



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Friday, February 22nd, 2019
Martha Brissette Conference Room
Washington Building
Richmond, VA
2:00 P.M.

SBE Board Working Papers



**STATE BOARD OF ELECTIONS
AGENDA**

DATE: Friday, February 22, 2019
LOCATION: Martha Brissette Conference Room
Washington Building
Richmond, VA
TIME: 2:00 p.m.

I. CALL TO ORDER

James B. Alcorn
Chair

II. APPROVAL OF MINUTES

A. January 23, 2019

Singleton McAllister
Secretary

III. CERTIFICATION

**A. Certification of the 86th House of Delegates
District Special Election.**

Matthew Abell
Election Administrator

IV. ADJOURNMENT

NOTE: During the discussion of each topic there will be an opportunity for public comment. Anyone wishing to discuss an issue not on the agenda will be allowed to comment at the end of the new business section.

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
Singleton McAllister
Secretary

**State Board of Elections
Draft Meeting Minutes
Wednesday, January 23, 2019**

1 The Wednesday, January 23, 2019 State Board of Elections meeting was held in the West
2 Reading Room of the Patrick Henry Building, in Richmond, Virginia. In attendance: James
3 Alcorn, Chairman, Clara Belle Wheeler, Vice Chair, and Singleton McAllister, Secretary,
4 represented the State Board of Elections (“the Board”). On behalf of the Department of Elections
5 (“ELECT”) was Christopher E. “Chris” Piper, Commissioner, and Jessica Bowman, Deputy
6 Commissioner. Alex West represented the Office of the Attorney General (“OAG”). Chairman
7 Alcorn called the meeting to order at 11:40 A.M.

8 The first order of business was the approval of the December 21, 2018 and January 11,
9 2019 Board meeting minutes, presented by Secretary McAllister. *The Secretary moved that the*
10 *Board approve the minutes from the December 21 and January 11 Board meetings.* Vice Chair
11 Wheeler seconded the motion, and the motion passed unanimously.

12 The next order of business was the Commissioner’s report, presented by Commissioner
13 Piper. The Commissioner stated that the General Assembly is now in session; and that the district
14 court in the Bethune-Hill case issued a direct order to finalize the redistricting maps for certain
15 districts and localities. Commissioner Piper stated that this is not a final order, but is an initial
16 directive to the Special Master to finalize a particular module of maps.

17 Commissioner Piper then noted that the National Voter Registration Act requires ELECT
18 and the Department of Motor Vehicles (DMV) to work together on voter registration.
19 Commissioner Piper explained that the issue is neither DMV nor ELECT, but rather, the Motor
20 Voter Process.

21 The Commissioner referenced a conversation he held with Commissioner Holcomb about
22 working with the DMV on the motor voter process. Commissioner Piper wanted to credit
23 Commissioner Holcomb for being a part of the strong partnership that has been created between
24 the DMV and ELECT, but acknowledged previous issues toward the beginning of the Motor Voter
25 Process. The Commissioner read part of a letter written by himself and Commissioner Holcomb
26 and sent to Jake Washburn, General Registrar in Albemarle, and other general registrars: “ELECT
27 and DMV have begun work to implement a revised Electronic Motor Voter Process (EMV). One
28 of many revisions being implemented is that all customers regardless whether they are previously
29 registered are asked all eligibility questions during the Motor Voter Process.” Commissioner Piper

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30 stated that in December 2018 the two agencies sat down after having the demonstration over the
31 summer with the registrars, and the result of the change would be the elimination of the address
32 update process. The Commissioner then advised that a group of general registrars review the
33 revised process and make suggestions. Commissioner Piper stated that the voter is responsible for
34 answering questions and going through the process at the DMV, which requires the person to read
35 and understand what is being asked. Commissioner Piper introduced new ELECT staff members,
36 Franchelle Tyson as the Board Liaison for the State Board and also Karen Thomas as the Deputy
37 Chief Information Officer.

38 Chairman Alcorn asked the Commissioner for a rough timeframe for improvements.
39 Commissioner Piper stated that they are at the beginning stages of the process and it would be
40 premature to give a timeframe. The Commissioner advised that after the General Assembly leaves
41 town ELECT would be able to spend more time on the process and plans to report back in March
42 with a better timeframe.

43 Vice Chair Wheeler stated that she remembered an October 16, 2016 SBE meeting where
44 the P&E Committee suggested that ELECT create a confirmation number so that the voter knows
45 that their information was processed. The Commissioner then stated that ELECT receives
46 transactions logs from the DMV which show when a person has confirmed their address twice.
47 He wanted to caution that neither the DMV nor ELECT change a voter's address, rather, it's the
48 process that the voter goes through at DMV to update their records. The Commissioner stated that
49 both agencies are working on more protections to avoid issues like these. Vice Chair Wheeler
50 asked when the online duplicate issue was fixed. The Commissioner stated that he believes it was
51 fixed in October of 2016. Secretary McAllister asked how they were going to get the Registrars
52 and the elections community involved in the Motor Voter Process. Commissioner Piper advised
53 that they have received a lot of feedback from the elections community and are using that
54 information to plan the revisions. The next step would be to demonstrate the new process to the
55 registrars and obtain their feedback. The Commissioner reiterated that once the process is
56 complete there will be a single path to apply to register to vote at the DMV.

57 The Chairman then called for General Registrar Washburn to approach the podium. Mr.
58 Washburn stated that the Board has addressed the GR's concerns but that the address question was
59 confusing for students as well as anyone. He expressed his appreciation for the Board addressing

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60 the question quickly. Chairman Alcorn then called Commissioner Holcomb who shared his
61 enthusiasm for the Motor Voter Process, and stated that DMV has sent over 10 million applications
62 to local registrars since the program began. Commissioner Holcomb added DMV is committed
63 to the process and will make changes as quickly and as accurately as possible.

64 The next order of business was the discussion of November 2018 General Election in
65 Chesterfield County. Commissioner Piper commended Constance Tyler, the Chesterfield County
66 Registrar because she reached out before and during the election, and kept ELECT apprised of
67 issues as they were happening.

68 Rosemarie Hart, Secretary, Randy Welch, Vice Chair, and Susan Beals, Chair, of the
69 Chesterfield County Electoral Board (EB), appeared before the Board as requested. On behalf of
70 the Chesterfield County EB, Secretary Hart stated that more than 150,000 people voted in
71 Chesterfield on November 6th, a 40% increase from the 2014 midterms. The Chesterfield County
72 EB believes that each voter should be able to vote in a timely manner, and that every election
73 should be run efficiently, fairly and impartially. Since the November 2018 election, Constance
74 Tyler, the General Registrar, the Chesterfield EB and the county's Administration office has
75 worked together to provide an in depth analysis of all aspects of the November 6th election. Based
76 on the preliminary findings, the recommendations included: certain precincts to be split or moved;
77 more training specifically for Chief Officers of Elections; and more funding for the elections
78 office. Deputy County Administrator of Finance for Chesterfield County, Matt Harris, then
79 provided the Board with the report. *This report is in the Working Papers for the January 23, 2019*
80 *meeting*. Chairman Alcorn commended Deputy County Administrator Harris for his presentation
81 and the way Chesterfield County came together to resolve the issues that occurred. The Chairman
82 pointed out that the information presented should be shared with other counties to advise them on
83 how to handle situations like these. Vice Chairman Wheeler commended Deputy County
84 Administrator Harris for making an agreement with the Department of Education for no school
85 activities during Election Day.

86 Chairman Alcorn moved the Board recess at 1:17 P.M. Vice Chair Wheeler seconded the
87 motion, and the motion passed unanimously.

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88 The Chairman moved the Board reconvene. Vice Chair Wheeler seconded the motion and
89 the motion passed unanimously. The Board reconvened at 1:33 P.M. The next order of business
90 was Stand By Your Ad hearings, presented by Arielle A. Schneider, Policy Analyst.

91 The first complaint was against Eurika V. Tyree. Ms. Schneider presented the Board with
92 the Complaint in question, which was a purple ballot that has a disclaimer reminding the individual
93 using the ballot to provide a disclosure. She noted that the purple ballot is a non-disclosed
94 advertisement distributed on Election Day. This counts as one penalty for a non-disclosed sample
95 ballot advertisement, or, \$100 if first time violation, doubled to \$200 due to the time frame –
96 distributed within 14 days of election – or \$50 (doubled to \$100) with an apology or remedial
97 action. Ms. Tyree and her campaign manager stated that the registrar informed her as long as it
98 was on white or yellow paper she could distribute it. The registrar did not contact them in regards
99 to the issue. Ms. Tyree stated that her oldest daughter pointed out that there was not a disclaimer
100 on the sample ballot, so she then wrote in her disclaimer on all the sample ballots she had with her
101 and contacted her local team to stop printing ballots.

102 The campaign manager stated that she was given the ballots from the Registrar office and
103 only informed to have it on white or yellow paper; she also stated that no one advised them that a
104 disclaimer needed to be on the sample ballots. The campaign manager stated that it was not their
105 intent to break the law, and apologized for it. Due to the apology Chairman Alcorn moved *subject*
106 *to the Board's authority under the Code of Virginia §24.2-955.3, to find Eurika V. Tyree in*
107 *violation of Stand By Your Ad with regard to one print media advertisements and assess a \$100*
108 *penalty. Secretary McAllister seconded the motion, and the motion passed unanimously.*

109 The next complaint was against Marc T. Aveni. Ms. Schneider presented a large sign
110 displayed at a polling place on Election Day. As Mr. Aveni had been assigned penalties for first-
111 time violations of Stand By Your Ad at the November 19, 2018 Board meeting, any violations the
112 Board would assess today would be considered second violations, penalized at \$250. She added
113 that this \$250 penalty would be doubled to \$500 due to the proximity to the election. Second, she
114 presented an advertisement printed in a high school athletics program. Even though the
115 advertisement was small, the minimum size for any disclosure is 7 point font. Ms. Schneider noted
116 that the disclaimer does not satisfy this minimum requirement. Ms. Schneider added that the
117 advertisement appeared in the athletics program, which was distributed 10+ times in August

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118 through October, but also once on November 2nd. All told, the distributions were still from one
119 printing, which resulted in a recommendation that the Board assign one penalty for the athletics
120 program publication, which would be doubled due to the proximity to the election. Therefore,
121 Ms. Schneider recommended a penalty of \$500 for the sign on Prince William St. and \$500 for the
122 athletics program advertisement, with a total penalty being \$1000. Vice Chairman Wheeler asked
123 if these advertisements were challenged in a previous meeting. Ms. Schneider did advise that the
124 State Board had issued a penalty for the large sign when deployed in the morning outside the sign-
125 maker's home, at a previous State Board Meeting but stated that the violation today was for a
126 second deployment of the sign later in the day outside a polling place. She concluded that these
127 incidents created another set of violations, which would be considered a second violation.

128 Marc Aveni then addressed the Board. Mr. Aveni stated that the violation in the High
129 School Athletics Program was provided to him by the Booster Program.. He stated that he sent in
130 the information needed for the poster including the disclaimer, but when printed realized that the
131 student minimized the disclaimer to fit on the poster. Once he was notified about the sign, he
132 notified the student and she apologized to him and to the Board. Mr. Aveni stated that the second
133 printed sign from Prince William St. had been removed by a volunteer who then decided to move
134 it to another precinct at a polling place. The Chairman moved *subject to the Board's authority*
135 *under the Code of Virginia §24.2-955.3, to find Marc Aveni in violation of Stand By Your Ad with*
136 *regard to two print media advertisements and to assess a \$1000 penalty. Secretary McAllister*
137 *seconded the motion, and the motion passed unanimously.*

138 The next complaint was against Paul J. Battle. Ms. Schneider introduced the challenged
139 advertisement: a sample ballot that advocates for Mr. Battle and mentions other candidates. This
140 is a sample ballot distributed on or prior to Election Day, with no disclaimer provided, making this
141 a first time violation with the penalty of \$200, for one print media advertisement doubled due to
142 the proximity to the election. Mr. Battle addressed the Board. He stated that he was not sure if the
143 sample ballot present had the disclaimer or not, but he did create a ballot that was not properly
144 disclosed. He informed the Board that he started handwriting a disclaimer on the ballots and
145 decided to stop and just order more with the disclaimer. Mr. Battle stated that one of the kids ran
146 out of the correct advertisements and accidentally picked up the ballots that did not have the
147 disclaimer. Once Mr. Battle was aware of the situation, he informed the kids not to pass them out.

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148 Mr. Battle stated that he was well aware of the rule and apologized. Due to the apology Chairman
149 Alcorn moved *subject to the Board's authority under the Code of Virginia §24.2-955.3, to find*
150 *Paul J. Battle in violation of Stand By Your Ad with regard to one print media advertisement and*
151 *to assess a \$100 penalty. Vice Chairman Wheeler seconded the motion, and the motion passed*
152 *unanimously.*

153 The next complaint was against Beth Barts for Loudoun County School Board. Ms.
154 Schneider presented a series of advertisements but they are not Facebook paid ads, nor were they
155 on a Facebook page specifically for her campaign. This counts as a first time violation, penalty
156 being \$100, due to two print media advertisements on Facebook. Mrs. Barts was not present for
157 the hearing. There were two complaints filed. Chairman Alcorn confirmed that online media is
158 still print media. Ms. Schneider informed the Board that after Mrs. Barts was informed of the
159 violation, she provided proof of compliance. Mrs. Barts also provided an apology. Due to the
160 apology Chairman Alcorn moved, *subject to the Board's authority under the Code of Virginia*
161 *§24.2-955.3, to find Beth Barts for Loudoun County School Board in violation of Stand By Your*
162 *Ad with regard to one print media advertisement on Facebook and assess a \$50 penalty. Secretary*
163 *McAllister second the motion, and the motion passed unanimously.*

164 The next complaint is against Mark Shiffer. Ms. Schneider outlined multiple violations.
165 Mr. Shiffer was not in attendance but did send a letter with an explanation and apology. *This letter*
166 *is in the Working Papers for the January 23, 2019.* The Board agreed to examine the 13 violations
167 separately. The following would be a \$50 penalty for each violation; 8 ½ x 11 flyer, Alexandria
168 Times August 2nd, 16th, 30th; and Alexandria Times Online August 2nd, 16th, 30th. The following
169 would be a \$100 penalty for each violation doubled due to the proximity of election; hand card,
170 yard sign, Alexandria Times on October 25th, Alexandria Gazette on October 25th, Alexandria
171 Times online October 25th and Alexandria Gazette online October 25th. Due to the apology
172 Chairman Alcorn moved, *subject to the Board's authority under the Code of Virginia §24.2-955.3,*
173 *to find Mark Shiffer in violation of Stand By Your Ad with regard to 13 advertisements and to*
174 *assess a \$1000 penalty. Vice Chairman Wheeler seconded the motion, and the motion passed*
175 *unanimously.*

176 The next complaint is against the Martin Luther King, Jr. Group as distinguished from the
177 Martin Luther King Jr, Leadership Steering Committee. Ms. Schneider stated that some of the

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178 group of candidates on the Martin Luther King Jr. Group sample ballot were not aware of the
179 improperly disclosed advertisement apparently sponsored by the Martin Luther King, Jr. Group.
180 Ms. Schneider stated that she spoke with De'Andre Barnes and Mark Whitaker who informed her
181 that they did not provide a photo or any information to be posted on the sample ballot. Ms.
182 Schneider confirmed that the improperly disclosed sample ballot was not sponsored by the Martin
183 Luther King, Jr. Leader Steering Committee. Chairman Alcorn moved, *subject to the Board's*
184 *authority under the Code of Virginia §24.2-955.3, to find Martin Luther King Jr, Group in*
185 *violation of Stand By Your Ad with regard to two print media advertisements and to assess a \$200*
186 *penalty. Secretary McAllister seconded the motion, and the motion passed unanimously.*

187 The next complaint was against Natan McKenzie. Ms. Schneider presented four images
188 from a website that advertised Mr. McKenzie's candidacy. Ms. Schneider believed two images
189 constituted as express advocacy, and recommended a \$200 fine for both images, doubled to \$400
190 due to the proximity of the Election. Ms. Schneider stated that she would amend her previous
191 motion to levy a \$400 penalty because the website displaying the images is still active despite two
192 notices provided to Mr. McKenzie. Chairman Alcorn moved, *subject to the Board's authority*
193 *under the Code of Virginia §24.2-955.3 to find Natan McKenzie in violation of Stand By Your Ad*
194 *with regard to two print media and to assess a \$400 penalty. Secretary McAllister seconded the*
195 *motion, and the motion passed unanimously.*

196 The next complaint was against Charlie Long and Sallie Wolfe Garrison. Ms. Schneider
197 presented three separate advertisements for Charlie Long, noted their time stamps and read a letter
198 from Mr. Long attesting that his signs are properly disclosed. Ms. Schneider pointed out to the
199 audience that the disclaimer is too small to read, and thus she could not verify compliance. Ms.
200 Schneider advised that three of Mr. Long's four signs do not comply with the requirements for
201 disclosure conspicuity and recommended further the Board double the penalty due to the proximity
202 to the election, for a total of \$700. Ms. Schneider added Mr. Long presented to prove compliance,
203 a sign that was not complained about, nor properly disclosed. She reiterated her recommended
204 penalty amount. Chairman Alcorn asked Commissioner Piper for his opinion on the signs.
205 Commissioner Piper agreed with Ms. Schneider's assessment of the conspicuity of the disclaimers
206 on Mr. Long's signs, and agreed with Ms. Schneider's penalty assessment. Chairman Alcorn
207 moved, *subject to the Board's authority under the Code of Virginia §24.2-955.3, to find Charles*

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208 *Long in violation of Stand By Your Ad in regards to four advertisements and to assess a \$700 civil*
209 *penalty. Secretary McAllister seconded the motion, and the motion passed unanimously.*

210 Ms. Schneider then moved on to Sallie Wolfe Garrison. The complaint was in regards to
211 signs and advertisements photographed in the same images as those of Mr. Long. Ms. Garrison
212 provided a letter reiterating the conspicuity of the disclaimers on her signs. Ms. Schneider
213 recommended a penalty of \$500, to represent the three \$100 penalties for undisclosed signs, two
214 of which were displayed on or immediately before Election Day, resulting in two doubled
215 penalties. Commissioner Piper suggested that in the future it would be useful to encourage people
216 to send images to the Board of signs in question. Ms. Schneider agreed with this suggestion, saying
217 that the more information she receives the better. Chairman Alcorn moved, *subject to the Board's*
218 *authority under the Code of Virginia §24.2-955.3, to find Sallie Wolfe Garrison in violation of*
219 *Stand By Your Ad with regard to three advertisements and to assess a \$500 penalty. Secretary*
220 *McAllister seconded the motion, and the motion passed unanimously.*

221 The last complaint was against Vernon Fleming. Ms. Schneider found that Mr. Fleming's
222 website constituted express advocacy, but not the image in question. Vice Chair Wheeler pointed
223 out a phrase on the poster in question that said "Vote Fleming November 6." Upon seeing this,
224 Ms. Schneider changed her recommendation of one violation for the website to be for two
225 violations doubled due to the proximity to the election. Chairman Alcorn moved, *subject to the*
226 *Board's authority under the Code of Virginia §24.2-955.3, to find Vernon Fleming in violation of*
227 *Stand By Your Ad with regards to two expressed advocacies on website and to assess a \$200*
228 *penalty. Secretary McAllister seconded the motion, and the motion passed unanimously.*

229 Ms. Schneider thanked the Board.

230 Ms. Schneider brought up a number of complaints that would not be addressed at the
231 current Board meeting. Chairman Alcorn asked what the Board's procedure was for complaints
232 where no expressed advocacy is present, specifically whether the Board needs to say that the
233 charge is being dismissed or not bring up the charge at all. Ms. Schneider answered that the Board
234 receives notice of the complaint but that it is not brought up at a meeting because it is "outside
235 [the] parameter" of the Board, since there would be nothing wrong with these specific complaints.

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236 Tara Carroll, Chairwoman of the Chesterfield County Republican Committee, spoke to the
237 Board regarding colors of sample ballots. Chairman Alcorn reiterated that the rule regarding colors
238 has not changed. Ms. Carroll thanked the Board for its time.

239 Chairman Alcorn finally presented gifts to the rest of the Board Members to commemorate
240 their last meeting together.

241 Vice Chair Wheeler moved to adjourn the Board. Secretary McAllister seconded the
242 motion and the motion passed unanimously. The meeting adjourned at approximately 3:40 P.M.

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Secretary

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Chair

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Vice Chair

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Commissioner's Report

BOARD WORKING PAPERS
Christopher E. "Chris" Piper
Commissioner



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STATE BOARD *of* ELECTIONS

Certification

BOARD WORKING PAPERS
Matthew Abell
Election Administrator



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STATE BOARD *of* ELECTIONS

Memorandum

To: Chairman Alcorn, Vice Chair Wheeler, and Secretary McAllister
From: Matthew Abell, Elections Administrator
Date: February 22, 2019
Re: **Certification of Results for the Member, House of Delegates District 86 February 19, 2019
Special Election**

Suggested Motion For A Board Member To Make:

“After reviewing the district-wide Abstract of Votes Cast in the February 19, 2019 Special Election for Member, House of Delegates District 86, I move that the Board certify the results as presented and declare the winner.”

Applicable Code Sections:

- Va. Code § 24.2-679.
A. “... The Board shall... make statements of the whole number of votes given... The Board members shall certify the statements to be correct and sign the statements. The Board shall then determine those persons who received the greatest number of votes and have been duly elected to each office. The Board members shall endorse and subscribe on such statements a certificate of their determination.”

B. “The State Board shall meet as soon as possible after it receives the returns for any special election held at a time other than the November general election to ascertain the results of the special election in the manner prescribed in subsection A.”
- Va. Code § 24.2-680.
“Subject to the requirements of § 24.2-948.2, the State Board shall without delay complete and transmit to each of the persons declared to be elected a certificate of his election, certified by it under its seal of office... The names of members elected to the General Assembly shall be certified by the State Board to the clerk of the House of Delegates or Senate, as appropriate.”

Attachments:

Abstract and winner Certificate of Election for Member, House of Delegates District 86.

Background:

- The House of Delegates District 86 seat became vacant upon the resignation of The Honorable Jennifer B. Boysko, who was elected to the Senate of Virginia on January 8, 2019. A stand-alone special election was called by Speaker of the VA House of Delegates, The Honorable M. Kirkland Cox, to fill the vacancy.
- There are two (2) localities in 86th House of Delegates District; Fairfax County and Loudoun County.
- Upon completion of the election, local general registrars entered all relevant election data into the Virginia Election and Registration System (VERIS).
- In accordance with Va. Code § 24.2-671, local electoral boards conducted provisional ballot meetings and canvasses to ascertain and certify election results for their localities.
- Upon completion of canvass the GRs forwarded their localities' certified Abstracts and, when applicable, Write-Ins Certifications, to the Department of Elections.
- Upon receipt of the localities Abstracts and Write-Ins Certifications, ELECT's Elections Administration team checked them for errors and accepted the ascertained results as presented.

ELECT Staff Recommendation:

ELECT staff recommends that the Board certify the results as presented and declare the winner.