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2 The State Board of Elections (“the Board”) meeting was held Tuesday, August 06, 2019,
3 in the Virginia State Capitol, Senate Room 3, in Richmond, Virginia. In attendance: Robert
4 Brink, Chairman, John O’Bannon, Vice Chairman and Jamilah LeCruise, Secretary, represented
5 the State Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner,
6 represented the Department of Elections (“ELECT”). Heather Hays Lockerman represented the
7 Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:00
8 P.M.

9 The first order of business was for the Board to approve minutes for the June 24, June 28,
10 July 11, and July 19, 2019 minutes. The minutes for those meetings were presented by Secretary
11 LeCruise. The Vice Chair *moved that the Board approve the minutes from the June 24, 2019*
12 *Board meeting.* Chairman Brink seconded the motion, and the motion passed unanimously. The
13 Vice Chair *moved that the Board approve the minutes from the June 28, 2019 Board meeting.*
14 Chairman Brink seconded the motion, and the motion passed unanimously. The Vice Chair
15 *moved that the Board approve the minutes from the July 11, 2019 Board meeting.* Chairman
16 Brink seconded the motion, and the motion passed unanimously. The Vice Chair *moved that the*
17 *Board approve the minutes from the July 19, 2019 Board meeting.* Chairman Brink seconded the
18 motion, and the motion passed unanimously.

19 The next order of business was the Commissioner’s Report, presented by Commissioner
20 Piper. The Commissioner stated that this year Virginia has 967 ballot styles for the November
21 General Election. Commissioner Piper informed the Board that over the past two weeks,
22 Lancaster County, Franklin City, and Bristol conducted post-election audit pilots. The

23 Commissioner stated that nine localities participated in Lancaster County, and five localities
24 participated in Franklin City. Commissioner Piper advised the Board that by the end of this
25 month post-election audits will be held in Loudoun County, Prince William County, and
26 Alexandria.

27 Commissioner Piper informed the Board that Virginia was selected to participate in the
28 National Governors Association (NGA) Policy Academy. The Commissioner stated that the
29 Policy Academy has a training session focused on ways to improve cybersecurity. Commissioner
30 Piper stated that the General Assembly assigned ELECT various reports to complete, such as a
31 salary study, a review of current job General Registrar duties and an annual list maintenance
32 report. The Commissioner informed the Board that through HB 2178, ELECT is partnering with
33 VACO, VML, and localities to develop minimum cybersecurity standards. Commissioner Piper
34 added that the General Assembly passed HB 1026, which permits no-excuse in-person absentee
35 voting from the second Saturday prior to an election to the Saturday immediately preceding an
36 election (early voting). The Commissioner informed the Board that this early voting bill does not
37 take effect until the November 2020 general election. The Commissioner informed the Board
38 that the General Assembly requested a report on the administrative procedures and additional
39 legislation necessary to implement early voting. Commissioner Piper stated that the General
40 Assembly also asked ELECT to draft a Request for Proposal for VERIS to determine if VERIS
41 needs to be replaced or upgraded. Commissioner Piper advised the Board that ELECT expects to
42 present new voting equipment certification standards and delegation documents in future Board
43 meetings, that ELECT is finalizing a new website that should be active September 15th and that
44 the Continuity of Operations Workgroup (COOP) meets on September 10 to secure a
45 communications plan for the November election.

46 The Commissioner introduced four new employees from ELECT: Josh Colley, Help
47 Desk Analyst; Jeff Braswell, Senior Developer; Leonard “Buddy” Murr, Training and
48 Development Specialist, and Chhavi Bhasin, Data Architect. Commissioner Piper congratulated
49 Garry Ellis in his new role as Liaison Supervisor. Chairman Brink welcomed the new employees
50 to ELECT.

51 Vice Chair O’Bannon presented the Board with a letter dated August 5, 2019, from the
52 Republican Party of Virginia. *This letter is in the Working Papers for the August 06, 2019*
53 *meeting.* Commissioner Piper stated that the letter requested clarification regarding whether
54 Delegate Freitas was properly nominated in accordance with Virginia Code § 24.2-539 and, if
55 the Department’s position was that Delegate Freitas was not properly nominated, whether the
56 Republican Party of Virginia would be able to fill the vacant nomination in accordance with its
57 own rules. The Commissioner informed the Board that Delegate Freitas failed to file the
58 Certificate of Qualification form (SBE-501) and the Legislative District chair failed to file the
59 Party Certification of Non-Primary Candidate form to certify a Republican candidate for the 30th
60 District (ELECT-511).

61 Commissioner Piper explained that unlike Delegate Freitas, Delegate Terry Kilgore (1st
62 District) and Delegate Clinton Jenkins (76th District) filed Certificates of Qualification forms
63 (SBE-501). In the Kilgore and Jenkins circumstance, although the candidates had properly filed
64 their Qualification form, their party did not provide the ELECT-511 form to certify the party
65 nominee. The Commissioner stated that because Mr. Freitas did not file a Certificate of
66 Candidate Qualification, the SBE-501 form, that there was no Republican candidate to nominate.
67 Commissioner Piper informed the Board that ELECT had received an ELECT-511 form from the

68 Legislative District Chair informing ELECT that they had replaced their nominee with Delegate
69 Freitas but because Delegate Freitas had submitted no forms to indicate or certify himself as a
70 candidate, ELECT could not accept the nomination.

71 Vice Chair O'Bannon *moved that the State Board of Elections to direct the Department*
72 *of Elections to accept the SBE-501 and ELECT-511 form presented from House District 30. The*
73 *motion failed for lack of a second. Vice Chair O'Bannon moved that the State Board of Elections*
74 *to direct the Department of Elections to notify the Republican Party of Virginia that it has the*
75 *authority to put forth another candidate in House District 30 consistent with Virginia Code §*
76 *24.2-539. The motion failed for lack of a second.*

77 The next order of business was the ES&S EVS 6.0.4.0 Voting System Certification,
78 presented by Eugene Burton, Voting Technology Coordinator. *This report is in the Working*
79 *Papers for the August 06, 2019 meeting. Secretary LeCruise moved that the Board certify the use of*
80 *ES&S EVS 6.0.4.0 in elections in the Commonwealth of Virginia, pursuant to the State Certification*
81 *of Voting Systems: Requirements and Procedures. Vice Chair O'Bannon seconded the motion,*
82 *and the motion passed unanimously.*

83 The next order of business was the 2020 Independent and 3rd Party Presidential Candidate
84 Petitions, presented by Samantha Buckley, Policy Analyst. *This report is in the Working Papers*
85 *for the August 06, 2019 meeting. Ms. Buckley advised the Board that there is a letter size and*
86 *legal size of this document. She informed the Board that the dates for the petition's circulation*
87 *have been changed, and the dates for the November General Election were updated for 2020.*
88 Further amendments to the forms that Ms. Buckley presented to the Board were to ensure that
89 the legal and letter size were identical in the information sought from and presented to the signer.

90 The legal size of the petition was amended to ask the signer for Date of Birth (optional) just as
91 the letter size. The affidavits were amended for accuracy and to ensure each presented the
92 circulator with the same information. . Chairman Brink asked why are there both letter and legal
93 sizes of the petiton? Ms. Buckley stated that she did not see a requirement for a certain size in the
94 Virginia Code, but she believes that it may have initially been provided in a legal size, and it was
95 hard to print. Vice Chair O'Bannon *moved that the Board approve the amendments to the*
96 *Petition of Qualified Voter for Electors for President and Vice President.* Secretary LeCruise
97 seconded the motion, and the motion passed unanimously.

98 The next order of business was the repeal of 1 VAC 20-90-20, presented by Arielle A.
99 Schneider, Policy Analyst. *This report is in the Working Papers for the August 06, 2019 meeting.*
100 Ms. Schneider informed the Board that the regulation states that for a \$25 fee ELECT will
101 transcribe campaign finance reports filed on paper into the electronic system. Ms. Schneider stated
102 that due to changes in the Code of Virginia, there is no longer an option to file on paper with the
103 State Board of Elections; accordingly, VAC 20-90-20 applies to a law that no longer exists. Vice
104 Chair O'Bannon *moved that the Board repeal 1 VAC 20-90-20 pursuant to the Administrative*
105 *Procedure Act.* Secretary LeCruise seconded the motion, and the motion passed unanimously.

106 The next order of business was Stand by Your Ad, presented by Arielle A. Schneider,
107 Policy Analyst. Chairman Brink confirmed with Ms. Schneider that one candidate requested to be
108 deferred to the next meeting. Ms. Schneider stated that two candidates submitted requests for their
109 complaints to be deferred to the next meeting; after Chairman Brink, per SBE Policy 2018-001
110 granted both requests, one candidate accepted the deferral, but the other wanted to be heard at this
111 meeting.

112 The first complaint was against Corbo for School Board. Ms. Schneider presented two
113 images from two separate complaints. The first image is of T-shirts and the second is of a banner
114 held by three campaign workers wearing the same T-Shirt. Ms. Corbo provided a response stating
115 that a disclaimer is present on both the banner and T-shirts, and a photo showing the disclosure on
116 the banner and the T-shirts. However, Ms. Schneider informed the Board that the disclosure
117 language Ms. Corbo provided is incomplete because it does not identify the proper committee that
118 sponsored the advertisements. Vice Chair O'Bannon *moved subject to the Board's authority under*
119 *the Code of Virginia §24.2-955.3, to find Corbo for School Board in violation of Stand by Your Ad*
120 *print media disclosure requirements with regard to one print media advertisement and assess a*
121 *\$50 penalty.* Secretary LeCruise seconded the motion, and the motion passed unanimously.

122 The next complaint was against David F. Williams, Sheriff for Alleghany County. Ms.
123 Schneider presented the Board with photos of five print media yard signs without disclosures. Mr.
124 Williams provided a response apologizing for the error and informing the Board that he has since
125 added disclosures to the signs. Ms. Schneider informed the Board that while "Paid for by
126 Candidate" is not the exact required disclosure because it does not explicitly state the candidate's
127 name or the name of the candidate's committee, that the previous Board in 2015 passed a policy
128 of substantial compliance, meaning if the language used precisely and exactly restates the required
129 content, the disclosure may be found to be appropriate. Secretary LeCruise *moved subject to the*
130 *Board's authority under the Code of Virginia §24.2-955.3, to find David Williams in violation of*
131 *Stand by Your Ad print media disclosure requirements with regard to five print media*
132 *advertisements and assess a \$250 penalty.* Vice Chair O'Bannon seconded the motion, and the
133 motion passed unanimously.

134 The next complaint was against Donald Smith for Sheriff. Ms. Schneider presented two
135 images: one of a Facebook page with a graphic announcing Donald Smith's candidacy, and a
136 second image posted online. Mr. Smith provided a response that primarily addressed whether he
137 was required to disclose the advertisements in question. Ms. Schneider advised the Board that the
138 images did not appear to constitute advertisements for the purpose of applying Stand By Your Ad,
139 because an advertisement must constitute either a contribution or expenditure and also contain
140 express advocacy. Vice Chair O'Bannon *moved to dismiss the complaints against Donald Smith*
141 *for Sheriff*. Secretary LeCruise seconded the motion, and the motion passed unanimously.

142 The next complaint was against Dwayne T. Wade. Ms. Schneider presented the Board with
143 one complaint containing images of six undisclosed business cards. Mr. Wade provided a response
144 acknowledging that the words Paid for and Authorized by were not on the business cards. Mr.
145 Wade also apologized for the oversight and was not aware of the business cards being posted in
146 public places. Due to the apology Vice Chair O'Bannon *moved subject to the Board's authority*
147 *under the Code of Virginia §24.2-955.3, to find Dwayne T. Wade in violation of Stand By Your Ad*
148 *print media disclosure requirements with regard to six print media advertisements and assess a*
149 *\$50 penalty*. Chairman Brink seconded the motion, and the motion passed unanimously.

150 The next complaint was against Galvin for Delegate. Ms. Schneider presented the Board
151 with a sample ballot with an incomplete disclosure. She advised that the disclosure for an
152 advertisement that makes reference to a clearly identified candidate who is not the sponsor of the
153 advertisement must identify whether other candidates authorized the advertisements by providing
154 specific language outlined in the Code of Virginia §24.2-956(2). Ms. Schneider informed the
155 Board that Ms. Galvin provided a response stating that she was not connected to the dissemination

156 of the photograph of her advertisement and confirming that her committee did create and
157 disseminate on election day the sample ballot in question. Ms. Schneider advised that any penalty
158 assessed for an advertisement disseminated on or within the two weeks before an election must be
159 doubled according to the Board's Schedule of Penalties. Ms. Galvin addressed the Board and took
160 full responsibility for the paper ballot, as she was unaware of the issue. Ms. Galvin stated that she
161 sincerely apologizes for her error and that the explanation she sent in was in regards to the tweet.
162 Due to the apology, Secretary LeCruise *moved subject to the Board's authority under the Code of*
163 *Virginia §24.2-955.3, to find Galvin for Delegate in violation of Stand By Your Ad print media*
164 *disclosure requirements with regard to a print media advertisement and assess a \$100 penalty.*
165 Vice Chair O'Bannon seconded the motion, and the motion passed unanimously.

166 The next complaint was against Gwen for Office. Ms. Schneider presented the Board with
167 one yard sign. She explained that it did not have a disclosure. Ms. Gwen Bell addressed the Board.
168 She explained that she ordered 100 signs with disclaimers on them, but received 50 with the
169 disclosure and 50 without. Ms. Bell stated that the company adjusted the machine while creating
170 the signs and cut off the disclaimer on half of her yard signs. She apologized for the error and
171 informed the Board that the signs had been removed, and the company re-created the signs
172 correctly. Ms. Bell provided a statement from Fast Signs stating the incident that occurred. Due to
173 the apology, Vice Chair O'Bannon *moved to dismiss the complaint pending confirmation.*
174 Secretary LeCruise seconded the motion, and the motion passed unanimously.

175 The next complaint was against Elect Kenya Savage- At Large Candidate. Ms. Schneider
176 presented an undisclosed website and explained to the Board that Ms. Savage added a disclosure
177 to her website. Ms. Schneider informed the Board that Campaign Finance is reaching out to Ms.

178 Savage because Friends of Kenya A. Savage is not her current campaign committee, but her 2015
179 campaign committee. Ms. Schneider advised that this would be a first time violation reduced to
180 \$50 due to the apology provided. Secretary LeCruise *moved subject to the Board's authority under*
181 *the Code of Virginia §24.2-955.3, to find Elect Kenya Savage – At Large Candidate in violation*
182 *of Stand By Your Ad print media disclosure requirements with regard to one print media*
183 *advertisement and assess a \$50 penalty.* Vice Chair O'Bannon seconded the motion, and the
184 motion passed unanimously.

185 The next complaint was against Friends of Levin White. Ms. Schneider presented the Board
186 with multiple challenged advertisements, but dismissed all complaints but one, as most of the
187 challenged advertisements appeared to constitute neither a contribution nor expenditure, and the
188 challenged advertisements for which a cost was obvious (the Goochland banner) did not contain
189 express advocacy. She then focused on a print media truck advertisement. She explained that the
190 truck advertisement constitutes an expenditure and contains express advocacy but does not have a
191 disclaimer. Ms. Schneider stated that Mr. White sent in a response apologizing for the error. Mr.
192 White then addressed the Board. He informed the Board that he provided a letter from the sign
193 company and an image showing the disclaimer at the bottom. Mr. White stated that he did go back
194 to the sign company and had the disclaimer placed on the back of the truck. Vice Chair O'Bannon
195 *moved to dismiss the complaint pending confirmation.* Secretary LeCruise seconded the motion,
196 and the motion passed unanimously.

197 The next complaint was against Lloyd Banks. Ms. Schneider presented an image of signs
198 made before July 1, 2015, and explained that the signs were made in March 2011. Ms. Schneider
199 informed the Board that Mr. Banks' signs are not in violation of Stand By Your Ad according to

200 the definition of yard signs in the State of Virginia, which includes an exemption for signs paid for
201 or distributed prior to July 1, 2015: “Yard signs paid for or distributed prior to July 1, 2015, shall
202 not be subject to the provisions of 24.2-956 and 24.2-956.1” because the General Assembly
203 changed the definition of Print Media to include yard signs in 2015. Secretary LeCruise *moved to*
204 *dismiss the complaints against Lloyd Banks*. Vice Chair O’Bannon seconded the motion, and the
205 motion passed unanimously.

206 The next complaint was against Patrick “Pat” Saylors. Ms. Schneider presented two images
207 to the Board, a Yard sign and an 8 ½ X 11 flyer – neither appeared to be disclosed. Ms. Schneider
208 stated that Mr. Saylors provided a response stating that he did not know the rules or have “political
209 experience”; Chairman Brink asked if the requirements are made clear to every candidate. Ms.
210 Schneider informed Chairman Brink that the Code of Virginia requires the State Board of Elections
211 to provide notice to candidates with information regarding of all the requirements for complying
212 with both campaign finance deadlines outlined in Chapter 9.3 and advertisements in Chapter 9.5.
213 She advised the Board that ELECT wrote a compliance guide focused on print media. Vice Chair
214 *O’Bannon moved subject to the Board’s authority under the Code of Virginia §24.2-955.3, to find*
215 *Patrick Saylors in violation of Stand By Your Ad print media disclosure requirements with regard*
216 *to two print media advertisements and assess a \$100 penalty*. Secretary LeCruise seconded the
217 motion, and the motion passed unanimously.

218 The next complaint was against Friends of Rich Breeden. Ms. Schneider presented the Board
219 with two advertisements of palm cards without disclosures. Christopher Woodfin, representing
220 Rich Breeden, addressed the Board. Mr. Woodfin informed the Board that he believes the images
221 presented are not palm cards, but rather, business cards that does not contain express advocacy.

222 Mr. Woodfin stated that Mr. Breeden apologizes because he was not aware of the rule related to
223 business cards having a disclaimer. Mr. Woodfin suggested that the Board determine if the
224 definition of express advocacy and consider whether a business card with contact information
225 should be considered differently than a business card that says "Vote for." He also
226 recommended that the Board take into consideration the language in Virginia Code 24.2-956
227 which provides an exception for online media that has insufficient space to place a disclaimer on
228 it, as long as any landing page you click on would go to it.

229 Mr. Woodfin stated that the card does provide a website with the disclaimer on it. Ms.
230 Schneider informed the Board that the electronic disclosure provision only applies to electronic
231 advertisements, that the Board has consistently considered a website address
232 "NameforOffice.com" to constitute express advocacy, due to the phrase similar to "Smith for
233 Congress" appearing in the advertisement, and that business cards are not exempt from Stand By
234 Your Ad. Due to the apology Secretary LeCruise *moved subject to the Board's authority under*
235 *the Code of Virginia §24.2-955.3, to find Friends of Rich Breeden in violation of Stand By Your*
236 *Ad print media disclosure requirements with regard to two print media advertisements and assess*
237 *a \$50 penalty.* Vice Chair O'Bannon seconded the motion, and the motion passed unanimously.

238 The next complaint was against Friends of Scott Wyatt. Ms. Schneider presented the Board
239 with second-round violation of a yard sign with no disclaimer. Ms. Schneider pointed to the
240 Board's Schedule of Penalties which states that the penalty for a second violation of Stand By
241 Your Ad during an election season is \$250 and is not eligible for a reduction due to apology,
242 explanation or remedial action. She stated that Mr. Wyatt provided a response that after he was
243 first penalized in May 2019, his campaign made attempts to bring all their advertisements in
244 conformity with the code. Vice Chair O'Bannon *moved subject to the Board's authority under the*

245 *Code of Virginia §24.2-955.3, to find Friends of Scott Wyatt in violation of Stand By Your Ad print*
246 *media disclosure requirements with regard to one print media advertisement and assess a \$250*
247 *penalty.* Secretary LeCruise seconded the motion, and the motion passed unanimously.

248 The next complaint was against a political action committee, the Virginia Constitutional
249 Conservatives. Ms. Schneider showed the Board the challenged advertisement, a handout. Ms.
250 Schneider explained that although the advertisement clearly advocates for the defeat of a clearly
251 identified candidate, the current understanding of express advocacy requires that an advertisement
252 contain certain words. She stated that the handout does not include "Vote for..."; "Support";
253 "Elect..."; "Smith for Congress"; "Send Him Home"; or "Oppose." Vice Chair O'Bannon *moved*
254 *to dismiss the complaint against Virginia Constitutional Conservatives.* Secretary LeCruise
255 seconded the motion, and the motion passed unanimously.

256 Chairman Brink opened the floor to public comment. Jim Smith, Chairman of the
257 Republican Committee of Madison County, spoke. Mr. Smith expressed his concerns about Mr.
258 Freitas not being on the ballot.

259 Chairman Brink then moved *to adjourn the meeting.* The meeting adjourned at approximately
260 2:40 P.M.

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