

State Board of Elections
Tuesday, August 20, 2024
FINAL Meeting Minutes

1 The State Board of Elections (“the Board”) meeting was held on Tuesday,
2 August 20, 2024 in Senate Room A of the General Assembly Building in
3 Richmond, Virginia. The meeting also offered public participation through
4 electronic communication so the remote public could view and hear the meeting. In
5 attendance: John O’Bannon, Chairman; Rosalyn R. Dance, Vice Chair; Georgia
6 Alvis-Long, Secretary; and Delegate Donald Merricks, member represented the
7 State Board of Elections (“the Board”). Matthew Weinstein, member; attended the
8 meeting electronically. Susan J. Beals, Commissioner, represented the Department
9 of Elections (“ELECT”), and Andrew Murphy represented the Office of the
10 Attorney General (“OAG”). Chairman O’Bannon called the meeting to order at
11 1:02 P.M.

12 The first item of business was the Approval of the Minutes from July 2, 2024
13 Board Meeting, presented by Secretary Alvis-Long. Vice Chair Dance moved *to*
14 *approve the minutes from the July 2, 2024 Board Meeting*. Delegate Merricks
15 seconded the motion and the motion passed unanimously. A roll call vote was
16 taken:

17 Chairman O’Bannon – Aye
18 Vice Chair Dance – Aye
19 Secretary Alvis-Long – Aye
20 Delegate Merricks – Aye

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21 Mr. Weinstein – Aye

22 The Chairman opened the floor to public comment. Commissioner Beals
23 requested the Lynchburg Electoral Board to discuss Dropbox Ballots, CAP
24 Processing and the Post -Election Central Absentee processing from the June 18,
25 2024 Primary Election. David Levy, Lynchburg Electoral Board Chairman
26 addressed the Board. This letter appears as Appendix: A. Jerri Cowan, Roxanne
27 Gray, Jo-Ann Chase, Jim Buttolph, Kenneth Vande Vrede, Thomas Kasperek, and
28 Clara Belle Wheeler addressed the Board.

29 The second item of business was the Commissioner’s Report, presented by
30 Commissioner Beals. Commissioner Beals informed the Board that today marks
31 one month from the start of early voting on September 20, 2024. The
32 Commissioner stated that the ongoing preparations include programming and
33 testing equipment, proofing and printing of ballots, training Officers of Elections,
34 and ensuring accessibility of polling places. Commissioner Beals stated that
35 ELECT is ensuring all guidance documents have been updated, including the
36 GREB handbook. The Commissioner advised the Board that ELECT has held
37 several trainings throughout the summer for Election Officials, both in person and
38 online regarding legislative changes, logic and accuracy testing, campaign finance,
39 records management, write-in certifications for Presidential Election, election night
40 reporting of results and preparations for conducting a risk limiting audit.

41 The third item of business was the Party Abbreviations, presented by John
42 Cronin, Election and Registration Service Supervisor. *This memo is in the Working*
43 *Papers for the August 20, 2024 meeting.* Vice Chair Dance moved *that the Board*
44 *approve the party abbreviations as presented by staff for general and special*
45 *elections being held through July 31, 2025.* Delegate Merricks seconded the
46 motion and the motion passed unanimously. A roll call vote was taken:

47 Chairman O’Bannon – Aye

48 Vice Chair Dance – Aye

49 Secretary Alvis-Long – Aye

50 Delegate Merricks – Aye

51 Mr. Weinstein – Aye

52 The fourth item of business was the SBE Annual Report, presented by Claire
53 Scott, ELECT Policy Analyst. *This memo is in the Working Papers for the August*
54 *20, 2024 meeting.* Delegate Merricks moved *that the State Board of Elections*
55 *approve the Annual State Board of Elections Report for 2023 as presented.* Vice
56 Chair Dance seconded the motion and the motion passed unanimously. A roll call
57 vote was taken:

58 Chairman O’Bannon – Aye

59 Vice Chair Dance – Aye

60 Secretary Alvis-Long – Aye

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61 Delegate Merricks – Aye

62 Mr. Weinstein – Aye

63 The fifth item of business was the City of Winchester, presented by Brandon
64 Smith, Chief Technology Officer. *This memo is in the Working Papers for the*
65 *August 20, 2024 meeting. Delegate Merricks moved that the Board approve the*
66 *experimental use of the Unisyn OpenElect FreedomVote Scan with software version*
67 *2.2 and firmware version 2018 in the City of Winchester for early voting, absentee*
68 *voting and the CAP precinct for processing mailed ballots, on election day for the*
69 *period of September 20, 2024 - November 6, 2024, for the November 5, 2024*
70 *presidential election. Vice Chair Dance seconded the motion and the motion*
71 *passed unanimously. A roll call vote was taken:*

72 Chairman O’Bannon – Aye

73 Vice Chair Dance – Aye

74 Secretary Alvis-Long – Aye

75 Delegate Merricks – Aye

76 Mr. Weinstein – Aye

77 1:41 P.M., Delegate Merricks stated pursuant to Virginia Code Section 2.2-
78 3711(A)(7), I move *that the Board go into closed session for the purpose of*
79 *discussing pending threatened litigation. In accordance with Section 2.2-3712(F),*
80 *Susan Beals, Commissioner of Elections, and Andrew Murphy and Dennis Polio of*

81 *the Office of the Attorney General, will attend the closed session because their*
82 *presence will reasonably aid the Board in its consideration of the subject of the*
83 *meeting. Mr. Weinstein seconded the motion and the motion passed unanimously.*

84 A roll call vote was:

85 Chairman O'Bannon – Aye

86 Vice Chair Dance – Aye

87 Secretary Alvis-Long – Aye

88 Delegate Merricks – Aye

89 Mr. Weinstein – Aye

90 At 1:50 P.M., Delegate Merricks moved *to reconvene the meeting in open*
91 *session, and take a roll call vote certifying that to the best of each member's*
92 *knowledge (i) only such public business matters lawfully exempted from open*
93 *meeting requirements under this chapter and (ii) only such public business matters*
94 *as were identified in the motion by which the closed meeting was convened were*
95 *heard or discussed by the State Board of Elections. Vice Chair Dance seconded the*
96 *motion and the motion passed unanimously. A roll call vote was taken:*

97 Chairman O'Bannon – Aye

98 Vice Chair Dance – Aye

99 Secretary Alvis-Long – Aye=


100 Delegate Merricks – Aye

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101 Mr. Weinstein – Aye

102 The meeting adjourned at 1:51 P.M.


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105 Chairman

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107 Vice Chair

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110 Secretary

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113 Board Member

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116 Board Member

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APPENDIX: A

119

David Levy, Esq

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Lynchburg Electoral Board



Lynchburg Electoral Board

825 Kemper Street, Lynchburg, Virginia 24501

July 25, 2024

SENT VIA EMAIL

Commissioner Susan J. Beals
Department of Elections
Washington Building
1100 Bank Street, First Floor
Richmond, Virginia 23219

Dear Commissioner Beals:

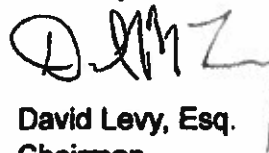
This letter provides the Lynchburg Electoral Board's response to the concerns expressed in your letter dated July 3. Once the Board became aware of seven ballots retrieved from the Registrar's office dropbox on June 21, an emergency meeting was called, and ELECT was notified. Investigations were conducted and reports were prepared by the Electoral Board and the Registrar. The following documents (attached) record our findings and actions:

- (1) Electoral Board ***Report on Dropbox Ballots and CAP Processing for the June 18th Dual Primary Election*** (dated July 20, 2024);
- (2) Electoral Board ***Emergency Meeting Minutes*** (held June 21 & 24; approved on July 25); and
- (3) ***Report of the Lynchburg City Registrar regarding the Post-Election Central Absentee Processing for the June 18th 2024 Dual Primary Election*** (presented to the Board on June 24).

I look forward to answering your questions and those of the State Board of Elections at their meeting on Tuesday, August 20, at 1:00 PM.

Thank you for your leadership and efforts to ensure election integrity throughout Virginia.

Cordially,



David Levy, Esq.
Chairman

Attachments



Lynchburg Electoral Board

825 Kemper Street, Lynchburg, Virginia 24501

Report on Dropbox Ballots and CAP Processing for the June 18th Dual Primary Election

July 20, 2024

The General Registrar provides a central dropbox inside the Registrar's office during Early Voting through Election Day (Code of Virginia § 24.2-707.1). This box is visible to three staff members and is monitored by them while it is in use during Early Voting hours. The dropbox is provided as an alternative to putting them in the US Mail. Protocols for removing ballots at the Registrar's dropbox include: breaking the seal placed on the empty box at the outset of the election, removing and counting the ballot return envelopes in the box in the presence of election officers from both parties, and resealing the empty box after ballot removal. In the Registrar's office this process is done periodically throughout Early Voting so that the box does not overflow with ballots due to the 45-day period allowed for the return of ballots. The office dropbox is stored in a locked location overnight between Early Voting office hours.

The dropbox inside the Registrar's office was cleared of ballots and resealed at 12:50 PM on Election Day. Voters were observed dropping ballots in the dropbox by an election officer on Election Day after it was cleared at 12:50. Due to a procedural error, on Election Night the dropbox in the Registrar's office was not checked again after the close of the election at 7 PM. The box continued to be available to the public and monitored by staff in its location inside the Registrar's office on Thursday, June 20 and the morning of June 21. Between 7 PM on Election Day until 12:15 PM on Friday, June 21, office staff did not observe any ballots being placed into the dropbox. When the dropbox was unsealed on Friday at 12:15 PM there were seven ballots inside. This took place prior to the beginning of scheduled Central Absentee Processing (CAP) processing at 12:30 PM. The procedures and documentation were the same as the clearing of the dropbox on prior occasions and included the number of ballots that were removed.

These seven ballots were transferred with other post-election ballots to the CAP team to be counted. The CAP team consists of four experienced election officers representing both parties. The CAP team verified that each ballot envelope had the elements that are required to be completed by the voter to confirm the identity of each voter whose absentee ballot was being processed. They also confirmed that each voter had a valid absentee ballot application in the State registration system. Once concern was raised about whether the seven dropbox ballots had come in during Election Day or after Election Day, CAP processing was halted, an emergency Electoral Board meeting was called, and the Department of Elections was notified about the incident. The Electoral Board and General Registrar began an investigation after specifically reviewing the provisions of Code of Virginia § 24.2-709.

**Report on Dropbox Ballots and CAP Processing
for the June 18th Dual Primary Election**

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Electoral Board Chairman David Levy interviewed the Deputy Registrars and others working in the Registrar's office on Thursday (June 20) and Friday (June 21). They confirmed that the dropbox was within view of at least one person in the office during all office hours until the 7 ballots were retrieved from the dropbox on Friday. No one visited the office to leave an absentee ballot in the dropbox. The Registrar and both Deputies have been instructed to ensure that access to the Registrar's office dropbox ends at 7 PM on Election Day, except as allowed by § 24.2-709(C).

Convinced that the 7 ballots in question were, in fact, cast prior to 7 PM on June 18, the Board reconvened the Emergency Meeting on Monday, June 24, accepted the Report of the Registrar, and voted to allow the Central Absentee Precinct to resume counting absentee ballots (along with the provisional ballots accepted at the subsequent provisional ballot canvass). The Minutes of the Emergency Meeting document the investigative steps, conclusions, and actions of the Board.

During the provisional ballot canvass, the Board received Commissioner Beals's email suggesting that the US Postal Service should be consulted to determine which ballot envelopes had been scanned, to distinguish them from the ones left in the dropbox. Unfortunately, by the time CAP processing was stopped on June 21, the ballots had been separated from their envelopes, making it impossible to distinguish which ballot came from each envelope. The Board affirmed their decision to allow CAP to proceed with processing all absentee ballots received.

Going forward, as the Virginia election schedule permits, the Board is monitoring and fully supports that Registrar Pense and his Deputies attend Department of Elections training sessions and relevant certification programs to ensure complete knowledge and compliance with all election laws.



David Levy, Esq., Chairman



Dr. Steven Troxel, Vice Chair



Betty Gibbs, Secretary



Lynchburg Electoral Board

825 Kemper Street, Lynchburg, Virginia 24501

Emergency Meeting Minutes

June 21 & 24, 2024

General Registrar's Office, 825 Kemper Street, Lynchburg, VA

ATTENDANCE

Members:

David Levy, Chairman
Steven Troxel, Vice Chairman
Betty Gibbs, Secretary (by phone)

Registrar Staff

Daniel Pense, Registrar
Juleigh Brown, Deputy Registrar

CAP Team

Authorized Representatives for:

Garcia campaign
Good campaign
McGuire campaign
Alexander campaign
Faraldi campaign

The meeting was called to order at 4:36 PM when Chairman Levy placed a phone call to Secretary Gibbs.

BACKGROUND

The Central Absentee Precinct (CAP) was scheduled to begin processing absentee ballots received in the mail by noon this day. Those postmarked no later than June 18th would be reviewed for completeness and processed for counting. In addition to the ballots retrieved by Registrar Pense from the Post Office at noon, seven ballots were retrieved from the dropbox in the Registrar's office and added to those to be reviewed for counting. These ballots have no postmark; by law, the window for dropping off absentee ballots ends at 7 PM on Election Day.

FACTS DETERMINED

The facts determined thus far include:

1. The office dropbox log indicates that it was emptied just before 1 PM on Election Day and those ballots were transferred to CAP for tabulation.
2. The office dropbox was not emptied by the CAP officers at 7 PM on Election Day.
3. Two workers at the Registrar's office on Election Day observed someone putting multiple ballots into the office dropbox in the afternoon after 1 p.m. and before 7 p.m.
4. There are no surveillance cameras in the Registrar's office, though there is a grant request in processing to have some installed.
5. Wednesday, June 19, was a City holiday; the Registrar's office was closed.

6. By law, staff is charged with monitoring the office dropbox when the office is open and the dropbox available. All day Thursday and prior to noon Friday, several staff members were working in the Registrar's office, with a clear view of the office entrance. No one saw anyone visit the dropbox or deposit ballots in it.
7. Registrar Pense and Deputy Registrar Nancy Davis have offices with a clear view of the entrance. They recall no one visiting the dropbox on Thursday or Friday
8. When the office dropbox was opened on Friday, there were seven absentee ballots in it. Those ballots were transferred to CAP to be processed with the mailed in absentee ballots, the "cured" ballots, and the ballots from the precinct dropboxes collected during Election Day.
9. All ballots, including the seven from the office dropbox, were processed by CAP on Friday at its scheduled session. The envelope information was verified for each ballot, the ballots were removed from their envelopes, and all ballots were sorted by primary.
10. Once the issue about the office dropbox was identified, the CAP process was suspended. None of the mailed in ballots, the cured ballots, the precinct dropbox ballots, and the office dropbox ballots have been tabulated.
11. It appears that all of the remaining ballots have been commingled and that the seven office dropbox ballots cannot be separated from the other remaining uncounted ballots.

It was reported that Registrar Pense had a telephone conference with Commissioner Beals to report this situation. It was reported that Commissioner Beals will talk to Registrar Pense again on Monday, June 24, 2024, after consulting with the office of the Virginia Attorney General.

After receiving this information, the Board unanimously voted to suspend the CAP tabulation of uncounted ballots until Monday, June 24, 2024.

At 5:17 PM, the Board recessed the emergency meeting. The Board is scheduled to resume Canvass on Monday, June 24, at 10 AM, to review provisional ballots cast on June 18. When information is available the Board will hold an open meeting to receive a report from the Registrar and determine what to do about resuming tabulation of the remaining ballots.

JUNE 24, 2024 – EMERGENCY MEETING RECONVENED

At 10:29 AM, Chairman Levy called the meeting to order.

Registrar Pense reported his findings relates to the seven envelopes containing absentee ballots retrieved from the dropbox in the Registrar's office on Friday, June 21. He read aloud the public statement he released at 9 AM this morning.

MOTION: Vice Chair Troxel moved that the Board accept the Registrar's report; passed 3-0.

MOTION: Chairman Levy moved that the Central Absentee Precinct resume processing absentee ballots at the conclusion of the Electoral Board meeting to review provisional ballots cast on Election Day, unless we are advised otherwise by ELECT; passed 3-0.

The Board conducted the certification vote for the 9 AM closed session to discuss personnel matters. (Certification vote appears in the separate minutes for that meeting.)

MOTION: Vice Chair Troxel moved to adjourn the Emergency Meeting; passed 3-0.

ADJOURNMENT: Emergency Meeting was adjourned at 10:43 AM.

Respectfully submitted,



Betty Gibbs
Secretary

app'd
7/25/24



THE CITY OF LYNCHBURG
REGISTRAR'S OFFICE

825 Kemper Street | Kemper Street Station | Suite A
Lynchburg, VA 24501

Report of the Lynchburg City Registrar regarding the Post-Election Central Absentee Processing for the June 18th 2024 Dual Primary Election

The General Registrar provides a central drop box inside the Registrar's office during Early Voting through Election Day as per the Code of Virginia. This box is visible to 3 staff members and is monitored by them while it is in use during Early Voting hours. The drop box is provided for voters to drop their absentee ballot envelope off at the Registrar's office as an alternative to putting them in the US Mail. Protocols for removing absentee ballot envelopes at the Registrar's central box include: breaking the seal placed on the empty box at the outset of the election, removing and counting the number of ballot envelopes in the box in the presence of election officers from both parties at appropriate times, and resealing the empty box again after ballot envelope removal. In the Registrar's office this process is done periodically throughout Early Voting so that the box does not overflow with ballot envelopes due to the forty-five-day period allowed for the return of ballots. The office drop box is stored in a locked location overnight between Early Voting office hours.

The drop box inside the Registrar's office was cleared of ballot envelopes and resealed at 12:50 PM on Election day. Due to a procedural error, on Election Night the drop box in the Registrar's office was not checked again after the close of the election at 7:00 PM on Election Day. Voters were observed to place ballot envelopes in the box by an election officer on Election Day after it was cleared at 12:50. The box continued to be available to the public and monitored by staff in its location inside the Registrar's office on Thursday June 20th and the morning of June 21st. Between 7 p.m. on Election Day through 12:15 p.m. on Friday, June 21st, staff who were monitoring did not observe any ballot envelopes being placed into the drop box. When the drop box was unsealed on Friday at 12:15 there were seven ballot envelopes inside. This took place prior to the actual beginning of the CAP process at 12:30. The procedures and documentation were the same as the clearing of the drop box on prior occasions and included recording the number of ballot envelopes that were removed.

These seven ballot envelopes were transferred with other remaining post-election ballot envelopes to the Central Absentee Precinct (CAP) team to be counted. The CAP team consists of four experienced election officers representing both parties. The CAP team verified that each ballot envelope had the elements that are required to be completed by the voter, which confirms the identity of each voter whose absentee ballot was being processed. They also confirmed that the voter in question had a valid absentee ballot application in the State registration system. Once concern was raised that there was a question about whether these seven ballot envelopes had come in during Election Day or after Election Day, CAP procedures were frozen in place, the Department of Elections was notified about the incident and the Electoral Board and General Registrar began an investigation.

The investigation concluded that no ballot envelopes had been cast in the drop box after close of the primary election on June 18, 2024. Based on this conclusion the Electoral Board voted in a public meeting to proceed with the completion of the post-election absentee vote counting. The remaining post-election absentee 129 ballots, 43 cast in the Republican primary, and 86 cast in the Democratic primary, which included the seven ballot envelopes from the Registrar's drop box were then counted by the CAP team. The results of the primary in Lynchburg now have been certified by the members of the Electoral Board and posted on the Virginia Board of Elections website on June 24, 2024.

