



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Wednesday, April 3rd, 2019
Martha Brissette Conference Room
Washington Building
Richmond, VA
1:00 P.M.

SBE Board Working Papers



**STATE BOARD OF ELECTIONS
AGENDA**

DATE: Wednesday, April 3, 2019
LOCATION: Washington Building
Martha Brissette Conference Room
1100 Bank Street
Richmond, VA
TIME: 1:00 p.m.

- I. APPROVAL OF MINUTES**
A. February 22, 2019
State Board of Elections
- II. COMMISSIONER'S REPORT AND INTRODUCTIONS**
*Christopher E. "Chris" Piper
Commissioner*
- III. STAND BY YOUR AD**
A. SBYA hearings
B. Express Advocacy regulation
*Arielle A. Schneider
Policy Analyst*
- IV. APA EXEMPTIONS**
*Samantha Buckley
Policy Analyst*
- V. DRAWING OF BALLOT ORDER IN CASE OF SIMULTANEOUS FILINGS**
*Matt Abell
Election Administration*
- VI. CLOSED SESSION**
A. Legal Advice on FOIA
B. Pending litigation update
*Alex West
Assistant Attorney General*
- VII. ADJOURNMENT**

NOTE: All materials provided to the Board are available for public inspection under the Virginia Freedom of Information Act upon request.



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STATE BOARD *of* ELECTIONS

Approval of Minutes

BOARD WORKING PAPERS
State Board of Elections

1 The State Board of Elections (the Board) meeting was held on Friday, February 22, 2019,
2 in the Martha Brissette Conference Room of the Washington Building in Richmond, Virginia. In
3 attendance: James Alcorn, Chairman and Clara Belle Wheeler, Vice Chair. Christopher E.
4 “Chris” Piper, Commissioner represented the Department of Elections (“ELECT”). Heather Hays
5 Lockerman represented the Office of the Attorney General (“OAG”). Singleton McAllister,
6 Secretary, attended the meeting electronically, but did not participate.

7 Chairman Alcorn called the meeting to order at 2:01 p.m.

8 The first order of business was for the Board to approve the minutes from the January
9 23, 2019 meeting. Commissioner Piper explained the process of review and finalization of
10 minutes, including that Secretary McAllister reviews the draft minutes before being provided to
11 the Board for final approval. Commissioner Piper informed the Board that at this meeting
12 Secretary McAllister would not be able to vote on the approval of the minutes electronically, as
13 the meeting notice did not inform the public that the Secretary would be participating
14 electronically. The January 23, 2019 Board meeting minutes were presented by Chairman
15 Alcorn. *The Chairman moved that the Board approve the minutes from the January 23, 2019*
16 *Board meeting.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

17 The next order of business was the Commissioner’s Report. Commissioner Piper
18 informed the Board that the court issued a final order requiring redistricting last Thursday, so
19 staff is working with localities to implement the new maps in VERIS. Vice Chair Wheeler
20 asked what steps the Department was taking to assist localities in implementing the redistricting
21 currently underway, given the short timeframe until May and June elections. She also inquired
22 about the pending appeal to the Court’s decision. Commissioner Piper explained that the Final
23 Order required “immediate implementation” and reiterated that ELECT will support the

24 localities. Chairman Alcorn asked whether the Department and localities had the resources they
25 need for implementation. Commissioner Piper assured the Board that ELECT is prepared for
26 possible appellate action but is currently on the path of implanting the Court's Final Order per
27 the court's instruction for immediate implementation.

28 The next order of business was for the Board to certify the February 19th Special
29 Election. Matt Abell, Elections Administrator, presented the abstract from the February election
30 for the 86th House of Delegate showing Ibraheem S. Samirah as the winner. Mr. Abell presented
31 the Board certificates of election for approval and signature. Chairman Alcorn asked Mr. Abell if
32 he had any concerns with certifying the election. Mr. Abell replied that there were no concerns
33 regarding this election. After the Board signed the abstract and certificates, Chairman Alcorn
34 moved for the Board to certify the Delegate Ibraheem S. Samirah as the winner of the 2/19/19
35 special election. Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

36 Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler seconded the
37 motion, and the motion passed. The meeting was adjourned at approximately 2:28 PM.

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Secretary

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Chair

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Vice Chair

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★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Commissioner's Report

BOARD WORKING PAPERS
Christopher E. "Chris" Piper
Commissioner



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

The Department of Elections (ELECT)

Christopher Piper
Commissioner



Mission

- The Department of Elections promotes and supports secure, accurate, fair and open elections for the citizens of the Commonwealth.



History

- The Virginia State Board of Elections (SBE) was created in 1946 as a nonpolitical agency responsible for ensuring uniformity, fairness, accuracy and purity in all elections in the Commonwealth of Virginia. The SBE promoted the proper administration of election laws, campaign finance disclosure compliance, and voter registration processes in the state by promulgating rules, regulations, issuing instructions, and providing information to local electoral boards and general registrars.



History

- In 2014, the Department of Elections (ELECT) was formed. ELECT conducts the State Board of Elections' administrative and programmatic operations and discharges the board's duties consistent with delegated authority.



State Board of Elections

Primary duties and responsibilities in § 24.2-103

- The State Board, through the Department of Elections, shall supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections.
- It shall make rules and regulations and issue instructions and provide information consistent with the election laws to the electoral boards and registrars to promote the proper administration of election laws.



State Board of Elections

Primary duties and responsibilities in § 24.2-103

- ELECT is authorized to establish and maintain a statewide automated voter registration system to include procedures for ascertaining current addresses of registrants; to require cancellation of records for registrants no longer qualified; to provide electronic application for voter registration and absentee ballots; and to provide electronic delivery of absentee ballots to eligible military and overseas voters



State Board of Elections

Primary duties and responsibilities in § 24.2-103

- The State Board, through the Department of Elections, shall ensure that the members of the electoral boards and general registrars are properly trained to carry out their duties by offering training annually, or more often, as it deems appropriate, and without charging any fees to the electoral boards and general registrars for the training.
- The State Board may institute proceedings pursuant to § 24.2-234 for the removal of any member of an electoral board who fails to discharge the duties of his office in accordance with law. The State Board may petition the local electoral board to remove from office any general registrar who fails to discharge the duties of his office according to law.



Major Partners

- Department of Motor Vehicle (DMV)
 - National Voter Registration Act (NVRA)
- Department of General Services (DGS)
 - Procurement and Mail Room
- Virginia Information Technology Agency (VITA)
 - Information Technology Procurement and Support
- Department of Human Resource Management (DHRM)
 - Human Resource Support
- Virginia State Police (VSP), Virginia Department of Emergency Management (VDEM)
- Federal Partners
 - Department of Homeland Security (DHS), Federal Bureau of Investigation (FBI)



Budget

- Total Agency Budget: ~\$18.6 million
 - Pass through--\$5,957,836
- HAVA Money-- ~\$9.2 million
- Potential Additional Funds in pending budget ~1.2 million
- 43 FTES
 - 6 additional FTES in pending budget

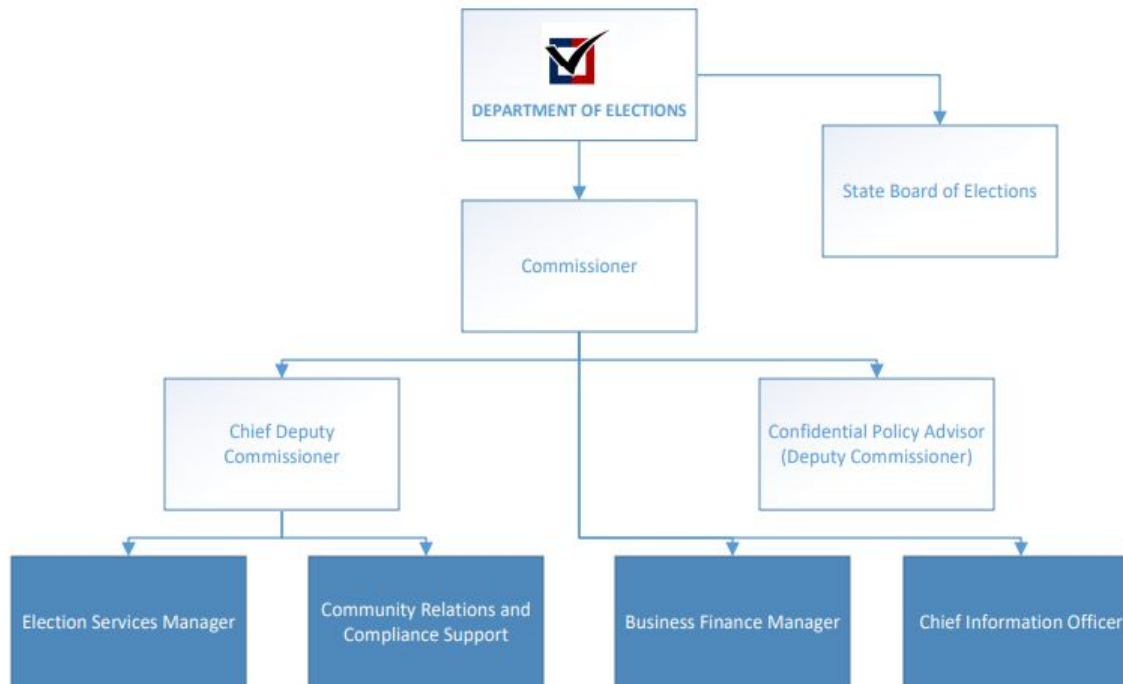


Executive Staff

- Christopher Piper
 - Commissioner
- Jessica Bowman
 - Chief Deputy Commissioner
- James Heo
 - Assistant Deputy Commissioner



Organizational





Information Services

Daniel Persico (CIO)

- Provides a means through the statewide Voter Election Registration & Information System (VERIS) for local general registrars to generate pollbooks, voter cards and other routine correspondence with voters to help ensure uniformity and integrity of elections.
- Provides an online method for individuals to register to vote and view or update their voter record.
- Provides an online system to report election results for all elections in the Commonwealth.
- Provides county and city general registrars a means to perform regular maintenance of the voter registration records to ensure the accuracy and integrity of the voter records. Maintenance activities include cancelling of registered voters records of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to relocation of his/her residence, (iii) has been convicted of a felony, (iv) has been adjudicated incapacitated, or (v) is otherwise no longer qualified to vote as may be provided by law. ELECT works with external agencies and partners to identify voters who have records needing review relating to these maintenance activities.



Election Administration

Dave Nichols

- Provides instructions and guidance to local county and city election officials in the certification of candidates and the conduct of all elections.
- Provides guidance, advice and support to SBE, general registrars, electoral boards, citizens and voters and ensures compliance with state and federal laws related to polling place accessibility.
- Certifies the results of elections



Election Administration

Dave Nichols

- Develops and prescribes forms and documents to be used in all election practices and proceedings
- Ensures that all ballots are printed and used in accordance with law
- Administers ELECT's electronic poll book efforts
- Informs public of the source and use of money in political campaigns. Public disclosure activities are supported by the training of political campaign organizations in the proper application of Virginia campaign finance laws and, the proper reporting of campaign finance activities and transactions.



Community Relations and Compliance Support

Andrea Gaines

- Responds to inquiries from the media, strives to ensure the accuracy of information presented to citizens.
- Prepares media releases to present relevant information to the general public and election officials.
- Improves the accessibility and quantity of polling places in Virginia.
- Provides statistical reports each month on its website regarding voter registration activity.
- Works with localities to assure readiness for absentee voting, voter registration, and election day
- Manages call center and coordinates statewide voter outreach efforts



Business Finance

Kevin Hill

- Responsible for ELECT's budget, including pass-through funds for localities and HAVA funds
- Human resources for the agency in conjunction with DHRM
- Assists with procurement contracts
- Conducts general office management for ELECT



Elections Community

- 399 Electoral Board Members across the Commonwealth
 - Appointed by local Circuit Court from recommendations of political parties
 - Staggered three year terms
 - Each board has three members
 - Two members of Governor's party
 - 133 General Registrars
 - Appointed by Electoral Boards
 - Four year term
 - All appointments expire June 30, 2019



Electoral Boards

- The authority for the administration of all aspects of elections for the locality remains with the Electoral Board, including oversight of the General Registrar/Director of Elections, and is responsible to the State Board of Elections for that administration. It employs and supervises the General Registrar, who handles voter records.
- Virginia Electoral Board Association (VEBA)
 - Barbara Tabb, President



General Registrar

- Duties and powers of the General Registrars generally include: Maintain official registration records, process denials according to 24.2-422; verify accuracy of pollbooks, notify registrants of polling place moves, attend annual training.
- Establish the duties of assistant registrars, appoint assistant registrars, have authority to remove any assistant registrar who fails to discharge the duties of his office. May hire additional temporary employees on a part- time basis as needed.
- Voter Registrar Association of Virginia (VRAV)
 - **Walt Latham, President**



Budget/Legislative Studies

- Gather requirements for building a new VERIS (ELECT)
- General Registrar Compensation Study (ELECT)
- No Excuse Absentee (SBE)
- Security Standards Workgroup (SBE)



Benchmark Index Workgroup

- At the April 25, 2018 meeting of the State Board of Elections (SBE), its members voted unanimously to approve the Virginia Elections Benchmark Index Workgroup. The duties of the Workgroup would be to develop benchmarks to represent a successful election. The Workgroup would do a thorough review of elections in the Commonwealth and develop metrics to measure successful elections, as well as how to reach those benchmarks
- Report is due June 30, 2019
- Progress report will be provided at the next meeting



JLARC Report

- Report findings focused on the following areas:
 - Oversight
 - Training
 - Guidance
 - List Maintenance
 - Agency Structure



Response

- Governor proposed new positions for list maintenance and training
- Updated numerous policies and documents and reviewing annually
- Reviewing organizational structure



*The Staff Welcomes You to the
Team and Look Forward to Working
With Each of You*

Questions?



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Stand By Your Ad Hearings & Express Advocacy Regulations

BOARD WORKING PAPERS
Arielle A. Schneider
Policy Analyst

State Board of Elections Policy 2018-001

A meeting of the Virginia State Board of Elections was held on August 15, 2018 whereby the following policy was proposed by the Department of Elections and approved by the Board:

Stand By Your Ad Hearings

WHEREAS, the Code of Virginia §24.2-955.3 provides that the Board shall conduct a public hearing to determine whether to find a violation of Chapter 9.5 and assess civil penalties when appropriate; now therefore let it be

RESOLVED, by the Board under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to §24.2-103, that:

The below policy applies to the conduct of Stand By Your Ad hearings held pursuant to the Code of Virginia §24.2-955.3.

General Provisions.

1. **Notice, by electronic and certified US mail, where sent.** Whenever notice is required, if a respondent is a registered voter or registered committee, notice must be sent by electronic or certified United States mail to the most recent physical or email address provided in a statement (registration or statement of organization) filed with the Board.
2. **Opportunity to be heard.** The respondent must be given an opportunity to appear in person at a Board meeting before the Board makes a determination on the matter. Neither the complainant nor respondent is required to appear before the Board. A complainant or respondent may submit a written statement to the Board in addition to or in lieu of an appearance before the Board. The opportunity to be heard does not include the right to call witnesses or to question opposing parties, Board members, or ELECT staff.
3. **Non-appearance.** When notice of the opportunity to be heard has been sent as required, the failure to appear in person or in writing at the noticed meeting constitutes a waiver of the opportunity to be heard at that meeting. ELECT staff will provide notice to the most recently reported mailing or email address. A decision cannot be reconsidered if the respondent does not receive notice due to a changed mailing or email address.
4. **Waiver.** The Board may, for good cause shown, waive any of the provisions of this policy if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. Any waiver shall be documented in the official record of the meeting for continuity. In any conflict within this policy between general and specific provisions, the specific provisions shall govern.

Definitions.

1. “Clearly identified” means the candidate’s name, nickname, photograph, or drawing or the identity of the candidate is otherwise apparent through an unambiguous reference such as the candidate’s initials (e.g. FDR), nickname (e.g. Ike), their office (e.g. “the Governor”) or

through an unambiguous reference to their status as a candidate such as “the Democratic Senate nominee for District 5”.

2. “Complainant” means the filer of a complaint.
3. “Coordinated, or coordination” means an expenditure that is made (i) at the express request or suggestion of a candidate, a candidate’s campaign committee, or an agent of the candidate or their campaign committee or (ii) with material involvement of the candidate, a candidate’s campaign committee, or an agent of the candidate or their campaign committee in devising the strategy, content, means of dissemination or timing of the expenditure.
4. “Express advocacy” means a direct or indirect contribution, in-kind contribution, independent expenditure or loan made to a candidate or political committee for the purpose of influencing the outcome of an election; an advertisement that refers to a party or candidate(s) by name and states “Vote for...”; “Support”; “Elect...”; “Smith for Congress”; “Send Him Home”; “Oppose”, etc.
5. “Respondent(s)” means the subject of a complaint, or the committee against whom action is sought.

Coordinated Expenditure. If an expenditure is alleged or appears to be coordinated, ELECT may provide notice to the named party.

Minutes and Transcripts. The minutes of Board meetings and hearings are a matter of public record. The minutes of Board meetings shall include the vote of each member on each complaint and any ruling of the Board.

Interpreters. If an interpreter is required, ELECT staff will make appropriate arrangements to ensure an interpreter is present during the hearing.

Representation. In a proceeding before the Board, any person or party may appear on their own behalf. Any person or party may be represented by any other person duly authorized in writing to do so for the purpose of the hearing.

Hearing Procedures: General. The order of procedure during the hearing shall be as follows:

- Call to order and opening statement of the Chairman, to include a list of the respondents whose hearings are scheduled for the meeting, a note that the respondents are required neither to appear nor speak, and a statement explaining that the Board will consider each complaint in alphabetical order by respondent or committee name.
- Introductory statement by the Commissioner, Counsel, or ELECT staff, as appropriate.
- For each complaint heard, ELECT staff will present background information, the evidence submitted, explain the recommended action and provide an opportunity to answer questions from the Board.
- If present, respondent shall be given the opportunity to speak and answer questions from the Board.
- Witnesses before the Board shall be examined orally. Any member of the Board may question any witness at any time during or after the witness speaks.

Hearing Procedures: Chair’s Authority. The Chair shall have the authority to:

- Regulate the course of the hearing;
- Approve motions to consolidate complaints for hearing;
- Call and examine witnesses;

- Request any party or person at any time during the hearing to state their respective position concerning any issues in the proceeding and theory in support of that position;
- Adjourn a hearing and establish the date when the hearing will be continued;
- Conclude a hearing;
- Establish reasonable time limits for witnesses, and fairly allocate time among the parties and others;
- Exclude unduly repetitious or irrelevant testimony, and permit a witness to adopt the prior testimony of another witness; and
- Take any other action permissible by law or that is necessary under this policy.

Deliberation. To assess a civil penalty for a violation of Chapter 9.5 Stand By Your Ad, the Board must find that SBYA requirements apply to the communication in question, and that the communication fails to comply with SBYA requirements. The Board should consider whether the communication constitutes an advertisement subject to Virginia’s SBYA laws and whether the advertisement expressly advocates for the election or defeat of a clearly identified candidate. Upon such finding, the Board may then determine whether the advertisement complies with SBYA disclosure requirements and if not, what civil penalty to assess.

Occurrence. SBYA penalties are assessed cumulatively, based on the number of violations from the same committee within an election cycle.

Decision. The Board’s motion should clearly state the Board’s determination that the communication in question constitutes an advertisement governed by the SBYA laws, whether it found a violation of Chapter 9.5, and the penalty assessed. The recommendation provided by ELECT for each complaint will include a motion stating whether a violation was found and the penalty assessed, which the Board can use or change. For example, *“I move, subject to the Board’s authority under the Code of Virginia §24.2-955.3, to find John Smith in violation of Stand By Your Ad’s print media disclosure requirements with regard to two advertisements, and is thereby fined \$200.”* At the conclusion of the hearing, ELECT staff shall send notice of the decision promptly to all parties.

Continuance. A scheduled hearing shall not be delayed by the inability of the respondent to attend the hearing unless a request for a continuance is made in writing to the Chair or ELECT staff not less than seven (7) days before the scheduled hearing date. A continuance shall not be granted unless the request, in the opinion of the Chair, sets forth good and sufficient cause for the continuance. If a continuance is granted, ELECT staff shall notify all members of the Board and document this in the official record of the meeting for continuity. The availability of counsel shall not be considered good cause for a continuance. A continuance shall not be granted where the requested hearing date would extend beyond the statutorily mandated deadline for Board adjudication. No more than one continuance may be granted.



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

Stand By Your Ad

BACKGROUND

HISTORY

CURRENT PROCESS

MOVING FORWARD

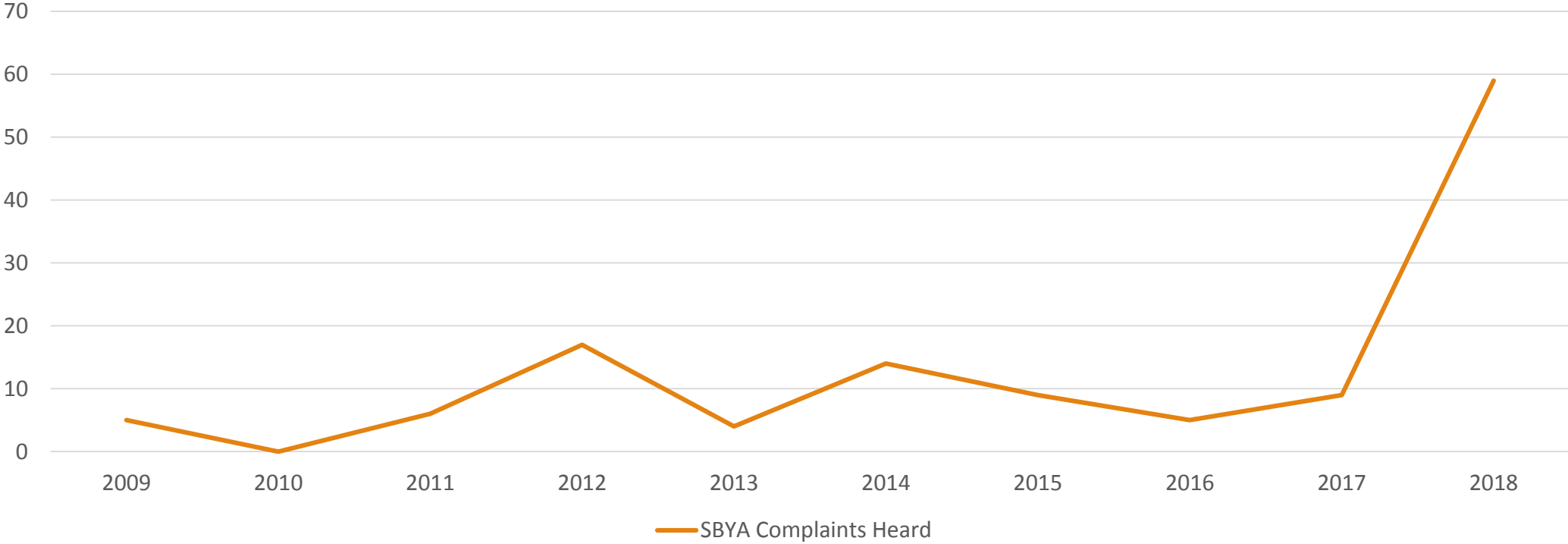
Background

24.2-955.3(D)

D. The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty. At least 10 days prior to such hearing, the State Board shall send notice by certified mail to persons whose actions will be reviewed at such meeting and may be subject to civil penalty. Notice shall include the time and date of the meeting, an explanation of the violation, and the maximum civil penalty that may be assessed.

Number of SBYA Complaints Heard

Stand By Your Ad Complaints – 2009–2018



History

Stand By Your Ad law enacted 2002

Records prior to 2009 are only kept in the body of meeting minutes

No regulatory action

Some policies adopted

- SBE Policy 2008-007: defining “Exhibit Other Campaign Materials”
- Overturned by SBE Policy 2009-002: “Display Campaign Material”

Staff only brought complaints before Board if hard evidence (sign or flyer itself) was mailed to ELECT staff. Staff then evaluated, and provided memos summarizing the facts and analysis.

Circa 2011

Code 24.2-955.3 establishes the following *maximum* penalties

- For Print Media, each violation subject to *no more than \$1,000*
 - *Proximity to Election Day: subject to no more than \$2,500*
- For Television and Radio, each violation subject to *no more than \$1,500*
 - *Proximity to Election Day: no more than \$10,000*
- For Campaign Telephone Calls, each violation subject to no more than \$2,500

Staff drafted and SBE passed a “Schedule of Penalties” to guide the Board in assessing fair, consistent penalties

- Introduces scaled penalties based on recurrent violations within the same election cycle
- Introduces the “explanation, apology, or remedial measures” reduction for 1st time offenders

Schedule of Penalties for Statewide Office

Section 15.2 - Penalties for Candidates for Statewide Office

The following penalties will apply only to statewide candidates or statewide campaign committees which sponsor political advertisements.

Print Media

Violators shall be assessed a penalty as follows:

- \$50 for a first time violation with explanation, apology and/or remedial measures taken;
- \$100 for a first time violation without explanation, apology and/or remedial measures taken;
- \$250 for any second violation;
- \$500 for any third violation; and
- \$1000 for any fourth or subsequent violation.

If the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains, the above penalties will be doubled and the maximum penalty would be \$2,500.

Television

The penalty for violating required television disclosures will be \$2,500 per occurrence unless the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains. In this case, the penalty will be \$10,000 per occurrence.

Radio

The penalty for violating required radio disclosures will be \$2,500 per occurrence unless the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains. In this case, the penalty will be \$10,000 per occurrence.

Campaign Telephone Calls

The penalty for violating required campaign telephone call disclosures will be \$2,500.

Schedule of Penalties for Candidates for General Assembly or Local Office

Section 15.3 - Penalties for Candidates for General Assembly or Local Office

The following penalties will apply only to General Assembly or local candidates and/or their campaign committees which sponsor political advertisements.

Print Media

Violators shall be assessed a penalty as follows:

- \$50 for a first time violation with explanation, apology and/or remedial measures taken
- \$100 for a first time violation without explanation, apology and/or remedial measures taken
- \$250 for any second violation
- \$500 for any third violation
- \$1000 for any fourth or subsequent violation

If the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains, the above penalties will be doubled and the maximum penalty would be \$2,500.

Television

Violators whose total expenditures for the election cycle are less than \$10,000 will be assessed a penalty of \$500 unless the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains. In this case, the penalty will be \$1,000.

Violators whose total expenditures for the election cycle are \$10,000 or more will be assessed a penalty of \$1,000 unless the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains. In this case, the penalty will be \$2,500.

Radio

Violators whose total expenditures for the election cycle are less than \$10,000 will be assessed a penalty of \$250 unless the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains. In this case, the penalty will be \$500.

Violators whose total expenditures for the election cycle are \$10,000 or more will be assessed a penalty of \$500 unless the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains. In this case, the penalty will be \$1,000.

Campaign Telephone Calls

The penalty for violating required campaign telephone call disclosures will be \$2,500 per occurrence.

2015 – 2017

2015 – SBYA complaints held from agenda

- 10/6/2015: Board requested ELECT review the entire SBYA process and provide a report
 - Statute of limitations barring action due to not being sent to SBE; Chairman Alcorn asked that ELECT forward the complaints to the Board Members as they are received
 - Chairman Alcorn requested historical data (of precedents set by the Board in future hearings) and a database to handle future complaints
- 11/16/2015: 12 complaints scheduled
 - Tabled multiple violations to next meeting 12/16/2015 pending additional information from staff
- 12/16/2015: ELECT presented SBYA protocol memo
 - Chairman Alcorn asked that ELECT forward the complaints to as they are received and SBE would direct ELECT to place the complaints on the agenda for the next appropriate board meeting depending on the circumstances of the complaint.
 - Board requested ELECT provide clarity at next SBE meeting (1/8/2016)

2016 – Express Advocacy Memo and Substantial Compliance Memo

- At January 8 meeting, ELECT staff presented the Express Advocacy Memo and the Substantial Compliance Memo
- 5 complaints heard in 2016

2017 – SBYA handled by Deputy Commissioner

- At 5/1/2017 meeting, ELECT did not provide recommendations, memos or staff analysis. 3 complaints heard, remainder tabled pending records to be provided by the Department such as candidate statements of organization
- At 6/27/2017, 3 complaints handled, several dismissed due to statute of limitations having expired

2018-present

Winter 2018 – Staff presented recommendations for improvements to SBYA process resulting in 3/23/18 SOP

SBE voted unanimously to submit a regulation defining Express Advocacy

Spring 2018 – Staff developed and discussed with Board to finalize SBE consensus on Policy 2018-001 regarding the conduct of SBYA hearings

June 21, 2018 – SBE passes 2018-001

- Five SBYA hearings held in 2018; total of 59 complaints adjudicated
- 5/21/2018; 6/19/2018; 9/20/2018; 10/9/2018; 11/19/2018
- First appeal requesting judicial review under the APA (still ongoing)

2019

- One SBYA hearing held so far (1/23/2019)
- 17 complaints

Current Process: SBYA Hearing

PRESENTATION FIRST PROVIDES OVERVIEW OF STAND BY YOUR AD REQUIREMENTS, BOARD POLICIES AND ITS SCHEDULE OF PENALTIES.

FOR EACH COMPLAINT, INCLUDES EVIDENCE, RESPONSE FROM SPONSOR, APPLICABLE LAWS AND REGULATIONS, ANALYSIS, AND A SUGGESTED MOTION.



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

Stand By Your Ad

OCTOBER 9, 2018

STATE BOARD OF ELECTIONS MEETING

Print Media

1. SAL ROMERO

Print Media

Advertisement sponsored by candidate or candidate committee

No Other Candidate Mentioned in Ad	Another Candidate Mentioned (who approved the ad)	Another Candidate Mentioned (did not approve the ad)	Jointly Sponsored Ad
“Paid for by John Doe.” OR “Authorized by John Doe.”	Paid for by John Doe. Authorized by Jane Smith, candidate for Delegate.	Paid for by John Doe. Not authorized by any other candidate.	Paid for by John Doe, Donald Duck and Jane Smith.

Substantial Compliance: An advertisement is only substantially compliant if the words used in the disclosure *unambiguously* convey the information required by Chapter 9.5. Under this standard, advertisement disclaimers must communicate to a reasonable person what is intended and may not admit to alternative interpretations.

Standard adopted at 11/16/16 SBE meeting: an advertisement bearing the disclosure legend “Sponsored by [Name of committee]” rather than the approved “Paid for” or “Authorized by” conveyed the information required by §24.2-956 and was therefore in substantial compliance.

Schedule of Penalties *candidates for General Assembly or local candidates*

Section 15.3 - Penalties for Candidates for General Assembly or Local Office

The following penalties will apply only to General Assembly or local candidates and/or their campaign committees which sponsor political advertisements.

Print Media

Violators shall be assessed a penalty as follows:

- \$50 for a first time violation with explanation, apology and/or remedial measures taken
- \$100 for a first time violation without explanation, apology and/or remedial measures taken
- \$250 for any second violation
- \$500 for any third violation
- \$1000 for any fourth or subsequent violation

If the advertisement is disseminated or on display in the 14 days prior to or on the Election Day for which the advertisement pertains, the above penalties will be doubled and the maximum penalty would be \$2,500.

1. Sal Romero



Attempt to Remedy



Sal Romero

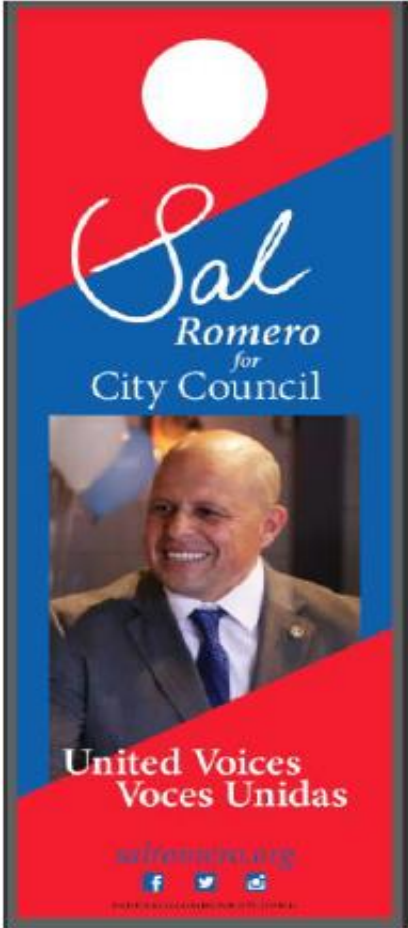
Published by Salvador Romero Jr. [?] · September 9 at 12:32 PM · 🌐



As the midterm elections approach, we are all hoping to change the tide and focus on positive and inclusive leadership, locally and nationally. In our hurry to start focusing on making the Blue Wave happen, our campaign missed something along the way by leaving off the required "Paid for by Sal Romero For City Council" statement at the bottom of the sign. If you have a political sign in your yard that is in need of this statement, please send us a PM and we will bring you a sticker. We've contacted the Board of Elections to let them know we are addressing the error. And for those in need of a sign, we will be happy to drop one by! Thank you for all of your support and help as we work together to get Sal elected to Harrisonburg City Council.



New Materials



Letter to Board

Dear Deputy Commissioner Bowman,

October 2, 2018

Thank you for taking my call this morning and answering my questions regarding the complaint against me regarding a possible violation of Virginia's Stand by Your Ad law. I take this matter very seriously and am grateful to be able to write this letter in place of having to attend the public meeting in person on Tuesday, October 9, 2018 in Richmond, Virginia.


As I mentioned during our conversation, I truly feel that I reacted proactively to the error and have documented the timeline of my actions:

1. On September 7, 2018 it was first brought to my attention that our first campaign yard signs were missing the text, "*Paid for by Sal Romero for City Council.*" I immediately called the Virginia Board of Elections to alert them of the error. You will find the response to that call attached to this message. I also got in contact with the local Harrisonburg Democratic Committee.
2. Within the next couple of days I alerted supporters of the error through phone calls and social media so that they would be aware that one of our campaign volunteers would be placing stickers on the signs in their yards to make the ads compliant.
3. In the weeks that have followed, my team has consistently continued to keep looking out for any signs that would not be compliant but we felt confident that we placed stickers on the 100 signs we originally distributed.

Since those first signs were ordered, we have put a second order of signs that do include the compliant text just as all of the other campaign materials do. Please see attached for documentation.

I regret that this mistake was made and I take full responsibility for the error but I do feel that I reacted in the swiftest manner possible. I hope that the concerned citizen that communicated the issue will see that we dealt with the issue as quickly as we could. Please let me know if I can provide any further information or documentation for your committee.

Respectfully Submitted,



Salvador Romero

Coordinator of Family and Community Engagement for Harrisonburg City Public Schools
Harrisonburg, VA 22801

RECOMMENDATION: Sal Romero

ELECTION Harrisonburg City Council; November 8th, 2018

TYPE yard signs

SPONSOR TYPE candidate campaign committee

DISCLOSURE required

DISCLOSURE missing

Print media advertisement (yard signs) with apology and attempt to remedy = \$50

About 50 signs, photo of 1 provided.

Recommended Motion: I move, subject to the Board's authority under the Code of Virginia §24.2-955.3, to find Sal Romero for City Council in violation of §24.2-956 Stand By Your Ad print media disclosure requirements with regard to a print media advertisement, and assess a \$50 penalty.

Moving Forward – Next Steps

- Reduce noncompliance in the first place by providing clarity in terms of
 - What must be disclosed (what advertisements constitute political advertisements that can be governed by Stand By Your Ad and regulated by the Board)
 - How to ensure a disclosure contains all required language and is sufficiently conspicuous
- Candidates and sponsors need to know how they can remedy their noncompliant advertisements, what constitutes an apology or explanation, etc.

Project 1 – Express Advocacy Regulation

Project 2 – Compliance Guide

- How to Properly Disclose Political Advertisements
- How to Remedy Noncompliant Advertisements
- How to Respond to a Notice of Violation

Questions?



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APA Exemptions

BOARD WORKING PAPERS
Samantha Buckley
Policy Analyst



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DEPARTMENT *of* ELECTIONS

APA Regulatory Process for the State Board of Elections



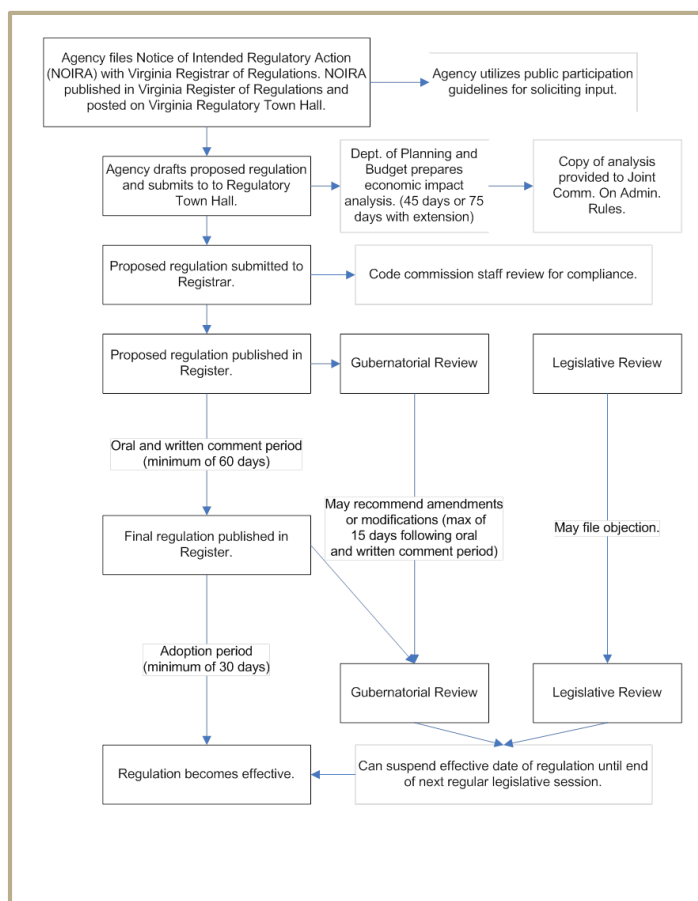
Where does the SBE get its Regulatory Authority?

“[The State Board] shall make rules and regulations and issue instructions and provide information consistent with the election laws to the electoral boards and registrars to promote the proper administration of election laws.”

Va. Code § 24.2-103(A)



The Traditional Regulatory Model





Exemptions

Agency action relating to the following subjects shall be exempted from the provisions of this chapter... The conduct of elections or eligibility to vote.

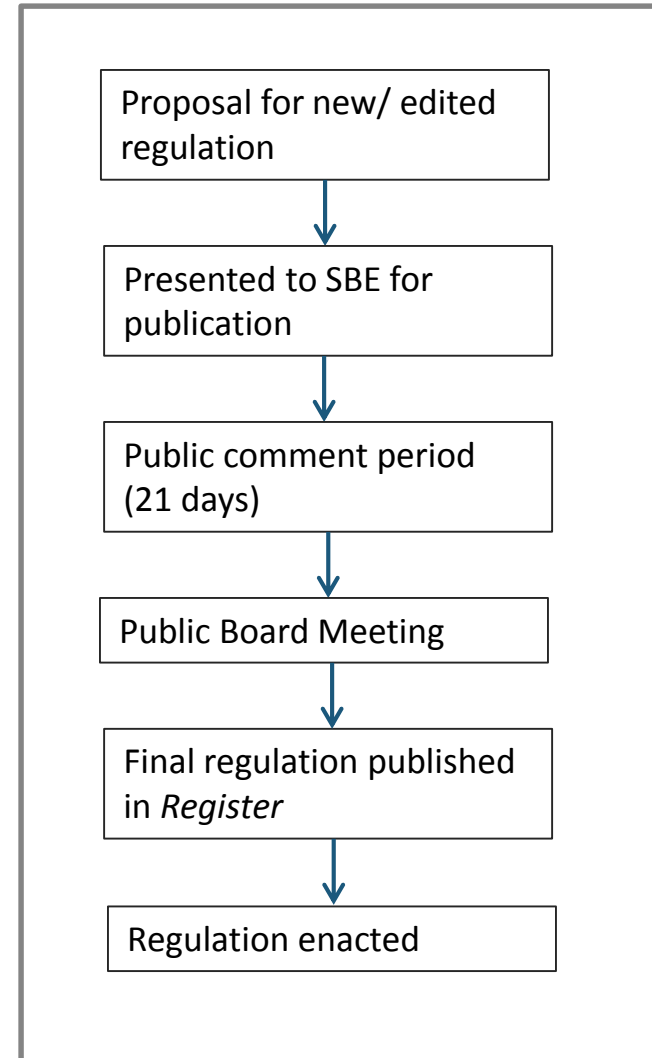
Va. Code § 2.2-4002(B)(8)

- The Code of Virginia exempts certain regulations from the requirements set in the Administrative Process Act (APA). Virginia Code § 2.2-4002(B)(8) explicitly provides an exemption from the APA process for regulations related to “the conduct of elections or eligibility to vote.”
- Campaign finance related regulations are *not* exempt.



What is the SBE Regulatory Process?

- Generally, the SBE regulatory process for exempt regulations is simple when compared to the traditional regulatory model.
- Two elements that are *not* removed from the SBE regulatory process are publication and public comment.





Publication and Public Comment

“In considering any nonemergency, exempt regulatory action, the board shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on Town Hall or through the State Board of Elections website.”

1VAC20-10-40

- While Va. Code § 24.2-4002(B)(8) provides for an exemption, by SBE’s regulations *Public Participation Guidelines*, nonemergency, exempt regulatory actions are required to complete publication and have a public comment period prior to adoption.
 - Publication may be on the ELECT website or on Town Hall and in the Virginia Register for a minimum of 21 calendar days.
 - SBE may determine to extend or reduce the 21 day comment period.
 - SBE may allow for additional time for public comments if one or more significant changes were made to the proposed regulation.



Adoption of Regulations

“Regulations adopted by the board shall be effective upon approval by the board and compliance with all applicable legal requirements, including filing with the Register of Regulations and any further conditions the board may specify. All adopted regulations shall be posted to the Internet within three business days after they become effective.”

1VAC20-10-100



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Drawing of ballot order in case of simultaneous filings

BOARD WORKING PAPERS
Matthew Abell
Election Administration



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ELECTIONS

Christopher E. "Chris" Piper
Commissioner

Jessica N. Bowman
Deputy Commissioner

Memorandum

To: Chairman Brink, Vice Chair O'Bannon, and Secretary LeCruise
From: Matthew Abell, Elections Administrator
Date: April 03, 2019
Re: Ballot order for candidate names for June 2019 Primaries

Suggested motion for a Board member to make:

"I move that the Board certify the determinations by lot of the order of candidates on the ballot for primary elections to be held on June 11, 2019."

Applicable Code Section: § 24.2-529. Primary ballots.

The primary ballots for the several parties taking part in a primary shall be composed, arranged, printed, delivered, and provided in the same manner as the general election ballots except that at the top of each official primary ballot shall be printed in plain black type the name of the political party and the words "Primary Election." The names of the candidates for various offices shall appear on the ballot in an order determined by the priority of the time of filing for the office. In the event two or more candidates file simultaneously, the order of filing shall then be determined by lot by the electoral board or the State Board as in the case of a tie vote for the office. No write-in shall be permitted on ballots in primary elections.