

State Board of Elections
FINAL Meeting Minutes
Tuesday, October 20, 2020

1 The State Board of Elections (“the Board”) public hearing on IVAC20-70-20:
2 Materials Omission from Absentee ballots was held on Tuesday, October 20, 2020, in
3 Conference Rooms C, D, and E of the James Monroe Building. The meeting was also
4 conducted electronically so the public could view and hear the meeting. In attendance:
5 Robert Brink, Chairman, John O’Bannon, Vice Chairman, and Jamilah LeCruise,
6 Secretary, represented the State Board of Elections (“the Board”). Christopher E. “Chris”
7 Piper, Commissioner and Jessica Bowman, Deputy Commissioner, represented the
8 Department of Elections (“ELECT”) and Carol Lewis represented the Office of the
9 Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:03 P.M.

10 Chairman Brink informed the Board that on March 12, 2020, Governor Ralph S.
11 Northam declared that a state of emergency exists in the Commonwealth as the result of
12 the potential spread of COVID-19, a communicable disease presenting a threat to public
13 health. On March 30, 2020, the Governor issued an executive order requiring all
14 individuals in Virginia to remain at their place of residence, with certain enumerated
15 exceptions.

16 This meeting was conducted consistent with the requirements for electronic
17 meetings by public bodies set forth in Items 4-0.01 of House Bills 29 and 30, as passed
18 by the General Assembly (“GA”) and signed by the Governor in April of this year. The
19 purpose of the meeting is to transact the statutorily required business of the Board.

20 Daniel Davenport, ELECT Policy Analyst, presented the IVAC20-70-20:
21 Materials Omission from Absentee ballots. *This report is in the Working Papers for the*

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22 *October 20, 2020 meeting.* Chairman Brink informed the Board that the public hearing
23 would last up to 1 hour to allow the public to offer comments regarding the regulatory
24 action making a missing postmark a material omission from absentee ballots. The
25 Chairman explained that the Board first considered the regulatory action at the August 4,
26 2020 Board meeting. ELECT then posted the regulatory action onto Town Hall for 30
27 days of public comment that ended on October 2, 2020. Chairman Brink informed the
28 Board that 751 Virginians provided a comment on the regulatory action. The Chairman
29 stated that as a result of the 751 comments, the Board has considered an amendment to
30 the regulatory text, as offered by ELECT.

31 Chairman Brink announced at 1:13 P.M.; the Board would go into a 10-minute
32 recess to give the public time to sign up. He gave instructions for public participation.
33 At 1:23 P.M., the Chairman opened the floor to public comment. Catharine Trauernicht,
34 participating electronically, was recognized to speak and addressed the Board. Ms.
35 Trauernicht stated, “the proposed regulation is illegal and affront to the honest Virginia
36 voters and it must not stand.” She asked whether the amendment would require
37 additional time for public comment and whether the intelligent barcode would indicate
38 when a ballot has moved through the postal service. Secretary LeCruise moved *that the*
39 *Board amend IVAC20-70-20 as proposed in the October 20, 2020, State Board of*
40 *Elections working papers effective October 21, 2020.* Chairman Brink seconded the
41 motion and the motion passed 2-1. A roll call vote was taken:

42 Chairman Brink – Aye

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43 Vice Chair O'Bannon – Nay

44 Secretary LeCruise – Aye

45 At 1:30 P.M., Chairman Brink called the meeting of the Board to order.

46 The first item on the agenda was the approval of the minutes presented by
47 Secretary LeCruise. Vice Chair O'Bannon moved *that the Board approve the minutes*
48 *from the September 18, 2020 Board meeting*. Chairman Brink seconded the motion and
49 the motion passed unanimously. A roll call vote was taken:

50 Chairman Brink – Aye

51 Vice Chair O'Bannon – Aye

52 Secretary LeCruise – Aye

53 The next item of business was the Commissioner's Report presented by
54 Commissioner Piper. Commissioner Piper informed the Board that no-excuse absentee
55 voting has been going smoothly. The Commissioner informed the Board that voters are
56 happy to have the option to vote at a time that is convenient for them. Commissioner
57 Piper stated that voters expressed appreciation for the local elections officials' efforts to
58 ensure voter safety. The Commissioner informed the Board that as of October 19, 2020,
59 there were 812, 000 votes cast in person, 628,000 votes cast by mail, and 1.1 million
60 absentee ballots requested by mail overall.

61 Commissioner Piper stated that in total, 1.44 million votes have been cast, which
62 is 34.3% higher than the total turnout in 2016. The Commissioner informed the Board
63 that for the 2016 Election, the total number of absentee ballots cast prior to the election

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64 was 566,000. Commissioner Piper stated that Virginia is currently averaging about
65 50,000 voters a day. The Commissioner informed the Board that there are 6 million
66 registered voters this year, whereas, in 2016, there were 5.5 million registered voters.

67 Commissioner Piper informed the Board that on October 13, 2020, ELECT was
68 unable to accept any voter registration through the citizen portal because a construction
69 crew in Chesterfield County inadvertently cut a fiber cable that disrupted service to
70 multiple Commonwealth of Virginia agency operations, including ELECT and the
71 Department of Motor Vehicles. Commissioner Piper stated that the disruption paused
72 access to the local GR's offices, causing them to provide provisional ballots to voters that
73 showed up to vote. The Commissioner stated that the source of the outage was quickly
74 discovered and resolved by 4:00 P.M. that day. Commissioner Piper informed the Board
75 that Governor Northam stated he would support any lawsuit extending the voter
76 registration deadline.

77 The Commissioner stated that shortly thereafter, a lawsuit was filed, and a consent
78 decree was entered to extend the deadline from Tuesday, October 13, 2020; 11:59 P.M. to
79 Thursday, October 15, 2020; 11:59 P.M. Commissioner Piper stated that during that time
80 over 24,000 Virginians registered to vote. The Commissioner informed the Board that
81 Friday, October 23, 2020, is the last day to request an absentee ballot to be sent by mail.
82 Commissioner Piper informed the Board Saturday, October 24, 2020, the first Saturday
83 that all voter registration offices must be open for in-person voting. The Commissioner

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84 informed the Board that Saturday, October 31, 2020, is the last day to vote early in
85 person.

86 Commissioner Piper stated on Monday, November 2, 2020, an absentee ballot can
87 be requested if a qualifying emergency is presented, and Tuesday, November 3, 2020, is
88 Election Day. The Commissioner stated the polling locations will be open from 6:00
89 A.M. to 7:00 P.M. If you are in line at 7:00 P.M., you would be able to vote.

90 Commissioner Piper informed the Board that the General Assembly extended the
91 timeframe for a ballot to be received through the mail. The Commissioner stated that a
92 ballot mailed/postmarked on Tuesday, November 3, 2020, would be counted if received
93 in a local general registrar's office by noon, Friday, November 6, 2020.

94 Commissioner Piper informed the Board that the reporting of Election results
95 would be conducted differently this year than previous years. The Commissioner
96 explained that the various Central Absentee Precincts located around the Commonwealth
97 would count all early absentee ballots cast in person, by dropbox, or by mail.

98 Commissioner Piper stated that on Election Night after the polls have closed, the
99 localities will start to tabulate the results and enter them into ELECT's website. The
100 Commissioner stated the Central Absentee Precincts will be receiving mail in ballots
101 throughout Election night, and have been advised to continue to count/process the
102 absentee ballots from the mail through 11:00 P.M. Commissioner Piper explained that
103 once the mailed absentee ballots and early in-person votes are tabulated, the GRs would
104 upload the result onto ELECT's website.

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105 The Commissioner informed the Board that over the next 2 ½ days after the
106 election, the GRs will continue to process the remaining ballots. Commissioner Piper
107 informed the Board that some localities will be continuing to process ballots over the
108 weekend due to the processing time it takes to count the ballots. The Commissioner
109 stated that official results have never been provided on Election night, but rather are
110 unofficial results. Commissioner Piper informed the Board that Tuesday, November 10,
111 2020, is the last day for localities to complete their canvasses and submit their results to
112 ELECT for review. The Commissioner stated that once ELECT reviews the results, the
113 Board will certify them and complete the election. Commissioner Piper informed the
114 Board that the Electors will meet on Monday, December 14, 2020, to vote for the
115 President and Vice President. The Commissioner expressed his appreciation to the
116 ELECT staff and Election Officials for all the hard work everyone has been putting forth
117 for this election.

118 The next item of business was the Revised Schedule of Penalties presented by
119 Arielle A. Schneider, Privacy Officer. *This report is in the Working Papers for the*
120 *October 20, 2020 meeting.* Vice Chair O'Bannon moved *that the State Board of Elections*
121 *adopt the revised Schedule of Penalties for the purpose of assessing penalties for*
122 *violations of Stand By Your Ad pursuant to the Code of Virginia § 24.2-955.3(A),*
123 *effective immediately.* Secretary LeCruise seconded the motion and the motion passed
124 unanimously. A roll call vote was taken:

125 Chairman Brink – Aye

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126 Vice Chair O'Bannon – Aye

127 Secretary LeCruise – Aye

128 The next item of business was the hearings for violations of the Stand By Your Ad
129 (“SBYA”) provisions of the Code, presented by Arielle A. Schneider, Privacy Officer.

130 The first complaint was against Arika Phillips for CCPS School Board. Ms. Schneider

131 informed the Board that one complaint was submitted with four yard signs, one banner,

132 and a flyer. She stated that the violation was made on November 5, 2019, Election Day.

133 Ms. Schneider informed the Board that Ms. Phillips provided a response letter and video

134 informing them of the remedial action taken to correct the signs. She explained that this

135 would be a second time violation for Ms. Phillips and due to the time of the violation, the

136 penalty would be doubled. Vice Chair O'Bannon moved *that the Board subject to its*

137 *authority under the Code of Virginia §24.2-955.3, to find Arika Phillips in violation of*

138 *§24.2-956 Stand By Your Ad print media disclosure requirements with regard to six print*

139 *media advertisements, and to assess a \$1200 civil penalty.* Secretary LeCruise seconded

140 the motion and the motion passed unanimously. A roll call vote was taken:

141 Chairman Brink – Aye

142 Vice Chair O'Bannon – Aye

143 Secretary LeCruise – Aye

144 The next complaint was against Linda Devito Kuchenbuch Election Campaign.

145 Ms. Schneider informed the Board that there were two complaints submitted with one

146 banner and two yard signs. She explained that the violations were made on November 3,

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147 2019, and November 5, 2019, Election Day. Ms. Schneider informed the Board that Ms.
148 Kuchenbuch provided a response and invoice informing them of the remedial action
149 taken to correct the sign. She informed the Board that this would be a first time violation
150 for Ms. Kuchenbuch. Ms. Schneider explained to the Board that the banner was properly
151 disclosed, so there would be no penalty. Secretary LeCruise *moved subject to the Board's*
152 *authority under the Code of Virginia §24.2-955.3, to find Linda Devito Kuchenbuch in*
153 *violation of §24.2-956 Stand By Your Ad print media disclosure requirements with*
154 *regard to two advertisements, and assess a \$25 civil penalty.* Vice Chair O'Bannon
155 seconded the motion and the motion passed unanimously. A roll call vote was taken:

156 Chairman Brink – Aye

157 Vice Chair O'Bannon – Aye

158 Secretary LeCruise – Aye

159 The next complaint was against Floyd Miles. Ms. Schneider informed the Board
160 that there was one complaint submitted for one pamphlet. She informed the Board that
161 this is a first time violation and it did not occur within the 14-day prior to the election.
162 Vice Chair O'Bannon *moved subject to the Board's authority under the Code of Virginia*
163 *§24.2-955.3, to find Floyd Miles in violation of §24.2-956 Stand By Your Ad print media*
164 *disclosure requirements, and assess a \$25 civil penalty.* Secretary LeCruise seconded the
165 motion and the motion passed unanimously. A roll call vote was taken:

166 Chairman Brink – Aye

167 Vice Chair O'Bannon – Aye

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168 Secretary LeCruise – Aye

169 The next complaint was against Friends of Virginia. Ms. Schneider informed the
170 Board that there was one complaint submitted for one yard sign. She explained that the
171 violation was made on November 5, 2019, Election Day. Ms. Smith addressed the Board.
172 She explained to the Board that the sign was found in Charlotte County, Virginia and she
173 resides in Prince George, Virginia. Ms. Virginia stated that the sign presented was
174 provided from the first violation, and purposely withheld, and placed out on Election
175 Day. Mr. William Pace addressed the Board. Vice Chair O’Bannon moved *subject to the*
176 *Board’s authority under the Code of Virginia §24.2-955.3, to find Virginia Smith in*
177 *violation of §24.2-956 Stand By Your Ad print media disclosure requirements, and assess*
178 *a \$600 civil penalty.* Secretary LeCruise seconded the motion and the motion passed
179 unanimously. A roll call vote was taken:

180 Chairman Brink – Aye

181 Vice Chair O’Bannon – Aye

182 Secretary LeCruise – Aye

183 The next complaint was against Gilbert A. Smith. Ms. Schneider informed the
184 Board that one complaint was submitted for one pamphlet missing a disclosure. She
185 explained to the Board that there was ambiguity regarding the date when the violation
186 was made. Mr. Smith addressed the Board. He stated that the pamphlet was presented to
187 him at a previous SBYA hearing. Ms. Tammy Alexander addressed the Board, informing
188 them that Campaign Finance received two complaints about the pamphlet, but one missed

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189 the previous SBYA meeting deadline. Ms. Schneider informed the Board that there was a
190 postcard in the working paper, but it was removed after learning that there was a
191 disclosure. Secretary LeCruise moved *subject to the Board's authority under the Code of*
192 *Virginia §24.2-955.3, to find Gilbert Smith in violation of §24.2-956 Stand By Your Ad*
193 *print media disclosure requirements, and assess a \$25 civil penalty.* Vice Chair
194 O'Bannon seconded the motion and the motion passed unanimously. A roll call vote was
195 taken:

196 Chairman Brink – Aye

197 Vice Chair O'Bannon – Aye

198 Secretary LeCruise – Aye

199 The next complaint was against Larry Snow. Ms. Schneider informed the Board
200 that one complaint was submitted for one letter missing a disclosure. She explained to the
201 Board that the letter was previously before the Board in 2019 for Spurgeon “Billy” Wade
202 for Greene County Sheriff. Ms. Schneider informed the Board that the letter was
203 sponsored by Larry Snow and not Spurgeon “Billy” Wade. She informed the Board that
204 this is a first time violation and Mr. Snow provided a response apologizing for the error.
205 Vice Chair O'Bannon moved *subject to the Board's authority under the Code of Virginia*
206 *§24.2-955.3, to find Larry Snow in violation of §24.2-956 Stand By Your Ad print media*
207 *disclosure requirements, and assess a \$25 civil penalty.* Secretary LeCruise seconded the
208 motion and the motion passed unanimously. A roll call vote was taken:

209 Chairman Brink – Aye

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210 Vice Chair O'Bannon – Aye

211 Secretary LeCruise – Aye

212 The next complaint was against Rob Tyler for Charles City Commonwealth's
213 Attorney. Ms. Schneider informed the Board that one complaint was submitted for one
214 postcard missing a disclosure. She informed the Board that this is a first time violation
215 made on Election Day. Ms. Schneider stated that Mr. Tyler provided a response
216 apologizing for the oversight. Secretary LeCruise moved *subject to the Board's authority*
217 *under the Code of Virginia §24.2-955.3, to find Rob Tyler in violation of §24.2-956 Stand*
218 *By Your Ad print media disclosure requirements, and assess a \$25 civil penalty. Vice*
219 Chair O'Bannon seconded the motion and the motion passed unanimously. A roll call
220 vote was taken:

221 Chairman Brink – Aye

222 Vice Chair O'Bannon – Aye

223 Secretary LeCruise – Aye

224 The next complaint was against Southampton County Democratic Committee. Ms.
225 Schneider informed the Board that one complaint was submitted for two sample ballots
226 with an incorrect disclosure. She informed the Board that the violation was made on
227 Election Day. Ms. Schneider informed the Board that the Committee provided a response
228 stating they did not have the budget to do mass copying and was not aware that someone
229 reproduced the sample ballots. Vice Chair O'Bannon moved *subject to the Board's*
230 *authority under the Code of Virginia §24.2-955.3, to find Southampton County*

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231 *Democratic Committee in violation of §24.2-956 Stand By Your Ad print media*
232 *disclosure requirements, and assess a \$400 civil penalty.* Secretary LeCruise seconded
233 the motion and the motion passed unanimously. A roll call vote was taken:

234 Chairman Brink – Aye

235 Vice Chair O’Bannon – Aye

236 Secretary LeCruise – Aye

237 The next complaint was against Tyler House of Delegates. Ms. Schneider
238 informed the Board that one complaint was submitted for two sample ballots. She advised
239 the Board that the sample ballots were distributed on Election Day. Ms. Schneider stated
240 that the sample ballot with “Paid for & Authorized by the candidate” has an incomplete
241 disclosure. Mr. Tyler addressed the Board. He apologized to the Board and asked for the
242 fees to be waived. Mr. Tyler explained that before printing out the sample ballots, Mrs.
243 Tyler went to the GR office in Emporia and was informed that “Paid for & Authorized by
244 Candidate” was acceptable. He stated that they were informed that the information they
245 received from the GR’s office was incorrect. Vice Chair O’Bannon moved *subject to the*
246 *Board’s authority under the Code of Virginia §24.2-955.3, to find Roslyn Tyler, House of*
247 *Delegates in violation of §24.2-956 Stand By Your Ad print media disclosure*
248 *requirements, and assess a \$200 civil penalty.* Secretary LeCruise seconded the motion
249 and the motion passed unanimously. A roll call vote was taken:

250 Chairman Brink – Aye

251 Vice Chair O’Bannon – Aye

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252 Secretary LeCruise – Aye

253 The next complaint was against Gayle M. Gilmore. Ms. Schneider informed the
254 Board that one complaint was submitted for one yard sign missing a disclosure. She
255 stated that Ms. Gilmore provided a written response apologizing and included a picture of
256 the corrected yard sign. Ms. Schneider informed the Board this is Ms. Gilmore's first time
257 before the Board. Secretary LeCruise moved *subject to the Board's authority under the*
258 *Code of Virginia §24.2-955.3, to find Gayle Gilmore in violation of §24.2-956 Stand By*
259 *Your Ad print media disclosure requirements, and assess a \$25 civil penalty.* Vice Chair
260 O'Bannon seconded the motion and the motion passed unanimously. A roll call vote was
261 taken:

262 Chairman Brink – Aye

263 Vice Chair O'Bannon – Aye

264 Secretary LeCruise – Aye

265 The next complaint was against Linwood W. Johnson, III. Ms. Schneider informed
266 the Board that one complaint was submitted for one yard sign. She stated that Mr.
267 Johnson provided a response with an image of the corrected signs. Vice Chair O'Bannon
268 moved *subject to the Board's authority under the Code of Virginia §24.2-955.3, to find*
269 *Linwood Johnson III in violation of §24.2-956 Stand By Your Ad print media disclosure*
270 *requirements, and assess a \$25 civil penalty.* Secretary LeCruise seconded the motion
271 and the motion passed unanimously. A roll call vote was taken:

272 Chairman Brink – Aye

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273 Vice Chair O'Bannon – Aye

274 Secretary LeCruise – Aye

275 The last complaint was against Tony Buffington. Ms. Schneider informed the
276 Board that one complaint was submitted for two signs with incomplete disclosures. She
277 explained to the Board that Mr. Buffington sponsored the advertisement for three
278 candidates running for Town Council in the Town of Purcellville. Ms. Schneider stated
279 that Mr. Buffington provided a response apologizing for the violation and taking full
280 responsibility for the error. Secretary LeCruise moved *subject to the Board's authority*
281 *under the Code of Virginia §24.2-955.3, to find Friends of Tony Buffington in violation of*
282 *§24.2-956 Stand By Your Ad print media disclosure requirements, and assess a \$25 civil*
283 *penalty.* Vice Chair O'Bannon seconded the motion and the motion passed unanimously.

284 A roll call vote was taken:

285 Chairman Brink – Aye

286 Vice Chair O'Bannon – Aye

287 Secretary LeCruise – Aye

288 Chairman Brink opened the floor to Public Comment. Clara Belle Wheeler
289 addressed the Board.

290 Vice Chair O'Bannon moved *to adjourn the meeting.* Secretary LeCruise
291 seconded the motion and the motion passed unanimously. A roll call vote was taken:

292 Chairman Brink – Aye

293 Vice Chair O'Bannon – Aye


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294 Secretary LeCruise – Aye

295 The meeting adjourned at 3:02 P.M.

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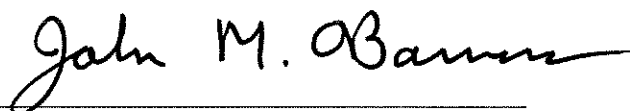
297 Chairman



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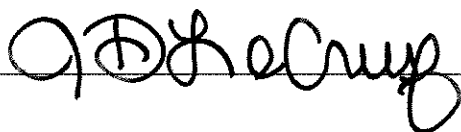
300 Vice Chair



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303 Secretary



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