulaski Citizens for an Informed  
501 Community. Ms. Schneider began by outlining the undisclosed yard signs, as well as the  
502 newspaper ads; ELECT also received additional information regarding advertisements,  
503 with additional photographs submitted as evidence. Chairman Alcorn reviewed the  
504 recommendations, asking if ELECT was recommending a \$600 penalty. Ms. Schneider  
505 confirmed they were, but noted the Board could exercise discretion in regards to the  
506 number of signs allegedly in violation. Ms. Schneider counted four non-compliant signs.  
507 Chairman Alcorn asked if Pulaski Citizens were a registered local committee, as the  
508 advertisements appeared to be in regards to a referendum. Chairman Alcorn asked if  
509 referendums and referendum committees were within the scope of SBYA. Ms. Schneider  
510 noted that §24.2-955 discussed the scope of disclosure requirements, including an  
511 individual who incurs expenses only with respect to a referendum; however, it was unclear  
512 who Pulaski Citizens for an Informed Community was funded by. Ms. Birkenheier asked  
513 Ms. Schneider if all the signs and advertisements were paid for by the respondent, and Ms.  
514 Schneider was unsure given the evidence provided to ELECT. Chairman Alcorn asked if  
515 ads related to referendums were exempt from SBYA. Commissioner Piper noted that  
516 referendum committees are not subject to SBYA, but individuals are. As Pulaski Citizens  
517 was not a registered political committee, the Commissioner was unsure if the ads met  
518 disclosure requirements. The Commissioner also directed the Board to the newspaper ad  
519 with a sample ballot, and asked if that would have to be referred to the Commonwealth's  
520 Attorney. Ms. Schneider agreed, given the sample ballot and the uncertainty regarding the  
521 responsibility behind the signs.

522 A representative from Pulaski Citizens for Education spoke and informed the Board  
523 that her committee provided ELECT with the cost for full page ads like the ones that  
524 Pulaski Citizens for an Informed Community placed. The representative stated that with  
525 the number of ads, and with the cost of placing the ads, the cost of the ads overall would  
526 exceed a value of \$1,000, which meets the criteria for being required to form a committee.  
527 Pulaski Citizens for Education did report as much to the Commonwealth's Attorney, and

528 was unsure who else to direct the complaint to, considering Pulaski Citizens for an  
529 Informed Community failed to form a referendum committee. Ms. Birkenheier asked the  
530 representative when the violations occurred and when the complaint was filed with  
531 ELECT. The representative stated the violations and complaint were submitted in  
532 September of 2017. Ms. Birkenheier asked the Board if it would like the pass by the  
533 complaint for the day until more information was available. Chairman Alcorn suggested  
534 the Board have a discussion on the scope of referendum committees, but agreed with  
535 passing the subject by for the day.

536 The representative further informed the Board that the central issue of their report  
537 was that there was a coordinated effort to shield Pulaski Citizens for an Informed  
538 Community from the requirements of public disclosure by acting as a referendum  
539 committee without registering as such; therefore, the public would assume that the  
540 advertisements were paid for and authorized by a committee, when in fact, no such  
541 committee existed. The representative asked what passing the topic by for the day entailed.  
542 Chairman Alcorn explained that the Board would not rule on the matter during the meeting,  
543 and would make a decision in a future meeting.

544 The next complaint heard was against Schleeper for City Council. Ms. Schneider  
545 covered the number of ads in question, as well the proximity of the ads to the election. Mr.  
546 Schleeper, respondent, stated it was his first time running. Upon realizing the lack of  
547 disclaimer, Mr. Schleeper attempted to add a handwritten disclaimer to each sign. When  
548 the campaign received new signs with the proper disclosure, the old, undisclosed signs  
549 were disposed of. Chairman Alcorn clarified the recommended fine was a \$50 fine for a  
550 first time violation with attempts of remediation and an explanation, doubled due to  
551 proximity to the election, and then applied to each sign submitted as evidence, which  
552 resulted in a \$400 fine. Vice Chair Wheeler asked how many of the signs were remediated  
553 and if the fixes happened before Election Day. Mr. Scheleper said that new signs were  
554 ordered on March 16, with a two-week delivery date, putting the arrival of the new,  
555 properly disclosed signs at April 1<sup>st</sup>; meaning the new signs replaced the undisclosed signs  
556 before Election Day. Vice Chair Wheeler noted that the proximity to the election did not  
557 apply because Mr. Schleeper hand wrote the disclosures before the election. Ms.  
558 Schneider said the complaint alleged that there were four signs, but made no mention of

559 whether or not there was an attempt to provide disclosure. Chairman Alcorn asked if there  
560 were any other photographs submitted as evidence, and Ms. Schneider said there were not.

561 Vice Chair Wheeler stated because the Board agreed to lower Mr. Gallaway's sign,  
562 that they should consider reducing Mr. Schleeper's fine as he attempted to fix the  
563 disclosure. Chairman Alcorn clarified that Mr. Gallaway's fine was lowered because Mr.  
564 Gallaway self-reported, but noted that other candidates who remediated their signs received  
565 a \$50 assessment. Chairman Alcorn stated earlier in the meeting the Board fined based on  
566 the number of signs reported. As there was only evidence of one sign per the evidence  
567 submitted, rather than the four reported, Commissioner Piper asked if that information  
568 would be taken into consideration. Ms. Schneider agreed, noting that the Board did not  
569 previously require a photograph of each sign in violation for which a penalty assessed. Ms.  
570 Schneider reminded the Board that in Mr. Gallaway's situation, there were 8 signs reported  
571 before Mr. Gallaway self-reported 48. Mr. Gallaway was then fined for the 8 signs  
572 reported, and the resulting fine was \$400. Vice Chair Wheeler asked Mr. Schleeper for  
573 clarification on when the signs were corrected by a handwritten disclosure. Mr. Schleeper  
574 said the hand written disclosures were added to the signs before the signs were even  
575 disseminated; therefore, the sign in the photographic evidence likely had the handwritten  
576 disclaimer on the back of it. Chairman Alcorn stated if there was in fact a disclaimer on  
577 the back side of the sign, then there was no violation. Chairman Alcorn moved *subject to*  
578 *the Board's authority under the Code of Virginia §24.2-955.3, to find Schleeper for City*  
579 *Council not in violation of Stand By Your Ad print media disclosure requirements.* Vice  
580 Chair Wheeler seconded the motion, and the motion passed unanimously.

581 The next complaint heard was against Tim McPeters for Commissioner of the  
582 Revenue. Ms. Schneider stated that all of Mr. McPeters's signs were properly disclosed  
583 before they were placed, and that no violation of SBYA was to be found. Chairman Alcorn  
584 asked why this was submitted as a SBYA complaint, and Mr. McPeters said there was  
585 confusion over the size the disclaimer is required to be. Commissioner Piper said that  
586 advertisements were required to have their disclaimers placed in a conspicuous manner,  
587 and Chairman Alcorn noted that the size requirement was 7 pt. Mr. McPeters stated he had  
588 the evidence to indicate that the font on the signs was bigger than that. Ms. Schneider  
589 noted that the 7 pt font applies to electronic advertisements, as stated in §24.2-956. Mr.

590 McPeters pulled out one of the signs in question, and showed the Board that the disclaimer  
591 was placed on both sides. Chairman Alcorn moved *subject to the Board's authority under*  
592 *the Code of Virginia §24.2-955.3, to find Tim McPeters not in violation of Stand By Your*  
593 *Ad print media disclosure requirements.* Vice Chair Wheeler seconded the motion, and  
594 the motion passed unanimously.

595 Ms. Schneider then gave the Board background on television advertisement  
596 disclosure requirements, stating that any television ad that a campaign committee puts out  
597 must have a written disclosure that appears on the screen. The disclosure must have the  
598 name of the committee or candidate that paid for it. If the ad references another clearly  
599 identified candidate, there must be a spoken disclaimer, spoken in the voice of the  
600 candidate. The spoken disclaimer must be accompanied by a full screen, unobscured image  
601 of the candidate. Unobscured, as defined in §24.2-955, means "that the only printed  
602 material that may appear on the television screen is a visual disclosure statement required  
603 by law, and that nothing is blocking the view of the disclosing person's face." Ms.  
604 Schneider mentioned that the requirement in §24.2-957.1 that there be a disclaimer at the  
605 beginning and end of the ad was not applicable because none of the ads being discussed  
606 during the meeting were longer than 30 seconds.

607 The first television ad complaint heard was against a TV advertisement sponsored  
608 by the Northam for Governor campaign. Ms. Schneider played the ad for the Board, and  
609 said that the complaint alleged that there was an insufficient, full screen image of Governor  
610 Northam. Ms. Schneider disagreed with the complaint, noting that the image was not  
611 obscured as it was the only photograph on screen, contained the disclosing individual,  
612 occupied all space, and contained at least 50% of the vertical height of the screen. Ms.  
613 Schneider further noted that no other printed material other than the written disclosure  
614 appeared with the image, and that the advertisement met the requirements for oral and  
615 written disclosures.

616 Ms. Schneider noted that with television ads, the written disclosure was required to  
617 constitute 20 scan lines in size, but that the size of the written disclosure was not in question  
618 and it was unclear how to measure scan lines. Brad Komar, Governor Northam's  
619 Campaign Manager, spoke and noted the letter submitted by the DPVA and RPVA. Mr.  
620 Komar stated both complaints, against Governor Northam and Ed Gillespie, were filed in

621 late September. The letter sent to ELECT came from counsel from both the Democratic  
622 and Republican parties, and stated the ads substantially complied with §24.2, and that the  
623 Board should find both Gillespie and Northam to not be in violation. In regards to the  
624 Northam ad, Mr. Komar noted that there was a clear, unobstructed image of Governor  
625 Northam. Chairman Alcorn moved *subject to the Board's authority under the Code of*  
626 *Virginia §24.2-955.3 to find Northam for Governor not in violation of Stand By Your Ad*  
627 *television disclosure.* Vice Chair Wheeler seconded the motion, and the motion passed  
628 unanimously.

629 The next complaint heard was against three television advertisements sponsored by  
630 the Ed Gillespie for Governor campaign. Ms. Schneider played the first ad for the Board,  
631 noting that because the ad did not mention another candidate, the oral disclosure statement  
632 was not required. Ms. Schneider explained that the statement has to be accompanied by an  
633 unobscured, full screen photo of the candidate; the advertisement could be considered  
634 obscured because there were lines of text that preceded the disclosure statement, and the  
635 Code states that the only text on screen could be the disclosure statement. Chairman Alcorn  
636 asked if that definition was from ELECT or in the Code, and Ms. Schneider directed the  
637 Board to §24.2-955.1. Ms. Birkenheier drew the Board's attention to §24.2-957.1,  
638 subsection 1, where the Code stated the requirements for a legend of a disclosure statement;  
639 Ms. Birkenheier noted that that subsection did not mention the term "unobscured."  
640 Chairman Alcorn clarified that there would only be the unobscured requirement if another  
641 candidate was mentioned in the advertisement, as required by §24.2-957.1, subsection 3.  
642 Ms. Birkenheier agreed, but deferred to staff on if that interpretation was consistent with  
643 past Board actions. Ms. Schneider noted it was unclear if subsection 3 applied to the  
644 subsections about the legend as well as to advertisements that clearly identify another  
645 candidate; Ms. Schneider also said the Board did not have past rulings on television ads.

646 Ms. Schneider said, consistent with Ms. Birkenheier's notes, the next two  
647 advertisements from Gillespie for Governor clearly identify a candidate and therefore  
648 explicitly require an unobscured photograph of Mr. Gillespie to appear during the  
649 disclosure statement and would also require a disclosure statement spoken by the  
650 sponsoring candidate. Vice Chair Wheeler asked if the reason the first advertisement was  
651 being questioned was because there was other print on the screen, noting that the disclosure

652 text was unobstructed. Ms. Schneider referred back to the definition in the Code discussed,  
653 stating the unobscured statement only referred to advertisements that clearly identified  
654 another candidate. Commissioner Piper asked Ms. Birkenheier if the unobscured  
655 requirement only applied to the candidate's picture, not to the text of the disclosure  
656 statement on the screen. Chairman Alcorn pointed out that §24.2-957.1 read "the  
657 disclosure statement" in all of the subsections, except for subsection 5, which read "the  
658 oral disclosure statement." The Chairman interpreted the Code as meaning that the  
659 unobscured photograph only applied to the oral disclosure statement, rather than the text  
660 of a disclosure statement. Because the first advertisement did not have an oral disclosure  
661 statement as it did not mention another candidate, the Chairman found no violation in the  
662 first advertisement.

663 Ms. Schneider played the second advertisement for the Board. Chairman Alcorn  
664 noted the advertisement did identify another candidate: Governor Northam. The Chairman  
665 noted that §24.2-955.1 defined unobstructed as having no other text than the written  
666 disclosure statement on screen during the oral disclosure statement. Because Mr.  
667 Gillespie's ad included additional text, the Chairman found this advertisement to be in  
668 violation of §24.2-957.1. Ms. Birkenheier clarified that the Code allowed the text of visual  
669 disclosure statements required by law, but agreed that there was additional text on screen.  
670 Ms. Schneider pointed to the third subsection of §24.2-957.1, which states that a candidate  
671 may provide the oral disclosure statement required by the section at the same time as the  
672 visual disclosure. Vice Chair Wheeler clarified that according to Ms. Schneider's  
673 statement, the second advertisement was not in violation. Ms. Schneider corrected the Vice  
674 Chair, stating the additional text on the screen, present in addition to the written disclosure,  
675 would constitute a violation. Vice Chair Wheeler asked that because there was additional  
676 text on the screen, despite the photo of the candidate being otherwise unobstructed and  
677 having the disclosure spoken in the candidate's voice, that there was a violation. Ms.  
678 Schneider said yes, because of the nuanced definition in the Code. Vice Chair Wheeler  
679 stated that it was clear who sponsored the ad, and that the probable intent of the law was  
680 so the candidate's face and the written disclaimer were not obstructed. Chairman Alcorn  
681 agreed that the definitions were nuanced, but agreed with staff assessment that the  
682 advertisement was in violation of §24.2-957.

683 Vice Chair Wheeler asked if it mattered that both parties asked to have their  
684 complaints withdrawn. Chairman Alcorn reminded the Vice Chair of the earlier  
685 conversation, stating that even if the complainant withdrew, a violation still may have  
686 happened so it was the Board's duty to review and assess fines regardless. The Vice Chair  
687 argued that in addition to requests for withdrawal, the additional text on the screen did not  
688 obscure the face of the candidate. Chairman Alcorn agreed, but noted the requirement  
689 stated that no text could be on the screen other than the written disclaimer, which was not  
690 the case with the particular advertisement. Secretary McAllister also agreed with staff's  
691 recommendation to find a violation of §24.2-957. The Secretary stated because this was  
692 the first television advertisements the Board would make a ruling on, the Board should  
693 adhere closely to the rules as their assessments would establish precedent for future  
694 hearings. Vice Chair Wheeler reiterated that the text did not obscure the candidate's face,  
695 and said the letter sent by both parties should be counted in the Board's consideration. Ms.  
696 Schneider said the letter indicated the advertisements substantially complied, though the  
697 Board had indicated otherwise during the discussion, and did not include an explanation,  
698 attempt of remediation, or apology. Vice Chair Wheeler asked if both parties' legal counsel  
699 were signatories on the letter, and Ms. Schneider said yes.

700 Ms. Schneider showed the Board the third advertisement. Chairman Alcorn noted  
701 the advertisement clearly mentioned another candidate, and therefore required oral  
702 disclosure. This advertisement also included extraneous text on the screen during the oral  
703 disclosure, rendering the advertisement improperly disclosed in violation of §24.2-957.1;  
704 similar to the second advertisement. Chairman Alcorn asked what the typical penalty for  
705 a television advertisement was. Ms. Schneider said there have been no previous Board  
706 decisions on television advertisements, but that there are recommendations in the campaign  
707 finance summaries; Ms. Schneider noted that the maximum penalty was not to exceed  
708 \$1,000 per occurrence, or \$2,500 per occurrence if the advertisement occurred within 14  
709 days of the election. In no event could a penalty for a single advertisement exceed \$10,000.  
710 Chairman Alcorn asked if it was known when the advertisements ran. Commissioner Piper  
711 noted the reason the Board did not hear television violations in the past was because of the  
712 per-occurrence issue. Without knowledge of when an advertisement aired or how often it  
713 ran, it was difficult to assess an appropriate penalty. The Commissioner asked Ms.

714 Birkenheier that because the Board was not positive the advertisement ran on television,  
715 but knew that it was posted online, if the Board could assess penalties treating the ad as a  
716 print media violation; Ms. Birkenheier said yes, the Board had that discretion. Chairman  
717 Alcorn asked if the complaints were brought as television ads, and Ms. Schneider said they  
718 were, with the complainant alleging multiple broadcasts throughout the Commonwealth.

719 Chairman Alcorn said because there was no proof the ads ran within the 14 days  
720 prior to the election, and noted that neither campaign argued the advertisements weren't  
721 television ads, it was appropriate to treat the advertisements as television violations rather  
722 than print media. Ms. Birkenheier asked Ms. Schneider if she requested information on  
723 the amount of broadcasts for each ad, and Ms. Schneider said yes, but did not provide  
724 any additional information. Chairman Alcorn moved *subject to the Board's authority*  
725 *under the Code of Virginia §24.2-955.3, to find Ed Gillespie for Governor in violation of*  
726 *§24.2-956 Stand By Your Ad print media disclosure requirements with regard to 2*  
727 *advertisements, and is hereby assessed \$2,000. Secretary McAllister seconded the motion.*

728 Vice Chair Wheeler stated members of the General Assembly and the Division of  
729 Legislative Services need to be careful when writing Code, and that candidates need to be  
730 careful to observe what was written. The Vice Chair stated she believed the intent of the  
731 law was to prevent the candidate or speaker's face, and the written disclosure, from being  
732 obscured, and did not believe that happened in any of Mr. Gillespie's ads. Ms. Schneider  
733 pointed the Board to the campaign finance summaries approved in 2015, which stated that  
734 each violation would be assessed a fine of \$2,500, unless the advertisement was  
735 disseminated in the 14 days prior to the election in which case the penalty would be  
736 \$10,000. Ms. Schneider added that because the complaint reporting the advertisement  
737 arrived over a month from the election, the violation did not occur within 14 days prior to  
738 the election. Commissioner Piper noted that the summaries needed to be updated, as the  
739 Code clearly stated that violations should not be more than \$1,000 per occurrence, or more  
740 than \$2,500 per occurrence when within 14 days prior to the election, not to exceed \$10,000  
741 overall. Vice Chair Wheeler asked how the term occurrence was being used, and Chairman  
742 Alcorn recommended using the lowest definition, which constituted each advertisement as  
743 one violation each, regardless of the number of times the advertisements ran. However,  
744 Commissioner Piper noted that §24.2-955.1 defined "occurrence" as "one broadcast of a



745 radio or television political campaign advertisement.” Ms. Schneider added that in no  
746 event, regardless of the number of broadcasts, could the penalty for one advertisement  
747 exceed \$10,000.

748 Chairman Alcorn suggested keeping the penalty to \$2,000, with a \$1,000 fine for  
749 each of the two advertisements. Vice Chair Wheeler asked if the Board was going to  
750 disregard the request to withdraw from the parties, and Chairman Alcorn said yes. The  
751 Board then voted on the matter; Chairman Alcorn voted yea, Secretary McAllister voted  
752 yea, and Vice Chair Wheeler abstained. The motion passed 2:0:1.

753 Chairman Alcorn then moved *the Board recess for ten minutes*. The Board  
754 reconvened at 2:54 p.m.

755 The next hearing was regarding Joan Ziglar for Commonwealth’s Attorney. Ms.  
756 Schneider stated that ELECT recommended finding no violation because the challenged  
757 advertisement neither mentions a candidate nor an election, and therefore does not  
758 constitute an advertisement expressly advocating for a candidate or election. Chairman  
759 Alcorn moved *subject to the Board’s authority under the Code of Virginia §24.2-955.3, to*  
760 *find Joan Ziglar not in violation of Virginia’s campaign finance Stand By Your Ad laws*.  
761 Vice Chair Wheeler seconded the motion, and the motion passed 2 to nothing, as the  
762 Secretary was not present in the room for the vote.


763 The next hearing was regarding Virginia Gov Facts. Ms. Schneider recommended  
764 finding no violation, per her recommendation that the advertisement did not contain  
765 express advocacy. Chairman Alcorn moved *subject to the Board’s authority under the*  
766 *Code of Virginia §24.2-955.3, to find Virginia Gov Facts not in violation of Virginia’s*  
767 *campaign finance Stand By Your Ad laws*. Vice Chair Wheeler seconded the motion, and  
768 the motion passed 2 to nothing, as the Secretary was not present in the room for the vote.


769 The next hearing was regarding Virginia Freedom Caucus. Ms. Schneider said the  
770 three advertisements before the Board constituted print media advertisements, and had an  
771 incomplete disclosure. Ms. Schneider noted that because the publication referred to  
772 another candidate, an additional disclosure statement was required by §24.2-957.1.  
773 Chairman Alcorn asked if Virginia Freedom Caucus sent any explanation or attempted to  
774 remediate the situation. Ms. Schneider answered that the group had a website, but was not  
775 registered as a committee with ELECT. ELECT did not have a contact person to notify of

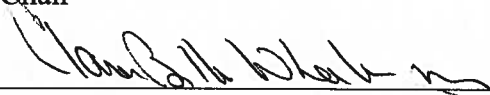
776 the hearing, but did send notification to a post office box. Ms. Schneider suggested that  
777 the case may have to be recommended to the Commonwealth's Attorney for further action  
778 because the group did not report or submit a Statement of Organization. Chairman Alcorn  
779 observed that no violation occurred because the advertisements did not meet the current  
780 definition of express advocacy. Chairman Alcorn moved *subject to the Board's authority*  
781 *under the Code of Virginia §24.2-955.3, to find Virginia Gov Facts not in violation of*  
782 *Virginia's campaign finance Stand By Your Ad laws.* Vice Chair Wheeler seconded the  
783 motion, and the motion passed 2 to nothing, as Secretary McAllister was not present.

784 Vice Chair Wheeler thanked Ms. Schneider for the format and presentation of the  
785 hearings. The Vice Chair reiterated the importance of educating candidates on campaign  
786 finance rules. Chairman Alcorn agreed, stating the Virginia Benchmark Index Workgroup  
787 would help establish areas of need to improve training and education.

788 Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler  
789 seconded the motion, and the motion passed two to nothing. The meeting was adjourned  
790 at approximately 3:07 PM. The next Board meeting will be on June 19, at 11:00 AM.

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793 Secretary

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796 Chair

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799 Vice Chair

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