

State Board of Elections
FINAL Meeting Minutes
Tuesday, September 17, 2019

1 The State Board of Elections (“the Board”) meeting was held Tuesday, September 17,
2 2019, in the Virginia State Capitol, Senate Room 3, in Richmond, Virginia. In attendance:
3 Robert Brink, Chairman, John O’Bannon, Vice Chairman and Jamilah LeCruise, Secretary,
4 represented the State Board of Elections (“the Board”). Christopher E. “Chris” Piper,
5 Commissioner, and Jessica Bowman, Deputy Commissioner represented the Department of
6 Elections (“ELECT”). Heather Hays Lockerman represented the Office of the Attorney General
7 (“OAG”). Chairman Brink called the meeting to order at 1:00 P.M.

8 The first order of business was for the Board to approve minutes for the August 6 Board
9 meeting, the August 6 Public Hearing for 1 VAC 20-90-30, and the August 22, 2019 meeting.
10 Chairman Brink presented the minutes for those meetings. The Vice Chair moved *that the Board*
11 *approve the minutes from the August 6, 2019 Board meeting.* Secretary LeCruise seconded the
12 motion, and the motion passed unanimously. The Secretary moved *that the Board approve the*
13 *minutes from the August 6, 2019 Public Hearing.* Vice Chair O’Bannon seconded the motion,
14 and the motion passed unanimously. The Vice Chair moved *that the Board approve the minutes*
15 *from the August 22, 2019 Board meeting.* Secretary LeCruise seconded the motion, and the
16 motion passed unanimously.

17 The next order of business was the Commissioner’s Report, presented by Commissioner
18 Piper. The Commissioner introduced new employees of ELECT including Danny Davenport,
19 Policy Analyst, Tanya Pruett, Senior Registrar Liaison, Matthew Fritz, GIS Analyst, Hilary
20 Small, VCU Wilder Fellow, and Sherry Cerny, Election Services Specialist. Commissioner Piper
21 advised the Board that the Elections Administration team reviewed 967 ballots that will be used

22 for the November general election. The Commissioner applauded the Campaign Finance team
23 for completing their deadline. Commissioner Piper stated that absentee voting begins Friday.

24 The Commissioner noted a pending issue at the federal level for the United States'
25 potential withdrawal from the Universal Posting Union ("UPU"). Commissioner Piper explained
26 that the UPU is an international agreement to ensure the standard delivery of mail globally. The
27 Commissioner informed the Board that if the UPU does not accede to US demands, the US will
28 withdrawal from the current agreement effective October 17, 2019. Commissioner Piper advised
29 that if the United States cannot come to a bilateral agreement with the nation, mail may not be
30 sent back to Virginia from overseas voters. The Commissioner stated that ELECT had asked
31 local general registrars to notify overseas and military voters to request the absentee ballot as
32 soon as possible and return the voted ballot no later than October 17, 2019. The Commissioner
33 informed the Board that the General Assembly assigned ELECT to review the "no excuse in-
34 person absentee voting" law that will go into effect in 2020. Commissioner Piper advised the
35 Board that a few ELECT staff members went to Mecklenburg County, North Carolina to observe
36 their early voting operation. The Commissioner congratulated its new Voter Registrar
37 Association of Virginia President from Wise, Virginia: Allison Robbins.

38 The next order of business was the Nationwide CyberSecurity Review, presented by
39 Daniel Persico, Chief Information Officer. Mr. Persico informed the Board that at a recent
40 meeting, the Board discussed HB2178 and approved a risk assessment. He advised the Board
41 that ELECT wants to allow localities to begin internal audits. Mr. Persico introduced Karen
42 Tinucci to present the Risk Assessment presentation. *This report is in the Working Papers for the*
43 *September 17, 2019 meeting.* Vice Chair asked if VACO and the other relevant constituent

44 groups were aware that the assessment was coming? Mr. Persico stated that if approved today,
45 ELECT will send out the first formal communication on the following business day. Chairman
46 Brink asked whether the Workgroup had identified any mechanism to share the cybersecurity
47 standards with the governing bodies of each locality. Mr. Persico advised that there is no
48 mechanism at this time but that once the Workgroup starts broadcasting the information and
49 attending VACO conferences, the Workgroup will be able to address a broader audience.

50 Secretary LeCruise *moved that the Board adopt the proposed Risk Assessment minimum*
51 *security standard related to information systems classified as sensitive to election related*
52 *activities. In support of improving risk communications and striving to baseline and measure*
53 *continual improvement, this standard includes a provision that each locality: Is a member of the*
54 *Center for Internet Security (CIS) Elections Infrastructure Information Sharing & Analysis*
55 *Center (EI-ISAC) and/or Multi-State ISAC (MS-ISAC); and Completes a self-assessment*
56 *annually as requested by the Department of Elections, utilizing a tool based on best practices;*
57 *such as the CIS Nationwide Cybersecurity Review (NCSR) Assessment. Vice Chair O'Bannon*
58 *seconded the motion, and the motion passed unanimously.*

59 The next order of business was the Voting System Certification Standard, presented by
60 Commissioner Piper. Commissioner Piper stated that certification standards had not been
61 updated in many years. The Commissioner informed the Board that with the partners of CGI
62 Technology Solutions ("CGI INC."), they have been working together to develop the
63 certification standards. Commissioner Piper introduced Jaime Woltz to present the report. *This*
64 *report is in the Working Papers for the September 17, 2019 meeting.* Chairman Brink asked
65 whether the new standard requires all systems to be recertified. Ms. Woltz stated that the testing

66 is done at the federal level but once completed, localities must demonstrate compliance to the
67 Commonwealth. Commissioner Piper stated that this would provide flexibility to the vendors to
68 make updates to the software without having to go through the recertification process. Vice
69 Chair O'Bannon *moved that the Board adopt the staff proposal for Voting System Certification*
70 *Standard as presented [amended]. Secretary LeCruise seconded the motion, and the motion*
71 *passed unanimously.*

72 The next order of business was the SB1564 regulations presented by Samantha Buckley,
73 Policy Analyst. *This report is in the Working Papers for the September 17, 2019 meeting.* Vice
74 Chair O'Bannon *moved that the Board approve the Department's proposal for regulatory action*
75 *and put forward IVAC20-50-40 for public comment.* Secretary LeCruise seconded the motion,
76 and the motion passed unanimously.

77 The next order of business was the Delegations of Authority 2019 presented by Dave
78 Nichols, Director of Elections Services. *This report is in the Working Papers for the September*
79 *17, 2019 meeting.* Chairman Brink suggested deferring the adoption of the Delegations until the
80 October 29 meeting. Vice Chair O'Bannon asked Commissioner Piper if this changes current
81 relationships. Commissioner Piper stated that ELECT currently works under the existing
82 delegations. The Commissioner informed the Board that the Delegations of Authority 2019 have
83 been updated to align the work of ELECT with the current Code of Virginia.

84 Mr. Nichols informed the Board that one of the changes between the old and new version
85 is that the General Assembly removed certain responsibilities given to the Board and reassigned
86 them to the Department. He explained to the Board that the memos for each chapter contain three
87 items of information; delegations regarding new or amended Code, a suggestion which should be

88 delegated to the Department and those that should remain with the Board, and any
89 recommendations the Department has for changing existing delegations and who has the
90 authority.

91 Mr. Nichols advised the Board that generally, delegations that constitute administrative
92 functions are delegated to the Department, but that under the proposed Delegations of Authority
93 2019 the Board retains policy and standard decisions. Mr. Nichols advised the Board that
94 Chapter 9.3 and 9.5 were originally Chapter 9. He explained that in 2006, the General Assembly
95 fundamentally rewrote the entire section and eliminated Chapter 9. Chairman Brink informed the
96 Board that they would defer the adoption of the delegations until the October 29 meeting.

97 The next order of business was Stand by Your Ad, presented by Arielle A. Schneider,
98 Policy Analyst. The first complaint was against Audrey for Supervisor. Ms. Schneider presented
99 the Board with two print media violations, one sign, and one letter. She stated that Ms. Regnery
100 provided a response, informing the Board that she has made the necessary changes to include a
101 disclosure statement on her advertising materials. Vice Chair O'Bannon moved *subject to the*
102 *Board's authority under the Code of Virginia §24.2-955.3, to find Audrey for Supervisor in*
103 *violation of Stand By Your Ad print media disclosure requirements with regard to two print*
104 *media advertisements and assess a \$100 penalty.* Secretary LeCruise seconded the motion, and
105 the motion passed unanimously.

106 The next complaint was against Friends of Steve Adragna. Ms. Schneider presented the
107 Board with two complaints. The first complaint contained two door hangers with no disclosure,
108 and the second complaint contained one door hanger with no disclosure. Ms. Schneider informed
109 the Board that Mr. Adragna provided an apology and explained the campaign's effort to correct

110 the errors. Vice Chair O'Bannon asked Ms. Schneider what does remediation constitute? Ms.
111 Schneider informed the Board that remediating an advertisement means to provide a disclosure
112 where there was no disclosure before or to provide correct disclosure language.

113 Vice Chair O'Bannon asked by what mechanism does ELECT document remedial action.
114 Ms. Schneider explained to the Board that the schedule of penalties provided by the previous
115 Board in 2012 provides that a first time violation can be halved if there is an apology,
116 explanation, or remedial action. She stated that if ELECT is basing the reduction solely on the
117 remedial action, ELECT will wait until the campaign provides an image of the remediated
118 advertisement. Secretary LeCruise moved *subject to the Board's authority under the Code of*
119 *Virginia §24.2-955.3, to find Friends of Steve Adragna in violation of Stand By Your Ad print*
120 *media disclosure requirements with regard to three print media advertisements and assess a*
121 *\$100 penalty. Chairman Brink seconded the motion.*

122 Ms. Hays Lockerman informed the Board that there are other complaints involving
123 multiple instances of the same media that will be presented today. She explained to the Board that
124 their response for one might impact the response on another. Commissioner Piper asked
125 hypothetically if 100 of the same business cards are considered to be one violation, and then it is
126 extended to yards signs, what would be the precedent created by this outcome? Ms. Hays
127 Lockerman stated that she would like the penalties and outcomes to be consistent. She noted that
128 these cases are not exempt from the APA; they have to provide justification for the final order
129 assessing a penalty. Chairman Brink suggested the Board defer the complaint until the end of
130 Stand By Your Ad.

131 The next complaint was against Friends of Virginia Smith. Ms. Schneider presented the
132 Board with 35-yard signs with no disclosure. She also provided the Board with the location of
133 each yard sign. Vice Chair O'Bannon asked how much would the penalty be for 35 sign
134 violation without apology or remediation. Ms. Schneider informed the Board the penalty would
135 be \$3,500 without apology and/or remediation and \$1,750 with an apology and/or remediation.

136 Ms. Smith addressed the Board and sincerely apologized for not having the disclaimer on
137 the yard signs. She stated that this is her first time running for office and was unaware of the
138 disclosure. Ms. Smith informed the Board that she has added the disclosure to all 35 signs and
139 presented the picture to the Board. Due to the apology Vice Chair O'Bannon moved *subject to*
140 *the Board's authority under the Code of Virginia §24.2-955.3, to find Friends of Virginia Smith*
141 *in violation of Stand By Your Ad print media disclosure requirements with regard to 35 print*
142 *media advertisements and assess a \$1,750 penalty.* Chairman Brink seconded the motion, voted
143 in favor of the motion and the motion passed 2-1, Secretary LeCruise having voted no.

144 The next complaint was against the Howard Phillips Campaign. Ms. Schneider presented
145 the Board with one yard sign with no disclosure. Mr. Phillips addressed the Board. He stated that
146 he first received notification of the violation from his local registrar and was unaware the
147 complaint had been sent to the State. Ms. Phillips apologized for the error and informed the
148 Board that once he received the complaint from his local registrar, he corrected his signs by
149 adding the disclosure. Chairman Brink asked Mr. Phillips if he had access to any material
150 informing him of this requirement. Mr. Phillips informed the Board that he did have a packet
151 containing the information. Due to an apology Secretary LeCruise moved *subject to the Board's*
152 *authority under the Code of Virginia §24.2-955.3, to find the Howard Phillips Campaign in*

153 *violation of Stand By Your Ad print media disclosure requirements with regard to one print*
154 *media advertisement and assess a \$50 penalty.* Vice Chair O'Bannon seconded the motion, and
155 the motion passed unanimously.

156 The next complaint was against J. Baxter Stegall for Nottoway Commonwealth's
157 Attorney. Ms. Schneider presented the Board with one print media yard sign with no disclosure.
158 Mr. Stegall addressed the Board. He stated that he had a two-part request. The first is a request
159 for the Board to find the evidence against him insufficient. Mr. Stegall informed the Board that
160 the requirements presented in §24.2-956 include Print Media, which is defined in §24.2-955.1.
161 He stated that the last sentence in the Print Media definition says "If a single print media
162 advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this
163 section applies only to one page, fold, or face." Mr. Stegall advised the Board that the evidence
164 only shows one side of the yard sign even though the sign is two-sided.

165 Ms. Schneider advised the Board that if the candidate can provide a photo of the
166 disclosure on the other side of the yard sign, she would recommend that the Board dismiss the
167 complaint. Mr. Stegall stated that he has added waterproof stickers with the disclosure to all of
168 the yard signs. Vice Chair O'Bannon asked what are the font size rules for disclosures? Ms.
169 Schneider informed the Board that the 7pt font sufficiency only applies to electronic disclosures.
170 She stated that if it is not an electronic disclosure, the minimum font size required is 7 point, but
171 that the Board must decide if the size is adequately conspicuous. Vice Chair O'Bannon moved
172 *subject to the Board's authority under the Code of Virginia §24.2-955.3, to find J. Baxter Stegall*
173 *for Nottoway Commonwealth's Attorney in violation of Stand By Your Ad print media disclosure*

174 *requirements with regard to one print media advertisement and assess a \$50 penalty.* Secretary
175 LeCruise seconded the motion, and the motion passed unanimously.

176 The next complaint was against Jeff Huffman. Ms. Schneider presented the Board with
177 two complaints, one sign without the disclaimer and the second sign with a disclaimer. Ms.
178 Schneider provided the Board with Mr. Huffman’s written response. *This report is in the*
179 *Working Papers for the September 17, 2019 meeting.* Mr. Huffman provided an apology and
180 informed the Board that he had made the necessary changes to 179 signs. Ms. Schneider
181 informed that Board that for the first sign, she would recommend a \$50 penalty due to the
182 apology and remedial action. She advised the Board that the second sign states “Authorized by
183 candidate”, and in 2015 the previous Board passed the substantial compliance policy. Ms.
184 Schneider stated that in order to determine a disclosure as substantially similar, the language
185 must articulate what the disclosure language was meant to communicate. Due to the apology
186 Vice Chair O’Bannon moved *subject to the Board’s authority under the Code of Virginia §24.2-*
187 *955.3, to find Jeff Huffman in violation of Stand By Your Ad print media disclosure requirements*
188 *with regard to one print media advertisement, for which the Board assesses a \$50 penalty.*
189 Secretary LeCruise seconded the motion, and the motion passed unanimously.

190 The next complaint was against Kersey for Sheriff. Ms. Schneider presented the Board
191 with two undisclosed print media items, one-yard sign, and one van advertisement. Mr. Kersey
192 addressed the Board. He apologized for his error and explained that he added the disclosure to
193 his signs. Chairman Brink asked if there was a copy of the remediated sign. Tammy Alexander
194 informed the Board that she does have proof of remediation for Mr. Huffman. Due to the
195 apology and remedial action Secretary LeCruise moved *subject to the Board’s authority under*

196 *the Code of Virginia §24.2-955.3, to find Kersey for Sheriff in violation of Stand By Your Ad*
197 *print media disclosure requirements with regard to two print media advertisements and assess a*
198 *\$100 penalty.* Vice Chair O'Bannon seconded the motion, and the motion passed unanimously.

199 The next complaint was against Trudy Berry for Delegate. Ms. Schneider presented the
200 Board with an undisclosed website. She informed the Board that the websites had subsequently
201 been disclosed. Due to the apology Vice Chair O'Bannon moved *subject to the Board's authority*
202 *under the Code of Virginia §24.2-955.3, to find Trudy Berry for Delegate in violation of Stand*
203 *By Your Ad print media disclosure requirements with regard to one print media advertisement*
204 *and assess a \$50 penalty.* Secretary LeCruise seconded the motion, and the motion passed
205 unanimously.

206 Ms. Schneider referred back to the Friends of Steve Adragna complaint. Vice Chair
207 O'Bannon moved *subject to the Board's authority under the Code of Virginia §24.2-955.3, to*
208 *find Friends of Steve Adragna in violation of Stand By Your Ad print media disclosure*
209 *requirements with regard to three print media advertisements and assess a \$150 penalty.*
210 Chairman Brink seconded the motion, and the motion passed 2-1.

211 Chairman Brink opened the floor to public comment. Dr. Clara Belle Wheeler, a former
212 Board member from Albemarle County, asked the Board would they speak with the local
213 General Registrar about political signs on private property.

214 Chairman Brink moved to adjourn the Board. The meeting adjourned at approximately
215 3:15 P.M.

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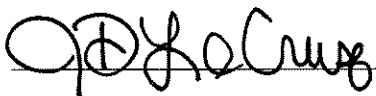
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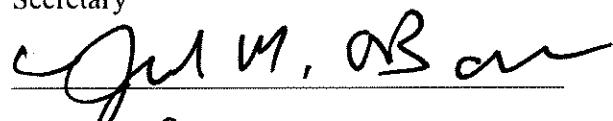
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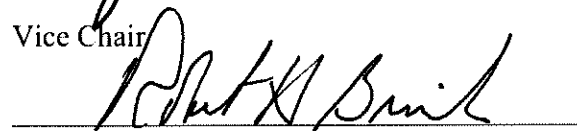
222 Secretary

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224 Vice Chair

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