



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Tuesday, March 15, 2016
General Assembly Building
Room C
10:00AM

SBE Board Working Papers



**STATE BOARD OF ELECTIONS
AGENDA**

*DATE: March 15, 2016
LOCATION: General Assembly Building, Room C
TIME: 10:00 a.m.*

- I. CALL TO ORDER** *James B. Alcorn
SBE Chair*
- II. APPROVAL OF MINUTES** *SBE Board Members*
January 8, 2016
February 4, 2016
March 1, 2016
- III. COMMISSIONER'S REPORT** *Edgardo Cortés
ELECT Commissioner*
- IV. OLD BUSINESS**
- A. Campaign Finance** *Brooks Braun
ELECT Policy Analyst*
- V. NEW BUSINESS**
- A. Certification of Presidential Primary** *Reiko Doğu
Senior Elections Administrator*
1. Absentee Ballot Issues *Edgardo Cortés
ELECT Commissioner*
2. Ballot Printing Issues
- B. General Registrar's Full-time Requests** *Martin Mash
ELECT Policy Advisor*
- C. Periodic Review of Regulation –Chapter 60 & 80** *Myron McClees
ELECT Policy Analyst*
- D. Recodification of §24.2 – Election Laws** *Martha Brissette
ELECT Policy Analyst*
- E. 2016 Presidential Election Preparation and Planning** *James Alcorn
SBE Chair*
- F. Disability Law Center of Virginia** *Clyde Mathews*
- VI. OTHER BUSINESS & PUBLIC COMMENT**
Next Meeting – June 14, 2016-Washington Building-B27 @ 8am
- VII. ADJOURNMENT**



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STATE BOARD *of* ELECTIONS

Call to Order

BOARD WORKING PAPERS
James Alcorn
SBE Chair



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STATE BOARD *of* ELECTIONS

Approval of Minutes
January 8, 2016
February 4, 2016
March 1, 2016

BOARD WORKING PAPERS
SBE Board Members



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval
Of
Minutes
January 8, 2016

BOARD WORKING PAPERS
SBE Board Members

1 MINUTES

2

3 The State Board of Elections Board Meeting was held on Friday, January 8, 2016.
4 The meeting was held in the General Assembly Building, Richmond, Virginia – Room C.
5 In attendance, representing the State Board of Elections (SBE) was James Alcorn,
6 Chairman; Clara Belle Wheeler, Vice Chair; and Singleton McAllister, Secretary. Also in
7 attendance, representing the Department of Elections (ELECT) was Edgardo Cortés,
8 Commissioner; Elizabeth Howard, Deputy Commissioner; Martin Mash, Policy Advisor;
9 Brooks Braun, Policy Analyst, and Rose Mansfield, Clerk. Anna Birkenheier, Assistant
10 Attorney General and Counsel to SBE and ELECT attended. Chairman Alcorn called the
11 meeting to order at 10:10AM.

12 The first order of business was the approval of the minutes from the State Board
13 of Elections Board Meeting held on December 16, 2015. Chairman Alcorn asked if board
14 members had any additions or corrections to the Board Meeting minutes presented and
15 there were none. Secretary McAllister moved *to adopt the minutes for the December 16,*
16 *2015 meeting.* Vice Chair Wheeler second the motion. The Board unanimously approved
17 the motion. Vice Chair Wheeler requested a close session to discuss the consent decree
18 mentioned in the minutes. Chairman Alcorn acknowledged the request.

19 The next order of business was the Commissioner Report presented by Edgardo
20 Cortés, ELECT Commissioner. Commissioner Cortés stated that Goochland County did
21 conduct a post-election audit and has requested that a brief report be given during this
22 meeting. Chairman Alcorn stated that the requested item would be added under other
23 business. Commissioner Cortés reported that Gary Fox, ELECT Voting Equipment
24 Supervisor, has retired. Mr. Fox’s expertize will be missed and ELECT wanted to thank
25 Mr. Fox for his service and dedication to the entire elections community. Commissioner
26 Cortés stated that the Governor has submitted his budget to the General Assembly. The
27 request includes a change to this years’ appropriation that covers reimbursement for
28 presidential primary expenses which was approximately, 3.8 million dollars for this fiscal
29 year. Monies were included in the request for the cost associated to printing voter
30 absentee applications, voter outreach, and state mail services. Commissioner Cortés
31 stated that a budget request has been entered for a call center for the presidential election

32 due to the increase in calls received by ELECT. Commissioner Cortés stated that the
33 Governor has placed a budget request to enhance and update the campaign finance
34 system. Commissioner Cortés stated that ELECT entered into a consent decree in the Lee
35 v. SBE case that was filed on December 23, 2015 and information related will be reported
36 as received by ELECT. ELECT implemented an on-line absentee request capability prior
37 to the November 2016, General Election which should decrease the handling time of
38 these applications by the Directors of Elections.

39 The next order of business was the Legal Report presented by Anna Birkenheier,
40 Assistant Attorney General and Counsel to SBE and ELECT. Ms. Birkenheier stated that
41 there was no report with the exception of honoring the closed session requested by Vice
42 Chair Wheeler later in the meeting.

43 The next order of business was the Campaign Finance Updates presented by
44 Brooks Braun, ELECT Policy Analyst. Mr. Brooks stated that a memorandum regarding
45 incomplete finance reports was included in the Board Working Papers. Mr. Brooks stated
46 that the memorandum is specifically related to allegation from reports that Mr.
47 McCollum continued receiving payments from his employer during a specific period in
48 which he was campaigning full-time. The Republican Party of Virginia claims that this
49 activity is in violation of the Campaign Finance Disclosure Act and ELECT is asking
50 SBE for clarification on whether payments received from one's private sector employer
51 which campaigning fulltime are campaign contributions. Mr. Brooks stated that under
52 §24.2-1019 any complaint or allegation concerning unlawful conduct shall be filed with
53 the attorney for the Commonwealth of the county or city in which the alleged violation
54 occurred. Commissioner Cortés stated that the official referral did not go to the
55 commonwealth attorney's office because the local office had questions as to whether it
56 was appropriate, and asked for guidance from SBE as to if a violation occurred.
57 Chairman Alcorn stated that the *code* states that is the obligation of SBE to report
58 violations and this matter is an allegation and in either event the complaint should be
59 referred to the local commonwealth attorneys' office. Vice Chair Wheeler stated that she
60 concurred with the Chairman statement however: "The matter should be handled
61 swiftly." Chairman Alcorn inquired if the campaign had responded to the complaint.
62 Commissioner Cortés stated that the McCollum campaign had not responded to the

63 allegation nor has the department of SBE requested a response. Chairman Alcorn stated
64 that the department should make a request of the campaign to respond to provide
65 information regarding the allegation. Secretary McAllister stated that the definition of
66 contribution should be defined as it relates to one's salary and this will help SBE to know
67 how to move forward. Secretary McAllister recommended that this allegation be given to
68 the commonwealth attorney to do the analysis. Chairman Alcorn stated that the allegation
69 should be investigated under §24.2-1019. Ms. Birkenheier stated that if it is investigated
70 under §24.2-1019, it would be investigated as a criminal matter verses a civil matter, and
71 without suggesting that this would affect the manner in which this complaint is handled.
72 Chairman Alcorn stated that under §24.2-946.3 SBE has the responsibility to report any
73 allegation of incomplete campaign finance reports. Commissioner Cortés stated that
74 when requests are sent to the commonwealth attorneys' offices there are no assurance
75 that when the investigation is complete that that office would notify ELECT of the
76 outcome however: in future requests for investigations, the request for notification of
77 disposition would be added to the letter. Secretary McAllister moved *that allegation be*
78 *referred to the local commonwealth's attorney for violations of the Campaign Finance*
79 *Act.* Vice Chair Wheeler second the motion and without further comment the motion
80 passed unanimously. Chairman Alcorn directed Mr. Brooks to notify the commonwealth
81 attorney's office regarding this matter and to update SBE when a determination is made.

82 The next order of business was the Substantial Compliance – History and
83 Standards Memorandum presented by Brooks Braun under the Campaign Finance
84 Update. Mr. Braun stated that on November 16, 2015, SBE asked ELECT to investigate
85 the past practice of the Board in the apparent substantial compliance provision in §24.2-
86 955.3(E)-[Stand by Your Ad]. Mr. Braun stated that ELECT suggests that the Board read
87 §24.2-955.3(E) narrowly. Mr. Braun stated that a narrow reading is good policy for
88 several reasons. First, it would encourage political committees under the scope of Stand
89 by Your Ad to read and carefully comply with the law as written. Second, it would ensure
90 that the information that the legislature intended, be communicated to voters, is actually
91 communicated. Mr. Braun stated that this is to the benefit of voters who have come to
92 expect certain disclosure statements on campaign materials. Under this standard,
93 advertisement disclaimers must communicate to a reasonable person what is intended by

94 the statute and may not admit to alternative interpretations. Vice Chair Wheeler stated
95 that the disclosure would allow interpretation of the words used on the disclosure to have
96 the intended meaning as outline by the statue. Mr. Braun stated that was a correct
97 statement. Secretary McAllister asked how this change would be conveyed to the
98 elections community. Mr. Braun stated that the information would be added to the
99 candidate bulletin which is in the campaign finance manual for candidates. Chairman
100 Alcorn moved *that moving forward §24.2-955.3(E) to mean that the disclosure statement*
101 *must unambiguously contain the information required by Chapter 9.5.* Secretary
102 McAllister seconded the motion and without further comment the Board unanimously
103 approved the motion.

104 The next order of business was the Express Advocacy Memorandum under the
105 Campaign Finance Update presented by Brooks Braun, ELECT Policy Analyst. Mr.
106 Braun stated that Chairman Alcorn requested that a memorandum be prepared that
107 addresses the topic of express advocacy. ELECT has received several complaints alleging
108 improper disclosure of advertisement's in November 2015, General Election. ELECT is
109 awaiting the Board's decision regarding interpretation of the term "Expressly
110 Advocating" as used in §24.2-945.1. The *code* defines both "expenditure" and
111 "contribution". Mr. Braun explained that the term "expressed advocacy" is a legal term
112 that has been utilized since 1976, and since then the term has been used and interpreted
113 by a number of courts and legislatures at both the state and federal level. Chairman
114 Alcorn stated that the Board finds it appropriate to ask legal counsel to discuss with the
115 Department the possible legal implications of establishing a policy regarding "express
116 advocacy. Chairman Alcorn stated that this action would allow the Board to move
117 forward on the complaints received by ELECT and would be received by SBE on the
118 definition of "expressed advocacy".

119 Commissioner Cortés stated that ELECT received a letter on behalf of SBE on
120 January 7, 2016 from the Landmark Legal Foundation regarding consideration of whether
121 to adjudicate violations of campaign finance law prior to election. Chairman Alcorn
122 stated that since the letter was just received the Board shall review the item at the next
123 regularly scheduled board meeting.

124 The next order of business was the GREB Workgroup presented by GREB
125 Workgroup Co-Chair John Hager. Mr. Hager stated that the final report of the GREB
126 Workgroup was due on December 31, 2015 and as a result the final report was placed on
127 the ELECT Website for review and held for formal presentation until the next available
128 board meeting. Mr. Hager stated that the workgroup was chartered on May 14, 2014 and
129 the primary purpose was to study the duties and responsibilities of the electoral boards
130 and general registrars. The workgroup presented an interim report on July 28, 2015. The
131 final report includes a resolution that includes recommendations. Mr. Hager introduced
132 the members of the workgroup and thanked all for their dedication to the efforts and
133 corporative spirit. Mr. Hager thanked the support of the ELECT staff. Robin Lind,
134 Goochland County VEBA representative, GREB Workgroup VEBA representative;
135 Larry Haake, Chesterfield County Director of Elections, GREB Workgroup VRAV
136 representative; and Tracy Howard, Radford City Director of Elections, VRAV
137 representative discussed portions of the workgroup report and resolution with SBE Board
138 Members in detail. The GREB Workgroup resolution as presented:

- 139 1. The budget submitted by the Commissioner of Elections setting the salary and population
140 brackets for General Registrar/Director of Elections to be the same as that of the Treasurer should
141 receive all necessary support and action to enable adoption by the General Assembly. This action
142 is consistent with the recommendation of the GREB Workgroup in 2014;
- 143 2. The budget submitted by the Commissioner of Elections requesting a significant increase in
144 funding in order to account for expiring federal funds should receive all necessary support and
145 action to enable adoption by the General Assembly; and
- 146 3. The State Board of Elections adopt the Electoral Board Job Description included in the Final
147 Report Section 2/Attachment 3 and instruct the Department of Elections to distribute that
148 document to the various circuit court judges and local political party chairs for use in the
149 appointment process to electoral boards; and
- 150 4. The Code of Virginia be modified to clarify responsibility between the Electoral Board and
151 General Registrar/Director of Elections in the areas of ballots and elections, officers of election,
152 and polling places, per Final Report Section 2/Attachment 2; and,
- 153 5. The State Board of Elections request that the General Assembly seek prompt re-codification of
154 Virginia Code §24.2 to eliminate archaic language, eliminate contradictory requirements, and
155 update references to reflect modern technology.

156
157

158 SBE Board Members thanked GREB Workgroup Members for their presentation
159 and efforts in reporting the final results. Chairman Alcorn requested that ELECT Staff
160 provide SBE with additional details on the process of re-codification of *Virginia Code*

161 §24.2. Vice Chair Wheeler moved that the State Board accept the GREB Workgroup
162 Final Report and Resolution of Recommendations and forward them to the Office of the
163 Governor, Department of Administration, Members of the Privileges and Election
164 Committee of both houses, Speaker of the House, and the President of the Senate for
165 consideration to include their recommendation for re-codification . Secretary McAllister
166 seconded the motion. Chairman Alcorn asked if there were additional public comments.
167 Theresa Martin, Virginia League of Women Voters provided supporting comments of the
168 workgroup’s efforts. Chairman Alcorn asked if there were additional public comments
169 and there were none. The Board unanimously approved the motion.

170 Vice Chair Wheeler stated that a previous conversation was initiated regarding the
171 extension of the GREB Workgroup’s efforts. Vice Chair Wheeler stated that a
172 recommendation to continue the workgroup in its’ current format and membership for the
173 upcoming year with the charge to review the re-codification of *code* and to work
174 independently on other charges, as they deem appropriate, in particular, the day to day
175 work of the election offices. Chairman Alcorn suggested waiting on the re-codification
176 until more information is received and Vice Chair Wheeler agreed. Mr. Hager stated that
177 the workgroup had ten areas of work that could be address during their charge and
178 reviewed those areas with SBE. Commissioner Cortés expressed concerned whether the
179 ELECT Staff could provide adequate support during a presidential election year,
180 redistricting, and a long legislative session. Chairman Alcorn stated that the use of
181 department resources was of concern. Mr. Hager stated that the workgroup would
182 exercise extreme respect of the Departments’ resources. Vice Chair Wheeler stated that
183 the membership of the workgroup is a volunteer group and would be respectful of
184 ELECT resources. Secretary McAllister stated that maintaining continuity is important
185 when it comes to the efforts of the workgroup and stated that she fully endorsed the
186 continuation of the workgroup efforts with the understanding that there would be respect
187 for ELECT resources in particular staff obligations. Vice Chair Wheeler moved that SBE
188 reconstitute the GREB Workgroup to work on any unfinished business that was initiated
189 two years ago and continue to look at the problems they see and bring those practical
190 aspects to resolution for the next year with a final report due in January 2017 due to the
191 busy election year. Secretary McAllister seconded the motion. Chairman Alcorn asked if

192 there were further discussion and there was none. A voice vote was taken. The motion
193 passed 2 to 1: Vice Chair Wheeler, Yea; Secretary McAllister, Yea; and Chairman
194 Alcorn, Nay.

195 Chairman Alcorn moved *that SBE go into recess until 12:15PM*. Secretary
196 McAllister seconded the motion and without public comment the Board unanimously
197 approved the motion, The Board went into recess at 12:10PM. Chairman Alcorn moved *that*
198 *the Board reconvene at 12:25PM*. Vice Chair Wheeler second the motion and without public
199 comment the Board unanimously approved the motion.

200 The next order of business was the Richmond City Election Day Issues presented by
201 Edgardo Cortés, ELECT Commissioner. Commissioner Cortés stated that on November 3,
202 2015, Election Day, the Department received several calls regarding pollbooks, split
203 precincts, wrong ballot style, and voter identification issues. Commissioner Cortés stated that
204 a letter expressing those concerns was sent to the General Registrar of Richmond City and to
205 date a response has not been received. Chairman Alcorn asked if Kirk Showalter, General
206 Registrar of Richmond City was present. Ms. Showalter approached the podium.

207 Ms. Showalter stated that: “She had received the letter dated December 31, 2015,
208 which contained a lengthy list of accusations and has not responded to SBE or ELECT due to
209 illness.” Ms. Showalter stated that: “When voters were check in on the electronic pollbook it
210 would ask for a valid ID number and this was not something in our protocol.” Ms. Showalter
211 stated that this was sporadic throughout the city. Ms. Showalter stated that: “Data shows
212 some precincts, 41% of our precincts opened, actually entered somebody in the pollbook,
213 between 6:00AM and 6:15AM.” Ms. Showalter stated that: “Richmond City figured out
214 the situation and determined that they were required to enter a unique identification
215 number.” Ms. Showalter stated that: “She only knew of one voter who left.” Ms.
216 Showalter stated that: “Part of the problem was that we had to rely on the State Board of
217 Elections Staff as the conduit, with the new vendor, for resolutions of pollbook
218 problems.” Ms. Showalter stated that: “The pollbooks sometimes stopped communicating
219 with each other and that there is a patch available; Richmond City had no knowledge of
220 this patch and we have been dealing with this situation for a long time. The State Board
221 knows about the situation and we have had problems with getting voter credit data. The
222 problem with our voter credit data is that the election officers were not closing the
223 pollbooks correctly.” Ms. Showalter provided copies of her training classes’ schedules

224 and handouts to board members. Ms. Showalter stated that: "Election officers are not
225 full-time positions and we have citizens working the polls that are welfare mothers or
226 hold a PHD, and everything in between." Ms. Showalter stated that: "We try to pair our
227 new election officers with the best chiefs and assistant chiefs." Ms. Showalter stated that:
228 "There were election officers who did not follow the photo ID requirements as they were
229 trained." Ms. Showalter explained the situation with the Governor and the confusion over
230 his photo identification. Ms. Showalter stated that the situation with the split precincts
231 occurred because of eight new split precincts and elections officers having to deal with
232 new voting equipment. Ms. Showalter explained the training process for election officers
233 dealing with split precincts and stated that when the problem was identified that two of
234 the Richmond City Electoral Board Members went into the field to address the problem.
235 Ms. Showalter stated that: "Every now and again, the voter does get the wrong ballot, but
236 overall the process has functioned very well." Ms. Showalter stated that: "Sometimes
237 voters get in the wrong line after checking into the precinct." Ms. Showalter stated that
238 the city was hoping to purchase new electronic pollbooks by March, 2016. Ms. Showalter
239 stated that: "The City of Richmond cares very much about the voters."

240 Chairman Alcorn thanked Ms. Showalter for her time and asked if any of the
241 Electoral Board Members were present and wished to speak. Charlotte Stevens,
242 Richmond City Electoral Board Chair approached the podium. Ms. Stevens stated that
243 she has been working with Ms. Showalter since 2008. Ms. Stevens stated that: "She felt
244 that SBE was targeting the City of Richmond and stated that Ms. Showalter does
245 extensive training before each election and has worked under both party administrations."
246 Ms. Stevens stated that: "The Electoral Board does address issues with election officers
247 and the City of Richmond is fortunate to have Ms. Showalter." Ms. Stevens stated that:
248 "The electoral board fully intends to work closely with Ms. Showalter, her staff, and
249 election officers and look into each and every recorded incident that occurred on Election
250 Day."

251 Chairman Alcorn stated that SBE wants to accomplish a culture change not a
252 partisan change and by having open and frank conversations about elections
253 administration we can have "lessons learned". Chairman Alcorn stated that SBE heard of
254 the issues on Election Day, in Richmond City, and the three member board of SBE

255 agreed to ask Richmond City to attend a SBE Meeting to discuss the situation. Chairman
256 Alcorn noted that Richmond City was not the first locality to appear before the Board to
257 address issues that occurred in their locality on Election Day. Chairman Alcorn asked if
258 there were any other public comments and there were none.

259 Vice Chair Wheeler stated SBE Board Members were made aware of the calls
260 related to election day issues throughout the day on November 3, 2015, and documented
261 the issues as they arose. Vice Chair Wheeler stated that as a former electoral board
262 member she would emphasize to election officers in training the value of following the
263 rules and not being creative on Election Day. Vice Chair Wheeler stated that the training
264 program of Richmond City Election Officers is amazing and everyone makes mistakes
265 and equipment will experience problems. Vice Chair Wheeler stated that we should be
266 grateful to the City of Richmond, and to those who are dedicated, and take their jobs
267 responsibly.

268 Secretary McAllister thanked the City of Richmond for providing the opportunity
269 to go on-site on Election Day. Secretary McAllister stated that this review is not a
270 partisan issue and the purpose of this conversation is to review the “lessons learned”,
271 2016 is going to be an important year and it is important to work together for
272 transparency, clarity, and to gather those “lessons learned”.

273 Commissioner Cortés stated that there are numerous localities across the
274 Commonwealth that utilize this equipment and have not experienced the issues stated by
275 Richmond City. Commissioner Cortés asked Eugene Burton to answer any questions
276 SBE may have regarding the functionality of the electronic pollbook equipment in
277 Virginia. Eugene Burton, ELECT Voting Equipment Specialist, approached the podium.
278 Mr. Burton stated that the valid ID feature is not for Virginia and the data card is for
279 other states. The feature is in the software but is not a feature that ELECTS trains the
280 localities to utilize. This feature was not provided for Virginia and is utilized in states
281 who have super precincts or vote centers.

282 Commissioner Cortés asked Ms. Showalter for a clarification on the percentage of
283 precincts that checked-in with the electronic pollbooks. Ms. Showalter stated that 41% of
284 the precincts actually had someone check into the pollbooks by 6:15AM and another 40%
285 had voters checked-in but required a unique voter identification number; the majority of

286 the precincts were fully functional by 7:00AM. Ms. Showalter confirmed that 19% of the
287 precincts were not totally functional until after 7:00AM. Commissioner Cortés asked Ms.
288 Showalter if provisional ballots were offered to those voters experiencing difficulty
289 checking-in with the electronic pollbooks. Ms. Showalter stated that she did not instruct,
290 to make the offer of a provisional ballot as the voter was in the process of checking-in
291 and the a resolution was being sought, and the situation, would have been resolved in the
292 near future. Ms. Showalter stated that that her office and the Electoral Board would
293 review the situation in the future. Commissioner Cortés asked Ms. Showalter if the
294 precincts had the most recent version of the training document titled “What-If”? Ms.
295 Showalter stated that the training document was from the June 2015, primary and was
296 unaware that the administration had a change in policy in the identification policy and did
297 not do a line by line comparison before issuing the training document and the
298 administration did not notify our office of the change. Ms. Showalter stated that
299 document used on November 3, 2015 was the same document utilized for the June 2015,
300 primary. Commissioner Cortés asked Ms. Showalter if provisional ballots were issued to
301 voters who were issued the wrong ballots in the split precinct situation. Ms. Showalter
302 stated: “No”.

303 Chairman Alcorn asked Ms. Showalter what was the expected date of the
304 completion of the “lessons learned” by the City of Richmond. Ms. Showalter stated that
305 the purchasing of electronic pollbooks and the March 2016, primary were the priority and
306 the city lack the resources to complete all of the tasks, i.e. the review of “lessons
307 learned”. Chairman Alcorn asked Ms. Showalter when the review is normally conducted.
308 Ms. Showalter stated in January however; this is a different year due to the primary and it
309 will be delayed. Vice Chair Wheeler asked if Richmond City would be conducting
310 training of their election officers before the March 2016, primary and if the issues of the
311 November 2015, election would be addressed. Ms. Showalter stated that they would
312 address those issues during training before the March 2016, primary and place an
313 emphasis on the photo identification requirements.

314 Chairman Alcorn asked Ms. Showalter about the issue with the voter credits. Ms.
315 Showalter stated that this is a known issue with the vendor and Richmond City is going to
316 install a patch which will allow voter credits to be uploaded in a timely fashion. Mr.

317 Burton stated that the patch was for a different system other than the ones being utilized
318 by Richmond City. Secretary McAllister thanked Ms. Showalter for her time at the Board
319 Meeting. Chairman Alcorn directed Ms. Showalter to respond to the letter and that the
320 response would be shared with the rest of the elections community so that ‘lessons
321 learned’ could be shared. Chairman Alcorn stated that when transparency is displayed the
322 accusations will cease and the education process will continue. Ms. Showalter stated that
323 she agreed with the Chairman. Chairman Alcorn inquired if there were any other
324 comments and there were none.

325 Chairman Alcorn moved *that SBE go into recess until 2:15PM*. Vice Chair Wheeler
326 seconded the motion and without public comment the Board unanimously approved the
327 motion, the Board went into recess at 2:10PM. Chairman Alcorn moved *that the Board*
328 *reconvene at 2:25PM*. Secretary McAllister seconded the motion and without public
329 comment the Board unanimously approved the motion.

330 Chairman Alcorn moved *that the SBE Board close the meeting to discuss specific*
331 *legal matters requiring the provision of legal advice by legal counsel as authorized by §*
332 *2.2-3711(A)(7) of the Code of Virginia*. Vice Chair Wheeler seconded the motion and
333 without public comment the Board unanimously approved the motion. Chairman Alcorn
334 directed Clara Belle Wheeler, Vice Chair; Singleton McAllister, Secretary; Anna
335 Birkenheier, Assistant Attorney General and SBE Counsel; Commissioner Cortés;
336 Deputy Commissioner Howard and Confidential Policy Advisor, Martin Mash to remain
337 with the Board during the closed session. The Board went into executive session at
338 2:25PM.

339 At 3:25PM Chairman Alcorn moved *to reconvene in open session and a roll call*
340 *vote was taken as required by § 2.2-3712(D) of the Code of Virginia, unanimously*
341 *certifying that during the closed meeting (i) only public business matters lawfully*
342 *exempted from open meeting requirements under this chapter, and (ii) only such public*
343 *business matters as were identified in the motion by which the closed meeting was*
344 *concerned were heard, were discussed or considered*. Vice Chair Wheeler seconded the
345 motion and the Board unanimously approved the motion. Ms. Mansfield performed the
346 roll call vote and all board members approved the motion.

347 The next order of business was the Halifax County Voting Equipment Issues
348 presented by Commissioner Cortés. Commissioner Cortés stated that Vice Chair Wheeler
349 inquired during the last board meeting about the voting equipment issues experienced in
350 Halifax County and as a result Halifax County was invited to attend this board meeting to
351 discuss the issues. Heather Harding, Director of Elections Halifax County approached the
352 podium. Ms. Harding referenced the voting equipment display that was available for
353 demonstration. Commissioner Cortés stated that Halifax County voting equipment
354 experienced calibration issues on Election Day which resulted in the incorrect candidate
355 being selected by the voter. Commissioner Cortés stated that Halifax County conducted L
356 & A testing on all the equipment deployed for use on Election Day and all equipment
357 passed testing to the vendor standards; which allows a quarter-inch variation.
358 Commissioner Cortés stated that one unit was pulled on Election Day and no calls were
359 received regarding the issue. Commissioner Cortés stated that after the election a
360 candidate called and stated that there were a substantial number of voters who expressed
361 concern regarding calibration issues on Election Day. Commissioner Cortés stated that
362 Ms. Harding conducted additional L & A testing on the equipment once the equipment
363 was released back to the locality. Commissioner Cortés stated that the candidates and the
364 political parties were invited to the testing. Commissioner Cortés stated that some voting
365 equipment did not pass the quarter-inch standard and most of the equipment did pass the
366 L & A testing. The candidate express concern and has appeared before the Halifax
367 County Board of Supervisors regarding the voting equipment currently being utilized in
368 the County. As a result, the Board of Supervisors has set aside funds for new voting
369 equipment. Ms. Harding approached the podium and explained the testing timelines and
370 process. Ms. Harding stated that 18 of the 56 units in Halifax County needed to be
371 recalibrated as a result of the testing and on Election Day three machines were replaced
372 as a result of issues that arouse. Ms. Harding reported that a candidate witnessed the
373 canvass because of his concerns and felt he should have received more votes than
374 reported and that candidate was present during the review of the machines when they
375 were returned to the office. The results of the testing were shared. With the concern for
376 voter faith in the equipment, Halifax County has purchased new voting equipment which
377 will be in use for the March 2016 primary and the November 2016, General Election. Ms.

378 Harding asked if there were any questions. Commissioner Cortés asked Mr. Burkhart,
379 Director of Unilect Operations, to explain the calibration issues. Mr. Burkhart explained
380 the vendor specification related to the calibration issues and variations. Chairman Alcorn
381 asked how the variations compare to other vendor voting equipment. Commissioner
382 Cortés stated that currently, there are not federal or Election Assistance Commission
383 (EAC) standards established and currently states do not have regulations regarding the
384 variations in touch screen equipment. Chairman Alcorn asked about the duration of the
385 calibration and the cycle of recalibration. Mr. Burkhart stated that recalibration is
386 recommended every two years. Ms. Harding stated that testing occurs before every
387 election and if the results indicate that recalibration is required, recalibration is
388 conducted. Vice Chair Wheeler thanked Ms. Harding for taking the initiative to replace
389 the equipment. Chairman Alcorn asked if there were any other questions or comments
390 and there were none.

391 The next order of business was Prince William County presented by
392 Commissioner Cortés. Commissioner Cortés explained the materials in the Board
393 Working Papers. Commissioner Cortés stated that discussions were held prior to the
394 November 2015, General Election related to potential signature verification of returned
395 absentee ballots based on how the voter chooses to apply for the absentee ballot. The
396 Department was asked by the Prince William Electoral Board to provide advice on
397 adopting a policy. The Departments' policy was signature verification is not supported
398 and is not contemplated in the *code*. Commissioner Cortés stated that he attended the
399 local electoral board meeting and answered questions regarding the concern of signature
400 verification. Commissioner Cortés recalled the outline of events that occurred between
401 the Electoral Board and the Director of Elections, Michele White. Mr. Guiffré, Chairman
402 of the Prince William County Electoral Board, then selected four individuals and
403 deputized those individuals as officers of elections. Commissioner Cortés stated that Mr.
404 Guiffré then undertook the process of signature verification comparing them to the
405 absentee ballot application that should have been in the courthouse but, were not, due to
406 instructions provided by Mr. Guiffré. Commissioner Cortés stated that Mr. Guiffré then
407 compared the signatures, on the absentee ballot envelopes, to the voter registration
408 applications in the Director of Elections Office, without authorization, which is required

409 and without any action taken by the Prince William Electoral Board. Commissioner
410 Cortés stated that the applications were not redacted and contained sensitive information,
411 i.e. social security numbers and birth dates. Commissioner Cortés stated that proper
412 notice of this activity was not given and once the Department was notified of the incident
413 the office of the attorney general was notified of the situation. Commissioner Cortés
414 stated: “My concern is that having any local electoral board member, because they
415 disagree with a policy, to undertake actions that are contraire to not only federal and state
416 law but, to advice given by the Department.” Commissioner Cortés stated that the
417 Director of Elections and her staff have raised concerns about the process.

418 Chairman Alcorn stated: “The facts and details are rather alarming and that an
419 individual would proceed contrary to advice given by their electoral board and or by the
420 Department.” Chairman Alcorn stated that it was understood that there is an open
421 investigation by law enforcement and the local commonwealth attorney’s office.
422 Chairman Alcorn asked Mr. Guiffré for an explanation of the situation. Mr. Guiffré
423 stated: “I have been advised by counsel not to say anything.” Chairman Alcorn replied:
424 “OK”.

425 Vice Chair Wheeler stated that verifying signatures on an absentee ballot request
426 form is important so that you know that the person who is requesting the ballot is the
427 voter who is requesting the ballot. We have received testimony and data that in a
428 particular situation all residents of a block requested an absentee ballot. Vice Chair
429 Wheeler stated that 56% of people who stated that they requested an electronically
430 produced request for an absentee ballot never returned the ballot; which is higher across
431 the state than the standard of people requesting absentee ballots. Vice Chair Wheeler
432 stated that voters presented themselves at polls stating that they had not requested an
433 absentee ballot, but received one, “This is a system that we need to evaluate and the *code*
434 is specific in stating that the voter must sign the request. I am concerned that the
435 procedure or system that is in place is not a safe process for getting an absentee ballot.”
436 Vice Chair Wheeler stated: “I do not see this as criminal activity, I see this as somebody
437 who was trying to test the system that is in place and see if it is a legal and safe means of
438 requesting absentee ballots.”

439 Chairman Alcorn stated: “My concern is a broader one, no matter the rule and
440 whether we agree with it, but here is a situation where the Board did discuss signature
441 verifications and this was not a required step. I recall that we were signing certificates of
442 elections, and we stated that this is why you do not do signature verification because of
443 the change of signature over time. If a request came through utilizing the proper
444 procedures I would be in full support of those actions. The Electoral Board of Prince
445 William County did not endorse this action. A decision was made and someone decided
446 to go against that decision. That is the underlying issue. Sometimes this Board does not
447 make a unanimous decision but we move forward together. To me that is fundamental.
448 That is my concern.” Chairman Alcorn asked if there were any members of the Prince
449 William Electoral Board or the Director of Elections that would like to address SBE.

450 Keith Scarborough, Secretary of the Prince William Electoral Board, approached
451 the podium. Mr. Scarborough stated: “I take no joy in doing this, but I want to encourage
452 you to begin the process of having Chairman Guiffre removed from our electoral board. I
453 realize this is a very serious step, but I believe that it is fully justified by what took place
454 in our county over the last several months. The record is clear, and there really is no
455 dispute on what has happened. Chairman Guiffre strongly disagreed with a decision you
456 made about using electronic signatures to apply for an absentee ballot. That is certainly
457 his right to disagree with that decision, but his right does not include the steps he has
458 taken over the last several months to do everything he could to undermine that decision
459 that you made and to undermine the operations of our local electoral board. During the
460 fall, he submitted at least four different applications for an absentee ballot using different
461 variations of his name and variations of his address just to test the system to see how it
462 worked. It is true that our local board discussed this issue; we debated for months on how
463 to treat these absentee ballots that were obtained using electronic signature. Initially he
464 wanted to treat all of those as provisional ballots and the Vice Chair and I refused to go
465 along with that, at a meeting on October 7th, yes we discussed the issue of the signature
466 match and one first impression, I will admit, a signature match has some logic. Through a
467 consensus we deferred the decision on how are we going to accept these ballots and we
468 discussed using a signature match, but after, I talked to others to see how they were
469 handling this issue. I talked to election lawyers who are more familiar; signature

470 matching is not an option that we had ever considered on the Electoral Board. After those
471 conversations I became convinced that it was wrong for us to do any type of signature
472 match. I called a special meeting on October 27th to reconsider the issue and to reverse
473 the consensus decision we had made to do a signature match. I asked the registrar to ask
474 the Commissioner for a statement to consider what our legal options were and whether
475 we had any legal authority to do a signature match. As the Commissioner noted the letter
476 was very clear, and there was a large crowd at our meeting, to nobody's surprise, and
477 very few people there were supportive of the position that we ended up taking.
478 Commissioner Cortés came, we presented the letter, he answered questions from the
479 audience, from the Board, and so after that meeting we voted two to one to not do any
480 signature match. We voted to treat every absentee ballot that was returned identically, no
481 signature matches from any ballots that came back. This vote was on the record in front
482 of a crowd of people during a special meeting of the Prince William Electoral Board. The
483 Chairman voted no on that and after the meeting he indicated that he is going to continue
484 to push on this issue, electronic signatures, because he doesn't trust them. We counted all
485 the ballots in the same way, with no distinctions. Two weeks later the Chairman shows
486 up at the Office of Elections, and the Registrar was out-of-town, and there was no notice
487 given to the Vice Chair, me, anybody else, the Democratic Party. The Chairman showed
488 up unannounced with four friends from the Republican Party, these are not election
489 officials, these people had never even worked in one of our precincts, and these were
490 people who, these were four friends from the Republican Committee. Using the oath to
491 create this perception, that I have the authority to do this, this is legal, I have the authority
492 to do this, he swore these four people in and he proceeded to do arbitrarily exactly what
493 the Commissioner of Elections said we had no authority to do, a signature match. He
494 completely ignored the direction of the Commissioner of Elections; he ignored the vote
495 that we took on October 27th that there was going to be no signatures match. There are at
496 least four sections of the *code* that have been violated and on Tuesday he left his four
497 friends alone who continued to look through voter registration information while he
498 attended a meeting of the County Board of Supervisors. Mr. Guiffré has ignored and
499 violated the trust of our local electoral board. I know that this is a serious request, but I
500 believe that his conduct was so outrageous and so over the top that he should be removed

501 from our electoral board. Thank you, very much.” Chairman Alcorn asked if there were
502 any questions for Mr. Scarborough and there were none. Chairman Alcorn asked if there
503 were any other comments. Michele White, Director of Elections Prince William County,
504 approached the podium.

505 Ms. White provided the background related to her office regarding electronic
506 signature comparisons on absentee ballot requests prior to the November 2015, General
507 Election. Ms. White stated that she asked the Commissioner of Elections directly about
508 signature verification. Ms. White stated that the Commissioner stated that signature
509 verification was not recommended and was in fact a violation of state and federal law.
510 Ms. White stated that Chairman Guiffre directed her and her staff not to seal and deliver
511 absentee ballot materials to the clerk of court, as required by *code*. Ms. White stated that
512 she was directed during an electoral board meeting to draft a letter, and send it, to the
513 local commonwealth attorney regarding this activity. Ms. White stated that Chairman
514 Guiffre and four individuals gained unauthorized access to voter registration documents.
515 Ms. White stated: “Elections are not being run according to law in Prince William
516 County.” Chairman Alcorn asked if there were additional speakers from Prince William
517 County. Jane Reynolds, Prince William Electoral Board Vice Chairman, approached the
518 podium.

519 Ms. Reynolds stated that she shared the views of the Director of Elections and the
520 Secretary of the Electoral Board. Ms. Reynolds stated that after receiving guidance from
521 the Commissioner of Elections the Electoral Board agreed that signatures would not be
522 compared and considering that we are not skilled on signature verification this was
523 understood. Chairman Alcorn asked if there were any additional speakers. Bill Card,
524 Prince William County Republican Committee Chairman approached the podium.

525 Mr. Card stated that the absentee ballot program is important and Chairman
526 Guiffre is our appointee. Mr. Card stated: “The idea that we are not going to compare
527 signatures is Ludacris. This same electoral board rejected a ballot because signatures did
528 not match. The treatment of electronic signatures is different and this ballot is different
529 than any ballot of people lined up at the polls.” Mr. Card stated: “There were ballots that
530 were submitted that should of not been because of the investigation. Senator Black
531 submitted a FOIA to keep the suppression of information occurring from the other

532 electoral board members.” Chairman Alcorn asked if there were any other speakers.
533 Larry Haake, Director of Elections Chesterfield County approached the podium.

534 Mr. Haake stated that a bill was introduced to the General Assembly that would
535 have required general registrars to conduct signature comparisons on absentee ballot
536 applications to voter registration forms. Mr. Haake stated that the bill was defeated
537 because it was realized that the average person cannot do a signature comparison. Mr.
538 Haake stated that in this situation the bottom line is not about electronic signatures it is
539 about what happened in Prince William County, which is a violation of the *code* and a
540 Class V felony. Mr. Haake stated: “If there is an investigation going on, Tony and four
541 other people will be indicted for a felony and properly for criminal conspiracy charges, as
542 well, as a senior election official we can’t let things like this go on. There are things I
543 don’t like. I am very concerned and there is a lot of concern in the registrar world.”
544 Chairman Alcorn asked if there were any other public comments and there were none.

545 Commissioner Cortés stated: “I would like to recommend that SBE under their
546 authority, §24.2-103, to move for removal of Mr. Guiffré from his office.” Chairman
547 Alcorn stated that this recommendation has been received from two individuals and this
548 situation is alarming. Vice Chair Wheeler stated: “This is properly one of the most
549 serious matters this board has had, there are lots of things that have gone on in the last
550 year or two, in the elections community, that I think are egregious in terms of people
551 being removed from their office, or their jobs, when they were trying to do the right
552 thing, and had a history of doing the right thing. The problem of voter integrity needs to
553 be addressed. How do we prevent absentee ballots from being fraud obtained and fraud
554 voted unless we come up with a protocol to prevent it? I have gone to nursing homes to
555 talk to residents, that had voted absentee, and I could not even get them to understand that
556 I was in the room, much less that they had voted a ballot the week before. That is not
557 only voter fraud, but elder abuse, which I take, very seriously. We need to figure out a
558 way to secure the absentee ballots. I do not think it is legitimate to try to remove from
559 office an electoral board member who is trying to test the system to see if it is
560 legitimate.”

561 Chairman Alcorn stated that while in agreement to testing the process the
562 established procedures must be followed. Secretary McAllister stated: “In this particular

563 case, I am leaning towards going with our chairman for all the reasons cited. Having read
564 all the materials and listened to the folks here, Prince William County and the
565 Commissioner, and what has happened. This sends ripples among the elections
566 community and they will know what is going on. They will see what this board is doing,
567 how did we respond to this, did we take it seriously, and the *code* is quite clear.”
568 Chairman Alcorn stated that he was fully supportive of testing the decisions of the Board
569 and suggested that if Vice Chair Wheeler would like to develop a plan to include testing
570 that it be bought before the Board. Chairman Alcorn asked if there were any other
571 comments and there were none. Chairman Alcorn moved *that the State Board of*
572 *Elections under the authority of §24.2-103 institute proceedings under §24.2-234 for the*
573 *removal of Tony Guiffre from the Prince William County Electoral Board.* Secretary
574 McAllister seconded the motion. Chairman Alcorn asked if there were any further
575 comments and there were none. A voice vote was taken. The motion passed 2 to 1:
576 Chairman Alcorn, Yea; Secretary McAllister, Yea; and Vice Chair Wheeler, Nay.

577 The next order of business was the City of Winchester Voting Request presented
578 by Commissioner Cortés. Commissioner Cortés stated that the City of Winchester
579 Electoral Board has sought approval for §24.2-630 to currently certify voting systems in
580 the March 1, 2016 Presidential Primary. The City of Winchester would like to purchase
581 new voting equipment and there are two voting systems they are considering: one from
582 ES&S and the other from ESO that they would like to test during the election before
583 making a final purchasing decision. The Departments’ recommendation is that this is
584 approved and this has been done previously by other localities. Vice Chair Wheeler stated
585 that this process of testing equipment has occurred previously in Albemarle County and
586 was very successful. Chairman Alcorn moved *that SBE the experimental use of the*
587 *Unisyn election systems, DS200 and Express Vote system in the City of Winchester for*
588 *the March 1, 2016, Presidential Primary Election.* Secretary McAllister seconded the
589 motion and without public comment the Board unanimously approved the motion.

590 The next order of business was the Albemarle County Electoral Board Request for
591 Guidance presented by Commissioner Cortés. Commissioner Cortés stated ELECT
592 received this request from Albemarle County recently regarding the Republican Party of
593 Virginia (RPV) statement to be signed by the voter. The administrative regulations,

594 1VAC 20-70-20, which deals with material omissions from Envelope B is of concern to
595 the central absentee precincts officers. Commissioner Cortés stated that if the situation is
596 not covered in the administrative regulation the officer of election will be responsible for
597 determining what is a material omission and what is not a material omission. There is
598 also the concern of whether Envelope B can be opened to determine whether the
599 statement was accidentally included with the ballot prior to deciding whether or not to
600 count the ballot. Commissioner Cortés stated that the Department talked with the Federal
601 Voting Assistance Program (FVAP) and they had concerns on how this would impact
602 military and overseas voters. Commissioner Cortés stated that there are some suggested
603 solutions, but that would require board approval and RPV approval. Commissioner
604 Cortés requested board approval to move forward and ELECT has spoken to the
605 Executive Director of RPV regarding this issue.

606 Chairman Alcorn stated the RPV would have to sign off on this consideration.
607 Chairman Alcorn asked if there is a way to get instructions to those impacted voters on
608 the RPV statement. Commissioner Cortés stated that with Board approval ELECT would
609 help coordinate those efforts. Matt Davis, ELECT CIO, stated that this would only apply
610 to the federal write-in voter because the federal write-in envelope arrives without an
611 actual absentee ballot. Chairman Alcorn moved *that SBE approve box 6 of the federal*
612 *write-in absentee ballot and if it indicates Republican that it meets the statement*
613 *requirement for participation in the Republican Presidential Primary and for ELECT to*
614 *seek approval from the Republican Party of Virginia for the same, and if they are in*
615 *agreement, to coordinate with the Federal Voting Assistance Program and to*
616 *communicate this to voters. Vice Chair Wheeler seconded the motion and without further*
617 *public comment the Board unanimously approved the motion. Commissioner Cortés*
618 *stated that in addition to this item being added to the next board meeting agenda that*
619 *guidance should also be given to how to handle provisional ballots if the voter refuses to*
620 *sign the RPV statement. Commissioner Cortés stated that written guidance will be*
621 *provided to the Board Members at the next meeting of SBE.*

622 The next order of business was the 2016 Presidential Election Preparation &
623 Planning presented by Chairman Alcorn. Chairman Alcorn stated he would like to start
624 the process of establishing the goals of SBE over the next year and would like to have the

625 support of the Virginia Electoral Board Association (VEBA) & the Virginia Registrars
626 Association of Virginia (VRAV). Chairman Alcorn stated that a list of priorities should
627 be established by SBE for the next three years and certainly over the next year with a
628 statement of these are the things we want to address. Chairman Alcorn stated that this is
629 important and we need to set aside time to work through our priorities while conducting
630 the business of the Board. Chairman Alcorn stated that he wanted to continue the culture
631 of asking tough questions with goal of continued improvement for the entire elections
632 community. Chairman Alcorn stated that his goal was to create a written workplan. Vice
633 Chair Wheeler stated that she would like to table this item to give more consideration to
634 the topic. Secretary McAllister stated that the plan was excellent and if we are not
635 proactive we will always be reactive. Secretary McAllister stated that she would like to
636 talk to her constituents and will bring ideas to the next meeting. Commissioner Cortés
637 stated that the Department has been focused on transparency and a voter data collection
638 project for which a lot of input has been received and ELECT will be ready to present to
639 the Board at the next meeting. Commissioner Cortés stated that the Department has been
640 focused on how to provide support to the localities and additional training efforts outside
641 of the annual training program.

642 Chairman Alcorn asked if there were any public comments. Tracy Howard,
643 VRAV President, stated that everything that has been talked about boils down to dollars,
644 “We could do great things if we were funded”. Mr. Howard stated that he would like to
645 convince the General Assembly that elections are a core governmental service. Mr.
646 Howard stated that VRAV will do everything to help the Department of Elections, SBE,
647 and other localities to work as a team. Chairman Alcorn asked if there were additional
648 public comments and there were none.

649 The next order of business was a report from Robin Lind, Electoral Board
650 Secretary Goochland County, on the voting equipment audit that was conducted in
651 Goochland County. Mr. Lind reported that Goochland County has ten precincts plus a
652 central absentee precinct utilizing the DS200 voting equipment. During the canvass of
653 results of the November 2015, General Election, we observed a pattern of unusual results
654 in particular we noticed that the ballots cast for treasurer and sheriff in three separate
655 precincts were identical. In the fourth precinct, the ballot candidate count was identical

656 for Senate, and the House of Delegates, and for school board supervisor. Mr. Lind stated
657 that the Goochland County Electoral Board requested an audit and this action were
658 approved by SBE as provided by *code*. Mr. Lind reported that the audit was conducted
659 on December 16, 2015 in the presence of Mr. Burton, clerk of the circuit court, four of
660 the candidates' names that were on the ballots, and several outside observers. Mr. Lind
661 reported that the hand count of the ballots produced results identical to those reported by
662 the optical scan voting machines when compared to the printouts on the statement of
663 results in the custody of the clerk of the court. Mr. Lind stated that the audit has proven
664 the absolute reliability of the DS200 optical scan equipment used in Goochland County
665 and has further established the wisdom of using paper ballots in the possibility of a
666 recount and has reestablished confidence in voters and the integrity of this voting
667 equipment. Chairman Alcorn stated that this is excellent news and asked if Mr. Lind had
668 any advice to offer other localities who may be thinking of doing audits. Mr. Lind stated
669 always do everything exactly according to *code*. Chairman Alcorn asked if there were
670 any public comments and there were none.

671 Chairman Alcorn asked if there was any other business. Vice Chair Wheeler
672 stated that the *code* calls for closing public schools that are used as polling location
673 during the November Election however: it does not call for schools to be closed on
674 primaries. Vice Chair Wheeler stated routinely there is low turn-out in primaries
675 however: this year we are anticipating that the turn-out will be high. Vice Chair Wheeler
676 stated that this raises a safety concern, closing the schools is a local option however: SBE
677 can make a request to please address this concern. Chairman Alcorn asked Commissioner
678 Cortés to help push this message out to the localities and to encourage the localities to
679 close the schools on Election Day, March 1, 2016.

680 Chairman Alcorn asked if there was any other business to come before the Board
681 and there was none. Chairman Alcorn moved *that the Board adjourn*. Secretary
682 McAllister seconded the motion and without further comment the Board voted
683 unanimously to adjourn. The meeting was adjourned at approximately 5:55PM.

684 The Board shall reconvene on February 2, 2016 at 11:00AM in the Patrick Henry
685 Building, Richmond, Virginia 23219 – West Reading Room.

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Secretary

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Chair

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Vice Chair

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DRAFT



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval
Of
Minutes
February 4, 2016

BOARD WORKING PAPERS
SBE Board Members

1 MINUTES

2

3 The State Board of Elections Meeting was held on Thursday, February 4, 2016.
4 The meeting was held in the Monroe Building, Richmond, Virginia – Room C/D/E. In
5 attendance, representing the State Board of Elections (SBE) was Clara Belle Wheeler,
6 Vice Chair and Singleton McAllister, Secretary. Also in attendance, representing the
7 Department of Elections (ELECT) was Edgardo Cortés, Commissioner; Elizabeth
8 Howard, Deputy Commissioner and Rose Mansfield, Clerk. Anna Birkenheier, Assistant
9 Attorney General and Counsel to SBE and ELECT attended. Vice Chair Wheeler called
10 the meeting to order at 11:00AM.

11 Vice Chair Wheeler stated that this was a special meeting of SBE and that the
12 agenda contained a single item. Vice Chair Wheeler stated that the item to be discussed
13 was the Republican Party of Virginia’s (RPV) voter statement requirement.
14 Commissioner Cortés stated that on January 30, 2016, ELECT received a request from
15 the RPV to repeal the requirement for voters to sign a statement of affiliation.
16 Commissioner Cortés stated that the Department immediately began the process of
17 contacting the Board Members to establish a meeting date to consider this matter.
18 Commissioner Cortés stated that the question, before the Board, is whether to repeal the
19 statement of affiliation under §24.2-545A of the *code* of Virginia that was passed at the
20 December 16, 2015, SBE Board Meeting. Commissioner Cortés stated that absentee voting
21 started on January 15, 2016. The Department needed to review how a significant change
22 would impact voters in the middle of the voting process. Vice Chair Wheeler asked John
23 Findlay, RPV Executive Director, to address the Board Members on the issue.

24 Mr. Findlay stated that the letter sent to ELECT on January 30, 2016 addressed
25 the decision made by the RPV. Secretary McAllister asked for the reasoning behind the
26 request. Mr. Findlay stated that: “The reasoning was covered in a press release issued by
27 the RPV on January 30, 2016. The press release stated that the form, that was approved
28 by SBE, on December 16, 2015 was different that the form that was put forth from the
29 RPV. Additionally, the day before the RPV meeting, we found out from a report in the
30 Virginia-Pilot that signing the form could be basically drawing a line, or marking an “x”,
31 and or drawing a Mickey Mouse and that would count as a signature. Mr. Findlay stated

32 that the original form was on a half-sheet and we received information that the font size
33 on the document was 6.5 and when we called the Department we were told that there was
34 an error in the document which created a reprint. Mr. Findlay stated that there were
35 several issues and as time passed it became unacceptable to our membership.” Secretary
36 McAllister asked Anna Birkenheier, Assistant Attorney General and Counsel to SBE and
37 ELECT, to consider the matter before the Board. Ms. Birkenheier stated that the Office of
38 the Attorney General has reviewed this matter and concluded that the Board has the
39 authority to rescind the voter statement and it is at the Board’s discretion to consider this
40 matter.

41 Vice Chair Wheeler stated that there have been 5,720 applications to vote
42 absentee in the presidential primary on March 1, 2016. Secretary McAllister stated that
43 SBE needed assurances from the Republican Party that: “You will not change your mind,
44 again.” Mr. Findlay stated: “I cannot speak if someone calls an emergency meeting to try
45 and change it again; I think that the likelihood of that is exceedingly small as in 0.000. I
46 cannot foresee any situation where there will be any type of request to re-implement
47 this...” Secretary McAllister asked Mr. Findlay if he was aware that the taxpayers of the
48 Commonwealth spent over \$60,000.00 to implement this and the Office of the Attorney
49 General has spent over 150 hours of work on this request. Mr. Findlay stated: “I am
50 aware of this and that is why in our initial statement we offered to pay for the cost of the
51 forms. I understand that usually the cost of the elections document is usually printed by
52 the agency, but in this case where printed by an outside vendor...we offered to do this but
53 this was the decision of the Board. We offered to pay for this. We looked at the printing
54 cost and we really encourage you guys to look at cost, as we have vendors that could do
55 this at 50% less then what was paid. I can’t speak to why our initial request to pay for this
56 wasn’t granted?” Secretary McAllister stated that the Commissioner had reviewed this
57 issue.

58 Commissioner Cortés stated that the letter sent by the party in late December
59 indicated that the party would pay as long as the party could determine everything related
60 to the printing. As a state agency, there are procurement rules that must be followed. “I
61 am frustrated that the statement: “The reasoning that the Republican Party has given for
62 rescinding this requirement suggests that there are some actions that the Department of

63 Elections or the State Board of Elections committed that led to this being and issue.” The
64 Department has gone above and beyond, and so has the Board, in ensuring that the
65 party’s rights under *code* have been realized and it is up to the party to determine the
66 requirement and up to the Board to certify it under *code*. Regardless or not if I thought it
67 a wise move in terms of participation or administration of elections, it is the party’s right
68 to exercise that right. ELECT had to testify in federal court in defense of your party’s
69 right to do that. So, now to pull this requirement, after the start of absentee voting, when
70 there were questions about when to pull it or if there were plans to pull it. I made clear at
71 the December meeting the January date when voting would start there would be
72 significant issues to properly administering the election after that date. It is really
73 frustrating to hear you not accepting responsibility that this is your decision to move
74 forward with the statement and now that because you have seen that voters are unhappy
75 with it and you have gotten bad publicity you have chosen now to rescind it and try to
76 suggest this is because of some action on our part. We are required to follow the *code* and
77 implement it...and to have you suggest publically that this is not on some blog but this is
78 the official statement of the party, suggesting that we were politicalizing this issue and
79 working with the Attorney General Office and the Governors’ office to politicalize this
80 issue. I would really like a response to as why you have gone that route instead of just
81 saying: “Hey, we chose to take an action, that was our right as a party to take, and we
82 now realize this is a bad idea and we would really like to work with you to reel this back
83 because it was a bad idea and how do we move forward.” That is not what is happening,
84 here.”

85 Mr. Findlay stated: “The reason it was repealed was on the statement we put out
86 and it came to light late in the process that anything would be accepted as a signature. I
87 understand that you are frustrated, but we are also very frustrated. We got the email with
88 the proposal of the pledge at midnight, 12:05am, the day of the meeting that it was to be
89 approved with less than eight hours to look it over, we all were really asleep, so really we
90 had three hours to look over the initial thing. We then went back on December 23rd, week
91 after the meeting; I sent an email to the Department of Elections Staff asking that the
92 statement be modified to reinstate some of the original language that was in the form and
93 two more requests subsequent to that asking for changes before absentee voting, two

94 weeks before. I would be happy to forward those emails, if they were not forwarded to
95 you directly, and that request fell on deaf ears. There was no action and some of the
96 language was very different than the form and so we put our request for changes in before
97 the deadline that you publically stated and those were not acted upon. The late news
98 about the signature requirements, not really being a signature requirement, as well as
99 some of the original issues, those are the reasons the state central voted for it and it was
100 not due to...I understand that you would like to make it an issue of us, voter back-lash, I
101 was in the room, I was in the executive session when it was talked about: It was due to
102 the reasons cited in that press release. That is the reason, and I really wish that the
103 changes that we asked to be implemented were implemented.”

104 Commissioner Cortés stated: “It appears from the original request that the state
105 central committee made the request back in September, but didn’t notify the state until
106 the end of November, during the course of that or even subsequent to that, did you
107 discuss with anybody, current or former election officials some of these issues of
108 signature requirements. This is not a new thing; there is not a signature legibility law in
109 Virginia. The issue of the forms not being available to you until afterwards was decided
110 back in 2012, under a previous board. Did you speak with an election administrator about
111 some of these questions, or discuss this with us in advance in order to move forward with
112 this and in the direction?”

113 Mr. Findlay stated: “I believe you received a letter from Don Palmer in 2012
114 when he based the original decision. The meeting that was cancelled in early February, I
115 believe there was on the agenda a chance for us to discuss getting access to the
116 information, afterwards. Again, Don Palmer read the memo in 2012 and a brief for us that
117 were very detailed and cited *codes* and cases. He went through the various reasons why
118 we had an argument that the forms should be access to FOIA under *Virginia Code*. We
119 obviously did speak to experts, and it was well considered, and did you receive that?”

120 Commissioner Cortés stated that does not change the position of the Department, in
121 consultation with legal counsel in 2012 that these forms were not subject to release. The
122 Department did get in touch with you about the changes and informed you that it required
123 board action and you were at the meeting. Commissioner Cortés stated: “This is an
124 attempt to throw back on the Department, who worked with all the elections officials

125 throughout the state, to try to properly administer this election. They are all now
126 frustrated, they have been catching a lot of grief from voters and having to go through a
127 lot of hoops to try and get this implemented and now we are pulling it at the last minute.
128 This has been a huge frustration, that there has been no acceptance of responsibility by
129 the Party in the terms of their actions and changing the rules in the middle of a federal
130 election.”

131 Vice Chair Wheeler stated that the matter has been reviewed by the Attorney
132 General’s Office and there is no reason why the Board cannot remove this request, which
133 had been previously granted, at this time. The discussion was on “How do we treat all
134 voters’ equally.” Secretary McAllister stated that you approached the Board with this
135 request and we asked if you were sure you wanted to do this and you said, yes. We
136 honored your request and I believe that the Department has done an outstanding job to try
137 to make this work for you and as a result we all went to court together. “At the end of the
138 day, we want to make sure we are doing what is right for the Voters of Virginia and not
139 making this a partisan issue, and everyone has transparency and they can vote. I am not
140 going to try to shift blame one way or another, and I hope that you do not try to do the
141 same.”

142 Vice Chair Wheeler asked if there were any public comments. Public speakers
143 were: Hope Amezquita, ACLU of Virginia; Robin Lind, Secretary of the Goochland
144 County Electoral Board; Cameron Sasnett, Fairfax County General Registrar, and Donald
145 F. McGahn, Trump Campaign. Vice Chair Wheeler asked if there were any other
146 comments and there were none.

147 Vice Chair Wheeler moved *that the Board accept the Republican Party of*
148 *Virginia's request to repeal the Republican Party of Virginia's Statement of Affiliation for*
149 *the 2016 Republican presidential primary election, and that the Board delegate to the*
150 *Department of Elections authority to issue guidance to localities to ensure that the*
151 *Republican Party of Virginia's Statement of Affiliation is repealed.* Secretary McAllister
152 seconded the motion and without further comment the Board unanimously approved the
153 motion.

154 Vice Chair Wheeler moved *that the Board adjourn*. Secretary McAllister
155 seconded the motion and without further comment the Board voted unanimously to
156 adjourn. The meeting was adjourned at approximately 11:55AM.

157 The Board shall reconvene on March 1, 2016 at 8:00AM in the Washington
158 Building, Richmond, Virginia 23219 – Room B27.

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Secretary

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Chair

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Vice Chair

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DRAFT



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval of Minutes March 1, 2016

BOARD WORKING PAPERS
SBE Board Members

1 MINUTES

2

3 The State Board of Elections Board Meeting was held on Tuesday, March 1,
4 2016. The meeting was held in the Washington Building, Richmond, Virginia – Room
5 B27. In attendance, representing the State Board of Elections (SBE) was James Alcorn,
6 Chairman; Clara Belle Wheeler, Vice Chair, and Singleton McAllister, Secretary. Also in
7 attendance, representing the Department of Elections (ELECT) was Edgardo Cortés,
8 Commissioner; Elizabeth Howard, Deputy Commissioner; Martin Mash, Policy Advisor,
9 and Rose Mansfield, Clerk. Anna Birkenheier, Assistant Attorney General and Counsel to
10 SBE and ELECT attended. Chairman Alcorn called the meeting to order at 8:10AM.

11 The first order of business was the Commissioner’s Report delivered by
12 Commissioner Cortés. Commissioner Cortés reported that the start of Election Day was
13 quiet and all polling places opened without incident. Commissioner Cortés stated that the
14 General Registrar’s and Electoral Board Members prepared for the election and the
15 results of their efforts are being realized. Commissioner Cortés stated that ELECT has
16 implemented a call center for this election emphasizing that ELECT experiences an
17 increase in calls leading up to an election. Commissioner Cortés stated the call center will
18 be utilized during the November 2016, General Election. Commissioner Cortés reported
19 that absentee voting has been higher, than the two previous presidential primary
20 elections; in particularly the request of Republican Primary Ballots. The number of
21 absentee ballots cast as of February 29, 2016 was double the number cast, approximately
22 23,000 ballots, in the 2008 Republican Presidential Primary. Vice Chair Wheeler thanked
23 the Commissioner and ELECT staff for their preparations for voter turnout and the
24 absentee ballots. Commissioner Cortés stated that the use of the ELECT website to
25 submit absentee ballot applications, by voters, was high and the General Registrars’
26 provided feedback stating that the amount of data entry required at the local level was
27 reduced. Commissioner Cortés stated that ELECT conducted a community outreach
28 campaign regarding the photo identification voting requirement that has included radio,
29 print and cable advertising, social media ads, and in Northern Virginia public
30 transportation ads. The program has been active since February 1, 2016. Commissioner
31 Cortés reported that Facebook had a banner that reminded voters of the date of the

32 presidential primary and Google app sent a card reminding users to vote. Commissioner
33 Cortés stated that Facebook had a banner, the day prior to the registration deadline, and
34 this action generated the highest usage of the website, for registration purposes, on a
35 single day to date.

36 Commissioner Cortés reported that February 29, 2016 was the expiration date of
37 some electoral board member terms stating that one member of the local electoral board
38 will have a term expire on the last day on February. As a result, several localities are
39 absent a member of their electoral board because the appointment process was not
40 completed by the courts. The department sent the Clerks' of Courts reminder
41 notifications about the expiring terms and explained that the vacant seat could have an
42 impact on the locality and the administration of the election on March 1, 2016.

43 The next order of business was the Legal Report presented by Anna Birkenheier,
44 Assistant Attorney General. Ms. Birkenheier stated that there were no updates to provide
45 members.

46 Chairman Alcorn moved *that the Board recess until 12:00PM*. Vice Chair
47 Wheeler seconded the motion and without further comment the Board voted unanimously
48 to recess. The Board recessed at 8:35PM. Chairman Alcorn moved that the Board reopen
49 the meeting at 12:05PM. Secretary McAllister seconded the motion. The Board
50 unanimously approved the motion.

51 The next order of business was the Ballot Order Draw for the May 3, 2016 City
52 and Town General Elections presented by Reiko Doğu, Senior Elections Administrator.
53 Ms. Doğu stated that all parties and recognized political parties will be included in the
54 drawings and any party or recognized political party not represented by a candidate will
55 not appear on the ballot and the positions will shift up accordingly. Ms. Doğu explained
56 the process and the ballot order drawing was conducted. The official ballot order drawn
57 by SBE Board Members;

58 Class 1 Drawing:

- 59 1. Republican
60 2. Democrat

61 Class 2 Drawing:

- 62 1. Green
63 2. Social Democratic

- 64 3. Libertarian
- 65 4. Constitutional
- 66 5. Reform
- 67 6. Natural Law
- 68 7. Virginia Taxpayers
- 69 8. Independent Green
- 70 9. Southern
- 71

72 Vice Chair Wheeler moved *that the Board certify the ballot order as drawn.*
73 Chairman Alcorn seconded the motion and without public comment the Board
74 unanimously approved the motion.

75 Chairman Alcorn stated that some voters expressed concern over announcing
76 which party primary they were participating in on Election Day. Chairman Alcorn stated
77 that the process is a *Code* provision enacted by the General Assembly.

78 Deputy Commissioner Howard reported that Norfolk City had sent test ballots to
79 voters that had requested absentee ballots. Deputy Commissioner Howard stated that the
80 situation was remedied by sending letters to the possible impacted voters. Deputy
81 Commissioner Howard stated that both the General Registrar and the Print Elect vendor
82 representative will be present at the next available SBE meeting to discuss the situation
83 under the Chairman’s initiative “Lessons Learned”.

84 Commissioner Cortés reported that the City of Winchester will be relocating their
85 Central Absentee Precinct (CAP) and their General Registrar Office due to protests that
86 are planned for the afternoon. Commissioner Cortés stated that the protests are not related
87 to the elections but rather to a community issue. The offices will move to an alternative
88 location at the advice and assistance of the Virginia State Police.

89 Chairman Alcorn moved *that the Board recess until 6:30PM.* Vice Chair Wheeler
90 seconded the motion and without further comment the Board voted unanimously to
91 recess. Chairman Alcorn moved that the Board reopen the meeting at 6:40PM. Secretary
92 McAllister seconded the motion. The Board unanimously approved the motion.

93 The next order of business was the approval of the minutes from the January 8,
94 2016 and February 4, 2016 SBE Board Meeting. Chairman Alcorn noted that he
95 submitted changes to the Clerk and the revised minutes would be presented for approval
96 at the next meeting.

97 Chairman Alcorn stated that voter turnout was high, as predicted, by the number
98 of absentee ballots requested. Chairman Alcorn noted that a couple of localities had
99 concerns about having an adequate supply of ballots. Commissioner Cortés stated that the
100 concerned localities were printing additional ballots and delivering them to the polling
101 locations. Chairman Alcorn stated that there were a few reports of lengthy lines and that
102 all voters’ who arrived before the close of polls, 7:00PM, should stay in line as they
103 would be permitted to vote. Chairman Alcorn stated that he would like the locality
104 involved appear before the Board to help with “Lessons Learned”. Commissioner Cortés
105 stated that the localities have received numerous communications from ELECT
106 reminding and instructing General Registrars about the process of ordering extra ballots.
107 Chairman Alcorn asked that Stafford & Chesterfield Counties, and the Cities of Norfolk
108 & Hampton be invited to the next available meeting to participate in “Lessons Learned”.
109 Commissioner Cortés reported that the call center received over 1,300 calls today.

110 Chairman Alcorn moved *that the Board adjourn*. Secretary McAllister seconded
111 the motion and without further comment the Board voted unanimously to adjourn. The
112 meeting was adjourned at approximately 7:10PM.

113 The Board shall reconvene on March 15, 2016, at 10:00AM in the General
114 Assembly Building, 1100 Bank Street, Room C, Richmond, Virginia.

115

116

117 _____
Secretary

118

119

120 _____
Chair

121

122

123 _____
Vice Chairman

124

125



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Old Business

BOARD WORKING PAPERS



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Campaign Finance

BOARD WORKING PAPERS
Brooks Braun
ELECT Policy Analyst

State Board of Elections

Board Meeting

March 15, 2016

**Stand By Your Ad
Penalty Hearing**



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

“Stand by Your Ad”

Complaint Hearing

Overview of Complaints

- ✓ Townsend Van Fleet – Question of “Occurrence”
- ✓ Jacqueline Smith – Question of substantial compliance
 - ✓ Dusty Sparrow Reed – Undisclosed yard signs
- ✓ Constance “Sis” Kelly Rice – Undisclosed sample ballots
 - ✓ Timothy F. Puryear – Undisclosed yard signs

SBYA Complaint

Van Fleet for Alexandria Council.

Complaint submitted

by

Larry Altenburg and others.



Dear Fellow Alexandria Veteran:

Please allow me to introduce myself, my name is Townsend A. ("Van") Van Fleet. I am running in the 3 November 2015 City Council election

here in Alexandria. I need your help. We veterans are not well-served by our current local government. We need someone who understands the issues we face to represent us.

As a 23-year Army veteran and a Vietnam Vet, as such, I feel that I am particularly well-positioned to understand and address the issues confronting veterans like ourselves. In addition, to the bond we share from having served our country with honor, we as a group possess a positive, "can do," attitude. If elected, I will bring that "Can Do" mentality and military understanding of how to tackle difficult challenges to our City government.

As a military man, I have great respect for tradition, values, and the historic nature of our great nation. Some of you may not know that the City of Alexandria played a pivotal role in the formation of our country. Our Founding Fathers gathered here, ate, drank here, and even formulated their battle plans around the tables at Gadsby's Tavern. Ultimately, two wars flowed through this great City: the American Revolution and the Civil War.

I have been a resident of Alexandria for the past 30 years. During that time, I have seen this City grow, battle all types of issues, and develop at an alarming pace. Under the pressure of unrestrained development, our precious green space is rapidly disappearing. I have experienced both the positive and negative effects of this growth.

In recent years, Alexandria's City Council has put our community into debt of substantial proportions--\$526 million, with a yearly debt service of at least \$66 million. This figure increases to \$80 million if you include the \$14 million additional debt that will result if Council approves the construction of a new Metro station in Potomac Yard. And they have done this while increasing our property taxes by 23 cents per \$100.00 of assessed value during the past ten years alone! Council members have failed to reconcile the imbalance of expenditures and revenues such that 'the Council' has overspent City revenues for the past eight years consecutively!

This fiscal dilemma--and the fact that City Council has steadfastly refused to pay attention to the needs and desires of its citizens in almost every neighborhood within the City have been major factors in my decision to stand as a candidate for election to the Council. I need your help and support to win this election. There are many ways you can help. Please visit my website, www.vanisyourman.com, to learn more about me, my positions on the issues facing our great City, and ways you can assist my campaign.

I respectfully ask for your help to bring responsible and responsive government back to Alexandria, and I ask for 'Your Vote' on 3 November 2015. Together we can make a difference.

Sincerely,

Townsend A. ("Van") Van Fleet.

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VAN FLEET 2015 Government Scholarship Competition is about to Begin --

1st Place \$1000.00; 2nd & 3rd \$500.00 each

NOTICE to Parents and **High School Junior or Senior Students residing in the City of Alexandria.** **VAN FLEET 2015 Scholarship Competition** starts Friday, SEP 18th, 2015. Students and a parent/guardian must attend the Kick-Off Ceremony at The Chinquapin Recreation Center on Friday, 18 SEP from 6-8 PM. to apply, sign forms and the competition begins that night. Please see the VAN FLEET Scholarship ad running in the *Alexandria Times and Gazette Packet* for more details.

Many Thanks to my fellow Veterans -- Please Vote 'VAN' VAN FLEET on 3 NOV 2015!

IT'S A TIME FOR CHANGE ~ And We Need Your VOTE

Van Fleet for Alexandria Council

Complaint submitted

by

Holly Wallace

Published on:

- ✓ 10/1/2015
- ✓ 10/8/2015
- ✓ 10/15/2015

+ VOTE FOR **2015**
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FOR ALEXANDRIA CITY COUNCIL



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SPORTS

Keeping up the pressure



Titans head coach William Hiersznik addresses his players at halftime against Annandale Monday night. T.C. beat the Atonis 3-0 on goals from Mimi Hyre, Claire Bilodeau and Alex Millikan.

Titans field hockey looks to stay focused in midst of hot streak

For all their dominance Monday night at home against Annandale, the T.C. Williams field hockey team was only ahead 1-0 at halftime on a goal from senior forward Mimi Hyre, and the players knew they needed more to put the game out of reach.

The Titans had plenty of opportunities in the first period, but the break proved crucial, as they tallied additional goals from Claire Bilodeau and Alex Millikan within five minutes of the restart. The eventual 3-0 win over the Atonis extended T.C.'s winning streak to six games, prior to their away game against West Potomac on Wednesday evening, played after the Times' print deadline.

And in spite of a slow start, where the hosts dominated but could not convert their chances, the Titans were delighted to keep their run going.

"I thought we played really well, especially in the second half," Millikan said. "We had a lot of shots on goal, [and]

we didn't let them get a corner whatsoever. I was happy with how the team played. We were talking a lot, had a lot of good passing combinations and, overall, I thought we gelled and were dominating the whole time."

The win improved the Titans' record this season to 10-1, with their only loss coming away against Herndon in late August. Head coach William Hiersznik attributes their success to having a deep roster that has managed to cope with injuries to key players.

"It's great when I've got people coming in off the bench and filling in spots and whatnot, even with a couple of injuries that we have," he said. "I don't have two starters right now, who are normally on my starting roster, so even with them being injured we're still solid, which, as a coaching staff, you couldn't ask for more."

From the players' perspective, it has been an exciting time to be involved in the program. The Titans look like a real force in the Patriot Conference and have conceded just two goals all

SEE TITANS | 15

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Speaker: Erika Mitchell, NP	Event code: TR312913 (1254821)

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- 1-866-703-6293
- GenzymePatientRSVP@ahmdirect.com

*Registration is limited to two people per RSVP. Photo ID may be requested at event entrance.
Complimentary parking or valet available.

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DESKS

FROM | 7

Just a few weeks into the new school year, Baytoth said that after some initial growing pains as students and teachers became used to the new arrangement, things have gone very smoothly and have already started to show results. He said with the desks being on wheels, they are conducive to different kinds of activities and class structure, in addition to offering students the option to sit or stand.

"What we anticipated, and what I think we're beginning to see, is that in fact, the ability to stand increases focus and attention," Baytoth said. "When you're sitting, you tend to collapse in on yourself and it can be hard to

maintain your energy. But when you're standing, you have a little more blood flow, a little more oxygen flowing around. You tend to be more engaged. I think the teachers are seeing that.

"If they've just come off a hard PE period and need to sit, they can sit, but if they're getting into the legs of the day after lunch, they can stand."

In addition to standing desks

in the middle school grades, the lower school was provided with new stools designed by Hekki, which are ergonomically designed to strengthen students' core muscles and encourage better posture.

Baytoth said that standing desks were unlikely to be introduced across all grades due to their size, but the idea



Fifth graders at Alexandria Country Day School give standing a try at their new adjustable desks, introduced in the middle school grades this year.

of improving the posture of the youngest students is something that has permeated other schools in Alexandria.

At Douglas MacArthur Elementary School, second grade teacher Jen Olmstead pioneered the use of fitness balls as an alternative to standard seats for her students, with the seats also available for those who want them. Having used them in a

variety of locations across the U.S. and Europe for the last two decades, Olmstead said the benefits are apparent in class.

"Rather than expecting [students] to sit still and do their work, they can be in one location and continue to do their work, be engaged in their work, but at the same time they're moving," she said. "For example, they might be sitting on the ball, and when they sit they have to have both feet flat on the ball for stability but they can still bounce up and down on the ball. They do it as they need it."

"Sometimes they'll be still for a while and other times they'll be moving. They can also rock back and forth on the ball, they can rock side to side on the ball or they can move in a circular motion, clockwise and counter clockwise."

With more and more research suggesting that alternative ways to sit in class can be beneficial to students, the use of standing desks, fitness balls and other methods may well grow further across the city and the country as time goes on.



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EPISCOPAL FROM | 16

game we were really pushing it through from the beginning and got it straight down to the circle and tried to get a goal as fast as possible because once we did that, they knew that we were a threat."

On the strength of that performance, Episcopal appeared to have put the disappointment of a blowout loss to its cross-town rival behind it, albeit after taking some hard lessons from the defeat.

"Having a loss to St. Stephen's, it really put our season in perspective," Phillips said. "It showed us that we can't always win, that we need to push through it and we need to learn from this mistake and have it in the back of our minds but not think about it all day. It's definitely an uphill climb from here."

"[The defeat] just showed us what we needed to work on," Winants added. "Even though it brought us down, it showed us that we need to really improve, and it showed us what parts of the game we were weak at. I think we worked on it this game and got a lot better."

It has been an up and down season so far for Episcopal, which saw an initial two-game winning streak wiped

out by a three-game losing run, followed by a thumping four-match win streak. Even with some difficult moments, Montgomery is adamant her players are talented enough to make an impact in future games.

"I've been telling them,

“[The defeat] just showed us what we needed to work on. Even though it brought us down, it showed us that we need to really improve, and it showed us what parts of the game we were weak at. I think we worked on it this game and got a lot better.”

- Eleanor Winants,
Episcopal field hockey player

and I truly do believe this, that they have absolutely so much potential," she said. "I'm really waiting for them to keep taking it to the next level because it's been fun to coach them as they've jumped on absolutely every-

thing I've sent their way."

With a No. 7 ranking in the last two state polls, the Maroon may have one eye on the postseason, especially having lost in the quarterfinals of both the Independent School League and Virginia Independent Schools Athletic Association playoffs last season. The players and coaches are well aware of what still needs to be done moving forward.

"I think we just [shouldn't] change what we have already, keep getting better and working harder," Phillips said. "I think the team works really well together and we're good about switching positions and helping each other out and having a lot of give-and-take. From here, we just need to push through and we need to remember the fundamentals and not let it get really scrappy."

"One thing that we've been focusing on is playing together and being super intentional about the time that we have to practice," Montgomery said. "It's not about practicing more or necessarily harder, it's really just being smart about our practicing. I think if we continue to do that, we're going to continue to make these improvements that we've been making and be in a good place to be successful at the end of the season."

SPORTS SHORTS

Local football teams see mixed results

With the majority of the city's high school football teams having played six games, there have been plenty of intriguing results so far, led by Bishop Ireton with a 5-1 record.

On the back of a state final appearance last season, the Cardinals began with a three-game winning streak and have more recently won two straight, including on October 3 at home against local rivals St. Stephen's and St. Agnes. Ireton travels to Benedictine of Richmond

this Saturday.

Ireton's only defeat so far this season came at the hands of Episcopal, which holds a 3-0 record so far. The Maroon also defeated SSSAS by the handy margin of 41-13, and will have the biggest test of the season Saturday as they welcome Bullis. The Bulldogs are defending Interscholastic Athletic Conference champions, having finished ahead of Episcopal last season.

It has been a mixed season so far for SSSAS, which has lost to both of its local rivals

but hold a 3-3 record at this stage. The Saints are currently on a two-game losing streak and welcome Landon to Moss Field on Saturday.

T.C. Williams has struggled and is 2-4 overall, with two two-game losing streaks sandwiching its only other victory since opening day: a 27-6 defeat of Mount Vernon. The Titans are 0-3 at home after losses to Westfield, South County and Lake Braddock, and travel to West Springfield on Friday night.

- Chris Teale

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SBYA Complaint

Supporters of Jacqueline Smith for
Clerk of the Circuit Court

Complaint submitted

by

Darrell Jordan

SMITHFORCLERK.COM

Received by SBE AUG 14 '15

CREATED IN-HOUSE BY VOLUNTEERS FOR
THE SUPPORTERS OF JACQUELINE SMITH
FOR CLERK OF THE CIRCUIT COURT

ELECT JACQUELINE SMITH
CLERK OF THE
CIRCUIT COURT



FOR A BALANCED,
EFFICIENT &
RESPONSIVE
CIRCUIT COURT

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FOR CLERK OF THE CIRCUIT COURT

ELECT JACQUELINE SMITH

CLERK OF THE
CIRCUIT COURT

BALANCED

Our Problem: Clerk and the appointed Deputy Clerk created an environment hostile to some members of our county based on their religious beliefs, the color of their skin and their sexual identity.

Smith's Promise: Ensure justice and services are available to ALL Prince William County taxpayers.

EFFICIENT

Our Problem: Computerized documents and files are disorganized and can be unavailable to judges, clerks and taxpayers.

Smith's Promise: Ensure electronic files are available to judges and Prince William County taxpayers.

RESPONSIVE

Our Problem: Phones not answered by a live person and taxpayers' questions left unanswered.

Smith's Promise: Ensure phones will be answered by staff so taxpayers' questions are answered promptly.

Received by SBE AUG 14 '15

Check the facts:

1. Va. Republican Leaders Call on GOP Party Treasurer to Resign Over Facebook Post. [Washington Post](#), February 27, 2014
2. Va. GOP Treasurer is Said to Offer Resignation After Facebook Post on Muslims. [Washington Post](#), July 31, 2014
3. Va. GOP Official Resigns After Controversial Facebook Post. [Washington Post](#), August 7, 2014
4. Prince William Clerk Part of 4-Judge Sex Marriage Case. [Prince William Times](#), January 25, 2014

SBYA Complaint

Supporters of Jacqueline Smith
for Clerk of the Circuit Court.

Complaint submitted

by

Darrell Jordan

CREATED IN-HOUSE BY VOLUNTEERS FOR
THE SUPPORTERS OF JACQUELINE SMITH FOR CLERK OF THE CIRCUIT COURT

ELECT
JACQUELINE
SMITH

CLERK OF THE
CIRCUIT COURT

FOR A BALANCED,
EFFICIENT &
RESPONSIVE
CIRCUIT COURT

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CREATED IN-HOUSE BY VOLUNTEERS FOR
THE SUPPORTERS OF JACQUELINE SMITH FOR CLERK OF THE CIRCUIT COURT

SBYA Complaint

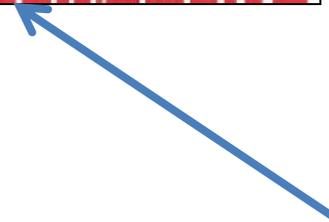
Supporters of Jacqueline Smith for Clerk of the
Circuit Court

Complaint submitted

by

Darrell Jordan

CIRCUIT COURT
CREATED IN-HOUSE BY VOLUNTEERS FOR THE SUPPORTERS
OF JACQUELINE SMITH FOR CLERK OF THE CIRCUIT COURT
SMITHFORCLERK.COM



ELECT
★ JACQUELINE ★
SMITH
CLERK OF CIRCUIT COURT



★ FOR A FAIR,
EFFICIENT
& RESPONSIVE ★
CIRCUIT COURT
CREATED IN-HOUSE BY VOLUNTEERS FOR THE SUPPORTERS
OF JACQUELINE SMITH FOR CLERK OF THE CIRCUIT COURT
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CLERK OF CIRCUIT COURT

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The Problem: Clerk and the appointed Deputy Clerk created an environment hostile to some members of our county based on their religious beliefs, the color of their skin and their sexual identity.
Smith's Promise: Ensure justice and services are available to ALL Prince William County taxpayers.

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The Problem: Computerized documents and files are disorganized and can be unavailable to judges, clerks and taxpayers.
Smith's Promise: Ensure electronic files are available to judges and Prince William County taxpayers.

★ RESPONSIVE ★
The Problem: Phones not answered by a live person and taxpayers' questions left unanswered.
Smith's Promise: Ensure phones will be answered by staff so taxpayers' questions are answered promptly.

Check the facts:
1. See Republican Legates Call on GOP Party Treasurer to Resign
Clerk Facebook Post, Washington Post, February 27, 2014
2. See GOP Treasurer is Said to Offer Resignation After
Facebook Post on Muslims, Washington Post, July 31, 2014
3. See GOP Official Resigns After Commercial Cashier's Post,
Washington Post, August 7, 2014
4. Prince William Clerk Part of Same-Sex Marriage Case, Prince
William Times, January 25, 2014

SBYA Complaint

Supporters of Jacqueline Smith for
Clerk of the Circuit Court

Complaint submitted

by

Darrell Jordan

Elect
JACQUELINE SMITH
CLERK OF THE CIRCUIT COURT

HOME ABOUT JACQUELINE WHY JACQUELINE? CONTACT

Court in Dumfries, Virginia.
November 3 at 8:24am
Pete Singh came over from th office to wish us luck!



Website courtesy of the Supporters of Jacqueline Smith for Clerk of the Circuit Court.

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SBYA Complaint

Friends of Dusty Sparrow Reed

by

Ryan Gleason



SBYA Complaint

Constance “Sis” Kelly-Rice

by

David Clary

SAMPLE BALLOT

CLERK OF COURT

(VOTE FOR ONLY ONE)

Timothy F. Puryear (Withdraw)

Arnika T. Green

Constance "Sis" Kelly-Rice

V. Earl Stanley, Jr.

SBYA Complaint

Timothy F. Puryear

by

David Clary

★ RE-ELECT ★

TIMOTHY F.
PURYEAR

TOTARO DISTRICT
SCHOOL BOARD

WRITE
IN



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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: McCollum Complaint Update

Background: The State Board of Elections (SBE) received a complaint from the Republican Party of Virginia alleging that Friends of Gary McCollum failed to appropriately disclose certain campaign contributions in violation of the Campaign Finance Disclosure Act.

At its January 7, 2016 meeting the State Board of Elections asked that the complaint and any relevant materials be forwarded to the Commonwealth's Attorney for the City of Virginia Beach. The letter sent on behalf of the Board is attached. It was mailed January 21, 2016 and received January 28, 2016. The Department will present any updates that come from the Virginia Beach Commonwealth's Attorney at future meetings.



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STATE BOARD *of* ELECTIONS

James B. Alcorn
Chairman

• Clara Belle Wheeler
Vice-Chair

• Singleton B. McAllister
Secretary

January 21, 2016

Mr. Colin Stolle

Commonwealth's Attorney for the City of Virginia Beach

Dear Mr. Stolle:

The State Board of Elections (SBE) received a complaint about a possible violation of the Campaign Finance Disclosure Act. § 24.2-947.4 of the *Code of Virginia* requires that campaign committees disclose all financial activity in regularly required reports including all contributions. The complaint from the Republican Party of Virginia alleges that Friends of Gary McCollum has not appropriately disclosed certain contributions to the campaign. Since it is not immediately clear whether there is a violation of the law in this instance the State Board has decided to forward this complaint to you pursuant to your authority under § 24.2-1019. The Board has decided to forgo any hearings regarding this matter until your office has concluded its review. We have attached all relevant correspondence. Please keep us updated on the disposition of this matter.

Sincerely,

Brooks C. Braun

Policy Analyst

1100 Bank Street
Washington Building - First Floor
Richmond, VA 23219-3947
www.sbe.virginia.gov
info@sbe.virginia.gov

Telephone: (804) 864-8901
Toll Free: (800) 552-9745
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Fax: (804) 371-0194



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Republican Party of Virginia
www.rpv.org

September 22, 2015

James B. Alcorn, Chairman
State Board of Elections
1100 Bank Street, 1st Floor
Richmond, VA 23219

Donna Patterson, General Registrar
City of Virginia Beach
PO Box 6247
Virginia Beach, VA 23456

Dear Chairman Alcorn and Ms. Patterson,

I write, pursuant to section 24.2-946.3 of the Code of Virginia, to notify of you a potential violation of the Campaign Finance Disclosure Act of 2006.

All reports, up to and including the report filed on September 15, 2015, submitted by Friends of Gary McCollum have failed to disclose contributions from Cox Communications, Mr. McCollum's employer.

Reporting in *The Virginian-Pilot* on September 13, 2015, indicates that Mr. McCollum is currently being paid by Cox Communications, but is not performing any work whatsoever for the company. In January, Mr. McCollum indicated he had decided to "step away" from his job and that he was "not with the company." However, in March, Mr. McCollum filed a statement of economic interest with the Clerk of the Senate listing Cox as his employer and that he is paid more than \$250,000 annually. This month, a campaign spokesperson indicated that Mr. McCollum was on "paid leave."

Section 24.2-945.1 defines the term "contribution" for purposes of the Campaign Finance Disclosure Act. Contribution "means money and services of any amount, in-kind contributions, and any other thing of value, given, advanced, loaned, or in any other way provided to a candidate, campaign committee, political committee, or person for the purpose of expressly advocating the election or defeat of a clearly identified candidate...."

As disclosed by Mr. McCollum's Financial Disclosure Statement and his own campaign staff, Cox Communications is paying Mr. McCollum not as compensation for services rendered, but to run full-time as a candidate for the State Senate. As such, its

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804-780-0111 • FAX: 804-343-1080

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payments, including all benefits, should be reported by Friends of Gary McCollum as contributions pursuant to section 24.2-947.4.

Please render your opinion on this issue and issue a demand to comply with the law to Friends of Gary McCollum as soon as practicable. The voters of the Commonwealth are entitled to this information and, more importantly, the law requires it.

Sincerely,

John Whitbeck
Chairman

Cc: Speaker of the House William Howell
Senate Majority Leader Thomas K. Norment
Chair of House of Delegates Privileges and Elections Committee Mark Cole
Chair of Senate Privileges and Elections Committee Jill Vogel

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Secretary



September 30, 2015

Department of Elections
Attn: Rise Miller
1100 Bank Street, 1st Floor
Richmond, VA 23219

Ms. Miller:

I am contacting the State Board of Elections to inform you of errors I made in the Campaign Finance Report. We recently changed to a third party campaign software system that now includes our campaign finances. Prior to this, I put the information directly into COMET and never had any issues.

The third party software has certain default settings. In the payment section it defaults to making everything a business (which I did not realize). So when I entered people with all of their correct information in the proper fields, the software did not look for the last name field for the finance report, as businesses do not have last names. That has been corrected and the fields are now populating correctly in the upload to COMET (an amended report was filed yesterday September 29, 2015 at 3:10 PM). I was also able to add a few more details to some donors. All of the remaining missing employer/occupation information has been requested. I will continue to strive to get the report to 100%.

This error was an absolute honest mistake on my part and I hope that my past record of excellent reporting will show this. The database shows when people were entered into our system and that the information was there all along.

Until I began using this new software, in 10 years of being a campaign treasurer on a few different campaigns, I have only had 1 amended report (which was turned in before the finance report due date) and never turned in a report that wasn't 100% complete. Up until this past year I didn't know that SBE would accept a report that wasn't complete. I thought 100% was mandatory!

Sincerely,

Vicki Wilson
Treasurer, Wagner for Senate

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AUTHORIZED BY FRANK WAGNER FOR SENATE

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info@sbe.virginia.gov

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<p>1. Article Addressed to:</p> <p>Office of the Commonwealth's Attorney Building 10B, 2nd Floor 2425 Mingo Parkway Virginia Beach, VA 23456-9050</p>		<p>3. Service Type <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label) 7009 1410 0000 2258 5400</p>		<p>PS Form 3811, February 2004 102698-02-M-1540</p>	

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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Stand by Your Ad Complaint – Van Fleet for Alexandria Council

Executive Summary: At its December 16, 2015 meeting the State Board found a violation of Stand By Your Ad by the Van Fleet for Alexandria Council campaign; however, it deferred declaring the amount of the fine against the Van Fleet campaign until after the Department of Elections could provide guidance on what should constitute an individual occurrence for advertisements in print media. The Department recommends that each publication of a particular advertisement be considered a separate occurrence. Accordingly, the Department also recommends that the Van Fleet campaign be fined \$400; \$100 for the newspaper advertisements published on three separate days, and an additional \$100 for the flyer previously found by the State Board to be in violation of SBYA.

Complainant: Mr. Altenburg and Ms. Wallace

Background: On Wednesday, September 30, 2015 Mr. Altenburg and Ms. Wallace emailed the Department photographic evidence that alleged Van Fleet for Alexandria Council was in violation of Virginia campaign finance law. They specifically mentioned a mailer that was disseminated to potential voters in Alexandria, which omitted the required disclosures. On October 1, 9, and 15, 2015, Ms. Wallace emailed the Department PDF copies of the Alexandria Times that, on three separate publication dates, contained advertisements for Mr. Van Fleet, which omitted the necessary disclosures. Emails and photos are attached. In its December 16, 2015 meeting the Board found the Van Fleet campaign in violation of SBYA in regards to a flyer and newspaper advertisements but deferred declaring the amount of the fine against the campaign until after the Department of Elections could provide guidance on what should constitute an individual “occurrence” for advertisements in print media.

Relevant Statutory and Policy Provisions:

§ 24.2-955 states that “The disclosure requirements of this Chapter [Stand by Your Ad] apply to any sponsor of an advertisement in the print media [...] the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 [the Campaign Finance Disclosure Act].”



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§ 24.2-955.1 defines “Advertisement” as “any message appearing in the print media, on television, or on radio that constitutes an expenditure under Chapter 9.3.”

§ 24.2-955.1 defines “Occurrence” as “one broadcast of a radio or television political campaign advertisement.”

§ 24.2-955.1 defines “Print Media” as “billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, yard signs, and outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.”

§ 24.2-955.3(A) provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500. In the case of a willful violation, he shall be guilty of a Class 1 misdemeanor.” In its November 16, 2015 meeting the State Board set a practice of fining on a per occurrence basis for violations of print media requirements.

§ 24.2-9553(B) provides that “Any sponsor violating [the television or radio requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000 *per occurrence*; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500 *per occurrence*. In the case of a willful violation, he shall be guilty of a Class 1 misdemeanor. In no event shall the total civil penalties imposed for multiple broadcasts of one particular campaign advertisement exceed \$10,000.” (Emphasis added).

In its November 16, 2015 meeting the State Board set a practice of fining first time violators of Stand by Your Ad \$100 per occurrence.

Analysis: The *Code of Virginia* does not require that violations of Stand by Your Ad in print media be fined on a per occurrence basis. While the *Code* does define occurrence in § 24.2-955.1, the definition is only applicable and only applied to advertisements on television or radio (see the difference between § 24.2-955.3(A) and (B) above). The reason for this difference was not apparent in the legislative history, conversations with the former manager of the campaign finance division, Chris Piper, or perusal of the laws of other states. Nonetheless the decision to fine on a per occurrence basis for advertisements in the print media seems to be within the Board’s discretion.

In the past the Board has levied fines against a single individual for multiple violations of the print media advertisement requirements. This has occurred both when substantially different advertisements by the same campaign were found to be in violation and when the same advertisement was made public multiple times.



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In its November 16, 2015 meeting, the State Board found Mark Marshall for Sherriff in violation on three separate occasions (photos are attached in Appendix B). The violations in that case were in three different types of print media: a newspaper advertisement, a banner, and a yard sign. As the photos show, the banner and the yard sign are similar in the in their design and the message they convey. Still, the Board found three separate violations in this case and fined the Marshall campaign \$300.

In its December 16, 2015 meeting, the State Board found Friends of Monique Miles in violation on three separate occasions (photos are attached in Appendix A). These violations were in the same paper but on three separate dates. The advertisement used is exactly the same in all three instances. These violations occurred in the same paper and on the same dates as the violations found by the Board against the Van Fleet campaign.

In light of the Board's past practice, it appears that the most consistent standard for what counts as an individual occurrence of an advertisement violation in print media is publication. "Publication" is defined by Meriam Webster's Dictionary Online as "the act or process of producing a book, magazine, etc., and making it available to the public." The Department recommends that the Board consider each time a campaign undergoes the process of preparing, printing, and distributing an advertisement a separate occurrence of that advertisement.

When advertisements appear as different types of print media (a pamphlet, a yard sign, a newspaper ad, etc.), it may be presumed that they underwent separate publication processes. Similarly, when the same advertisement is placed in a periodical on different dates, each date is presumed to be a different publication requiring separate preparation, printing, and distribution. The latter example describes what happened in the case of the Miles and Van Fleet campaigns.

This standard, consistently applied, will provide campaigns sufficient notice to avoid multiple infractions while remaining flexible enough to avoid the kind of gamesmanship that may result from ridged rules.

Staff Recommendations: The State Board should consider each publication of an advertisement in print media a separate occurrence and fine Van Fleet for Alexandria Council \$100 per occurrence; or a total of \$400 in this instance.

Suggested Motion: "I move that, subject to the Board's authority under § 24.2-955.3 of the *Code of Virginia* and in accordance with the Board's decision to find Van Fleet for Alexandria Council in violation of the print media disclosure requirements of Stand by Your Ad for the first time during its December 16, 2015 meeting, Van Fleet for Alexandria Council be fined \$400."

Authority: § 24.2-955.3(D) provides that "The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty." § 24.2-955.3(A) provides that "Any sponsor violating Article 2 [...] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000."



Appendix A: Van Fleet Newspaper Advertisements

14 OCTOBER 1, 2015

ALEXANDRIA TIMES

SPORTS

Keeping up the pressure



Titans field hockey looks to stay focused in midst of hot streak

BY CHRIS TEALE

For all their dominance Monday night at home against Annandale, the T.C. Williams field hockey team was only ahead 1-0 at halftime on a goal from senior forward Mimi Hyre, and the players knew they needed more to put the game out of reach.

The Titans had plenty of opportunities in the first period, but the break proved crucial, as they tallied additional goals from Claire Bilodeau and Alex Milliken within five minutes of the restart. The eventual 3-0 win over the Atrons extended T.C.'s winning streak to six games, prior to their away game against West Potomac on Wednesday evening, played after the Times' print deadline.

And in spite of a slow start, where the hosts dominated but could not convert their chances, the Titans were delighted to keep their run going.

"I thought we played really well, especially in the second half," Milliken said. "We had a lot of shots on goal, [and]

we didn't let them get a corner whatsoever. I was happy with how the team played. We were talking a lot, had a lot of good passing combinations and, overall, I thought we gelled and were dominating the whole time."

The win improved the Titans' record this season to 10-1, with their only loss coming away against Herndon in late August. Head coach William Horezniak attributes their success to having a deep roster that has managed to cope with injuries to key players.

"It's great when I've got people coming in off the bench and filling in spots and whatnot, even with a couple of injuries that we have," he said. "I don't have two starters right now, who are normally on my starting roster, so even with them being injured we're still solid, which, as a coaching staff, you couldn't ask for more."

From the players' perspective, it has been an exciting time to be involved in the program. The Titans look like a real force in the Patriot Conference and have conceded just two goals all

Titans head coach William Horezniak addresses his players at halftime against Annandale Monday night. T.C. beat the Atrons 3-0 on goals from Mimi Hyre, Claire Bilodeau and Alex Milliken.

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--	--

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10 OCTOBER 8, 2015

ALEXANDRIA TIMES

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DESKS

FROM | 7

Just a few weeks into the new school year, Baytosk said that after some initial growing pains as students and teachers became used to the new arrangement, things have gone very smoothly and have already started to show results. He said with the desks being on wheels, they are conducive to different kinds of activities and class structures, in addition to offering students the option to sit or stand.

“What we anticipated, and what I think we’re beginning to see, is that in fact, the ability to stand increases focus and attention,” Baytosk said. “When you’re sitting, you tend to collapse in on yourself and it can be hard to maintain your energy. But when you’re standing, you have a little more blood flow, a little more oxygen flowing around. You tend to be more engaged. I think the teachers are seeing that.”

“If they’ve just come off a hard PE period and need to sit, they can sit, but if they’re getting into the legs of the day after lunch, they can stand.”

In addition to standing desks

in the middle school grades, the lower school was provided with new stools designed by Hokki, which are ergonomically designed to strengthen students’ core muscles and encourage better posture.

Baytosk said that standing desks were unlikely to be introduced across all grades due to their size, but the idea

variety of locations across the U.S. and Europe for the last two decades, Olmstead said the benefits are apparent in class.

“Rather than expecting [students] to sit still and do their work, they can be in one location and continue to do their work, be engaged in their work, but at the same time they’re moving,” she said. “For example, they might be sitting on the ball, and when they sit they have to have both feet flat on the ball for stability but they can still bounce up and down on the ball. They do it as they need it.”

“Sometimes they’ll be still for a while and other times they’ll be moving. They can also rock back and forth on the ball, they can rock side to side on the ball or they can move in a circular motion, clockwise and counter clockwise.”

With more and more research suggesting that alternative ways to sit in class can be beneficial to students, the use of standing desks, fitness balls and other methods may well grow further across the city and the country as time goes on.



Fifth graders at Alexandria Country Day School give standing a try at their new adjustable desks, introduced in the middle school grades this year.




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EPISCOPAL FROM | 16

game we were really pushing it through from the beginning and got it straight down to the circle and tried to get a goal as fast as possible because once we did that, they knew that we were a threat."

On the strength of that performance, Episcopal appeared to have put the disappointment of a blowout loss to its cross-town rival behind it, albeit after taking some hard lessons from the defeat.

"Having a loss to St. Stephen's, it really put our season in perspective," Phillips said. "It showed us that we can't always win, that we need to push through it and we need to learn from this mistake and have it in the back of our minds but not think about it all day. It's definitely an uphill climb from here."

"[The defeat] just showed us what we needed to work on," Winants added. "Even though it brought us down, it showed us that we need to really improve, and it showed us what parts of the game we were weak at. I think we worked on it this game and got a lot better."

It has been an up and down season so far for Episcopal, which saw an initial two-game winning streak wiped

out by a three-game losing run, followed by a thumping four-match win streak. Even with some difficult moments, Montgomery is adamant her players are talented enough to make an impact in future games.

"I've been telling them,

“ [The defeat] just showed us what we needed to work on. Even though it brought us down, it showed us that we need to really improve, and it showed us what parts of the game we were weak at. I think we worked on it this game and got a lot better.”

- Eleanor Winants, Episcopal field hockey player

and I truly do believe this, that they have absolutely so much potential," she said. "I'm really waiting for them to keep taking it to the next level because it's been fun to coach them as they've jumped on absolutely every-

thing I've sent their way."

With a No. 7 ranking in the last two state polls, the Maroon may have one eye on the postseason, especially having lost in the quarterfinals of both the Independent School League and Virginia Independent Schools Athletic Association playoffs last season. The players and coaches are well aware of what still needs to be done moving forward.

"I think we just [shouldn't] change what we have already, keep getting better and working harder," Phillips said. "I think the team works really well together and we're good about switching positions and helping each other out and having a lot of give-and-take. From here, we just need to push through and we need to remember the fundamentals and not let it get really scrappy."

"One thing that we've been focusing on is playing together and being super intentional about the time that we have to practice," Montgomery said. "It's not about practicing more or necessarily harder, it's really just being smart about our practicing. I think if we continue to do that, we're going to continue to make these improvements that we've been making and be in a good place to be successful at the end of the season."

SPORTS SHORTS

Local football teams see mixed results

With the majority of the city's high school football teams having played six games, there have been plenty of intriguing results so far, led by Bishop Ireton with a 5-1 record.

On the back of a state final appearance last season, the Cardinals began with a three-game winning streak and have more recently won two straight, including on October 3 at home against local rivals St. Stephen's and St. Agnes. Ireton travels to Benedictine of Richmond

this Saturday.

Ireton's only defeat so far this season came at the hands of Episcopal, which holds a 3-0 record so far. The Maroon also defeated SSSAS by the handy margin of 41-13, and will have the biggest test of the season Saturday as they welcome Bullis. The Bulldogs are defending Interscholastic Athletic Conference champions, having finished ahead of Episcopal last season.

It has been a mixed season so far for SSSAS, which has lost to both of its local rivals

but hold a 3-3 record at this stage. The Saints are currently on a two-game losing streak and welcome Landon to Moss Field on Saturday.

T.C. Williams has struggled and is 2-4 overall, with two two-game losing streaks sandwiching its only other victory since opening day: a 27-6 defeat of Mount Vernon. The Titans are 0-3 at home after losses to Westfield, South County and Lake Braddock, and travel to West Springfield on Friday night.

- Chris Teale

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Appendix B: Van Fleet Flyer



Dear Fellow Alexandria Veteran:

Please allow me to introduce myself, my name is Townsend A. ("Van") Van Fleet. I am running in the 3 November 2015 City Council election

here in Alexandria. I need your help. We veterans are not well-served by our current local government. We need someone who understands the issues we face to represent us.

As a 23-year Army veteran and a Vietnam Vet, as such, I feel that I am particularly well-positioned to understand and address the issues confronting veterans like ourselves. In addition, to the bond we share from having served our country with honor, we as a group possess a positive, "can do," attitude. If elected, I will bring that "Can Do" mentality and military understanding of how to tackle difficult challenges to our City government.

As a military man, I have great respect for tradition, values, and the historic nature of our great nation. Some of you may not know that the City of Alexandria played a pivotal role in the formation of our country. Our Founding Fathers gathered here, ate, drank here, and even formulated their battle plans around the tables at Gadsby's Tavern. Ultimately, two wars flowed through this great City: the American Revolution and the Civil War.

I have been a resident of Alexandria for the past 30 years. During that time, I have seen this City grow, battle all types of issues, and develop at an alarming pace. Under the pressure of unrestrained development, our precious green space is rapidly disappearing. I have experienced both the positive and negative effects of this growth.

In recent years, Alexandria's City Council has put our community into debt of substantial proportions—\$526 million, with a yearly debt service of at least \$66 million. This figure increases to \$80 million if you include the \$14 million additional debt that will result if Council approves the construction of a new Metro station in Potomac Yard. And they have done this while increasing our property taxes by 23 cents per \$100.00 of assessed value during the past ten years alone! Council members have failed to reconcile the imbalance of expenditures and revenues such that 'the Council' has overspent City revenues for the past eight years consecutively!

This fiscal dilemma--and the fact that City Council has steadfastly refused to pay attention to the needs and desires of its citizens in almost every neighborhood within the City have been major factors in my decision to stand as a candidate for election to the Council. I need your help and support to win this election. There are many ways you can help. Please visit my website, www.vanisyourman.com, to learn more about me, my positions on the issues facing our great City, and ways you can assist my campaign.



Appendix C: Miles Newspaper Advertisements

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OCTOBER 1, 2015 | 15

“I’ve been on varsity three years and we’ve never had a season like this. Going into the season I really wasn’t expecting this, but so far, we’ve been playing great. We haven’t let down and have come back from some really tough [deficits]. Against Lake Braddock we were down 1-0 going into the second half and we came back and won [2-1]. I think our team’s just got a lot of heart and we want to win.”

- Alex Milliken, T.C. Williams Field Hockey player



Several T.C. Williams field hockey players wait for a short corner to be delivered in their game against Annandale. The Titans went on to win 3-0, and at the time of writing have a six-game winning streak.

count and use them as a springboard for playoff success.

“It’s up to them,” he said. “That’s what it comes down to. How bad do they want it? A lot of the girls on the team, they have goals set as individuals and we have goals set as a team, and it depends on how bad they want that and how far we can go.”

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TITANS FROM | 14

season, led by goalkeeper Sarah Leckman. With 10 seniors on the roster, there is plenty of experience, and that has stood the Titans in good stead.

“I’ve been on varsity three years and we’ve never had a season like this,” said Milliken. “Going into the season I really wasn’t expecting this, but so far, we’ve been playing great. We haven’t let down and have come back from some really tough [deficits]. Against Lake Braddock we were down 1-0 going into the second half and we came back and won [2-1]. I think our team’s just got a lot of heart and we want to win.”

“We have a saying that losing isn’t an option,” added Hyre. “We said that in our halftime meeting with Lake Braddock, and we came out and scored two goals again in the first 10 minutes. I think losing isn’t an option this year, we’re really trying hard to go all the way.”

With just five games left in the regular season, including Wednesday’s game at West Potomac, the Titans are setting themselves up for a strong end to the season, even with the prospect of facing a South County team that beat the Atoms 11-0

last week. The players are confident, but know they have to stay sharp in the closing stages of their conference schedule.

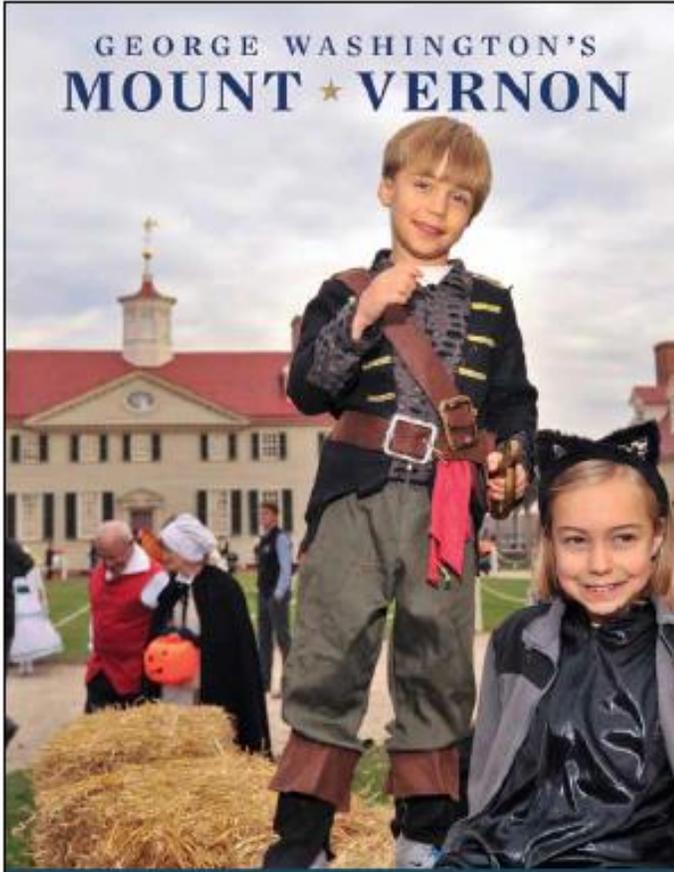
“I think a lot of focus in practice is key,” Milliken said. “Then just communicating on the field, because the second we start communicating we gal and work together. Our team’s gotten really close this season, which I think also helps, because we all know how each other plays and will cover for each other and talk.”

Horeszniak also emphasized the need for focus among his players, and said he is determined to see his side not get too carried away with their winning ways.

“We’re pretty grounded,” he said. “The thing that — always as a coach — you have in the back of your mind is they’re teenagers. They’re not professional athletes. You’ve got to keep them focused; have fun, but we take it one game at a time. It’s one after the other after the other. Their focus is the same way.”

And while the Titans are not getting too ahead of themselves, their current run of form has attracted some attention and may have them dreaming of a deep postseason run. Horeszniak says the focus is on his players to make these wins

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OCTOBER 8, 2015 | 5

COUNCIL

FROM | 1

the city re-establishing the 1-cent set-aside for affordable housing. Wood abstained on whether he would support a \$20 million expansion project at the T.C. Williams Minnie Howard campus, while Miles held up both "Yes" and "No" cards to indicate being undecided. Wood abstained again on whether low-income users should be on panels to evaluate the use of grants from the Fund for Human Services.

The rapid-fire questions didn't mean voters weren't able to hear some longer answers on other issues, including the city's dwindling affordable housing stock. All agreed that something must be done, but candidates laid out a number of different possible solutions.

Chapman repeated his belief that affordable units should be built into municipal buildings, and that the number of units managed by the Alexandria Redevelopment and Housing Authority should be expanded.

Both Lovain and Wilson said the city's land-use and zoning authorities could prove useful, and remain one of the most effective things at the city's disposal.

“The city has a lot of tools in the toolbox when it comes to affordable housing, and it needs to use them all.”

- City Councilor Tim Lovain (D)

“The city has a lot of tools in the toolbox when it comes to affordable housing, and it needs to use them all,” Lovain said.

Several candidates said officials must be more aggressive with developers when negotiating the number of affordable units in new projects, while Pepper suggested partnering with nonprofit and for-profit organizations could be beneficial.

“We're basically able to say location, location, location,” said

Cefaratti, referring to a possible negotiating tactic with developers.

“We need to be negotiating hard ... we can't force them, but we can ask them,” said Miles.

Wilson cited the example of the Beauregard development as one where the city has done well to preserve affordable units. But Wood accused councilors of failing to maintain enough affordable units in the neighborhood's redevelopment plan, alleging that affordable units were reduced by 86 percent at Beauregard.

The redevelopment resulted in the temporary loss of 2,475 apartments rented mostly by those with low or medium incomes, with half of the existing units set to be demolished over the next 30 years and replaced by 5,000 new apartments, townhouses and condominiums. Within that, the city negotiated an agreement that 800 new or existing apartments will be made affordable.

The candidates also were asked their one main initiative if they are elected, with answers as varied as universal pre-K, expanding the commercial tax base

and Van Fleet's assertion that the city must reduce its debt service.

To close things out, they were asked how to reduce inequality and improve civic engagement. Several suggested hiring more bilingual staff and providing information in multiple languages,

while Torres said increasing diversity among city councilors would give others something to aspire to. Chapman argued mimicking D.C.'s use of Advisory Neighborhood Commissions

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Mayoral race enters high gear

Campaigns trade endorsements, barbs

BY ERICH WAGNER

There are less than three weeks left until the November 3 local election, and Alexandria's mayoral candidates still are trying to get a leg up with voters.

Vice Mayor Allison Silberberg leads the local Democratic ticket, but she faces a write-in challenge from incumbent Mayor Bill Euille, who lost the party primary by 312 votes in June. The candidates have been garnering dueling lists of endorsers and are trading jabs over each other's campaigns.

U.S. Rep. Don Beyer (D-8) endorsed Silberberg last week, joining the Alexandria Democratic Committee, Democratic nominee for Delegate in the 45th District Mark Levine and Sheriff Dana Lawhorne.

"As a lifelong Democrat and as an Alexandrian, I am pleased to support Allison's candidacy for mayor," Beyer said in a statement. "Allison is a person of integrity with a vision for the future of our great city. I am con-

"As a lifelong Democrat and as an Alexandrian, I am pleased to support Allison's candidacy for mayor."
— U.S. Rep. Don Beyer (D)

"I'd say that our current officials are united in their support of the Democratic ticket, top to bottom."
— State Sen. Adam Ebbin (D)

"We can't control every particular voter in the city, but we did send an email out immediately after we heard about the flyers."
— Eric Williams
Euille campaign manager

"The vice mayor, despite many platitudes, has done nothing to improve small business life in the city."
— Delegate Rob Krupicka

ident that she will be ever present in our community, and will do her best to help Alexandria stay balanced and prosperous."

But a growing number of prominent local Democrats have announced they would break with the party to support Euille's write-in effort, including former Mayor and primary foe Kerry Donley, former City Councilor Lonnie Rich and former candidate for delegate Julie Jakopic. And on Monday, Delegate Rob Krupicka, who is not running for re-election, announced his own support for Euille's campaign in a letter to the Alexandria Times.

"Small businesses give our city much of its unique character," Krupicka wrote. "Euille has firsthand small business experience and has worked to streamline permitting and process. The vice mayor, despite many platitudes, has done nothing to improve small business life in the city."

But ADC joint campaign chairman state Sen. Adam Ebbin said he was not concerned by the growing rift in the party or how it might affect the results on Election Day.

"I'd say that our current officials are united in their support of the Democratic ticket, top to bottom," Ebbin said. "I respect

Delegate Krupicka and his decision, but he's a little bit of an outlier in terms of the current membership of the committee and elected officials."

Ongoing arguments over whether Euille and Silberberg should square off on the issues also gathered steam Wednesday, when the Alexandria Chamber of Commerce issued a statement strongly calling for a debate and offering to help arrange one.

"Given the level of activity by both the Euille and Silberberg campaigns, the chamber believes the debate over the method of nomination is now over," chamber officials wrote. "We are focused squarely on the election in November and the future of Alexandria; in the chamber's view, there are two candidates running for mayor."

"One is a party nominee, the other a declared write-in. Those candidates owe the business owners of Alexandria a debate to explore their positions on key issues such as budget, land use, small business, taxes and transportation. To omit such a debate and discussion from an electoral process is a disservice to all voters, es-

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Appendix D: Mark Marshall for Sheriff Advertisements

Exhibit 1: Yard Sign



Exhibit 2: Banner





Exhibit 3: News Paper Advertisement

Page 14 The Smithfield Times Wednesday, Sept. 9, 2015

Come Meet Isle of Wight's Crime Fighting TEAM!



Sheriff Mark Marshall and Commonwealth's Attorney Georgette Phillips will be at the County Fair ready to meet and greet you! Come on by and say "Hi!" And don't forget to VOTE experience and progress on November 3rd.

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★★ Re-elect Sheriff Marshall & ★★
Elect Commonwealth's Attorney
★★ Georgette Phillips ★★





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February 23, 2016

Van Fleet for Alexandria Council

P.O. Box 320904

Alexandria, VA 22320

Dear Mr. Van Fleet,

The State Board of Elections (SBE) received a complaint about a possible violation of Virginia's Stand by Your Ad law; specifically, a mailer you sent out to potential voters in Alexandria, VA, and advertisements in the Alexandria Times on October 1, 8, and 15, 2015, which omit the disclosure statement required by § 24.2-956 of the Code of Virginia (attached). Stand by Your Ad (SBYA) provisions require disclaimers on political advertisements appearing in print media, television ads and on radio.

The § 24.2-955.3 of the Code of Virginia provides that all disclaimer complaints go to the Board to determine the amount of civil penalties to be assessed. Civil penalties for violations of the print media requirements of Stand by Your Ad may not exceed \$2500.

The Board was initially set to hold a public meeting regarding this matter on Monday, November 16, 2015. At that meeting the complaint against you was deferred until the next meeting. The Board then heard the complaint on Wednesday, December 16, 2015 at 10:00 a.m. While the Board did find you in violation of SBYA it did not levy a fine. Instead the SBE directed the Department look into the issue of what counts as a "instance" of an ad, which should be fined separately from other instances. The meeting to determine the fine associated with your violation is set to be held on Tuesday, March 15, 2016. You may attend and/or provide information to the Board which may help the Board reach a decision. If you cannot appear you will be notified by letter of the Board decision. Should the Board decide to assess a penalty, payment must be made within 30 days of the receipt of a letter advising you of the Board decision.

If you need further information please contact me at 1-800-552-9745 ext. 8924.

Sincerely,

Brooks C. Braun, Esq.
Policy Analyst



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Exhibit A: Flyer



Dear Fellow Alexandria Veteran:

Please allow me to introduce myself, my name is Townsend A. ("Van") Van Fleet. I am running in the 3 November 2015 City Council election here in Alexandria. I need your help. We veterans are not well-served by our current local government. We need someone who understands the issues we face to represent us.

As a 23-year Army veteran and a Vietnam Vet, as such, I feel that I am particularly well-positioned to understand and address the issues confronting veterans like ourselves. In addition, to the bond we share from having served our country with honor, we as a group possess a positive, "can do," attitude. If elected, I will bring that "Can Do" mentality and military understanding of how to tackle difficult challenges to our City government.

As a military man, I have great respect for tradition, values, and the historic nature of our great nation. Some of you may not know that the City of Alexandria played a pivotal role in the formation of our country. Our Founding Fathers gathered here, ate, drank here, and even formulated their battle plans around the tables at Gadsby's Tavern. Ultimately, two wars flowed through this great City: the American Revolution and the Civil War.

I have been a resident of Alexandria for the past 30 years. During that time, I have seen this City grow, battle all types of issues, and develop at an alarming pace. Under the pressure of unrestrained development, our precious green space is rapidly disappearing. I have experienced both the positive and negative effects of this growth.

In recent years, Alexandria's City Council has put our community into debt of substantial proportions--\$526 million, with a yearly debt service of at least \$66 million. This figure increases to \$80 million if you include the \$14 million additional debt that will result if Council approves the construction of a new Metro station in Potomac Yard. And they have done this while increasing our property taxes by 23 cents per \$100.00 of assessed value during the past ten years alone! Council members have failed to reconcile the imbalance of expenditures and revenues such that 'the Council' has overspent City revenues for the past eight years consecutively!

This fiscal dilemma--and the fact that City Council has steadfastly refused to pay attention to the needs and desires of its citizens in almost every neighborhood within the City have been major factors in my decision to stand as a candidate for election to the Council. I need your help and support to win this election. There are many ways you can help. Please visit my website, www.vanisyourman.com, to learn more about me, my positions on the issues facing our great City, and ways you can assist my campaign.



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I respectfully ask for your help to bring responsible and responsive government back to Alexandria, and I ask for 'Your Vote' on 3 November 2015. Together we can make a difference.

Sincerely,

 Townsend A. ("Van") Van Fleet.

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Many Thanks to my fellow Veterans – Please Vote 'VAN' VAN FLEET on 3 NOV 2015!

IT'S A TIME FOR CHANGE – And We Need Your VOTE



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Exhibit B: Newspaper Advertisements

14 OCTOBER 1, 2015
ALEXANDRIA TIMES

SPORTS

Keeping up the pressure



PHOTO: CHRIS MILLER

Titans field hockey looks to stay focused in midst of hot streak

BY CHRIS MILLER

For all their dominance Monday night at home against Annandale, the T.C. Williams field hockey team was only ahead 1-0 at halftime on a goal from senior forward Mimi Hyre, and the players knew they needed more to put the game out of reach.

The Titans had plenty of opportunities in the first period, but the break proved crucial, as they tallied additional goals from Claire Bilodeau and Alex Millikan within five minutes of the restart. The eventual 3-0 win over the Atoms extended T.C.'s winning streak to six games, prior to their away game against West Potomac on Wednesday evening, played after the Times' print deadline.

And in spite of a slow start, where the hosts dominated but could not convert their chances, the Titans were delighted to keep their run going.

"I thought we played really well, especially in the second half," Millikan said. "We had a lot of shots on goal, [and]

we didn't let them get a corner whatsoever. I was happy with how the team played. We were talking a lot, had a lot of good passing combinations and, overall, I thought we gelled and were dominating the whole time."

The win improved the Titans' record this season to 10-1, with their only loss coming away against Herndon in late August. Head coach William Hersoniak attributes their success to having a deep roster that has managed to cope with injuries to key players.

"It's great when I've got people coming in off the bench and filling in spots and whatnot, even with a couple of injuries that we have," he said. "I don't have two starters right now, who are normally on my starting roster, so even with them being injured we're still solid, which, as a coaching staff, you couldn't ask for more."

From the players' perspective, it has been an exciting time to be involved in the program. The Titans look like a real force in the Patriot Conference and have conceded just two goals all

Titans head coach William Hersoniak addresses his players at halftime against Annandale Monday night. T.C. beat the Atoms 3-0 on goals from Mimi Hyre, Claire Bilodeau and Alex Millikan.

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DESKS

FROM | 7

Just a few weeks into the new school year, Baytosk said that after some initial growing pains as students and teachers became used to the new arrangements, things have gone very smoothly and have already started to show results. He said with the desks being on wheels, they are conducive to different kinds of activities and class structures, in addition to offering students the option to sit or stand.

“What we anticipated, and what I think we’re beginning to see, is that in fact, the ability to stand increases focus and attention,” Baytosk said. “When you’re sitting, you tend to collapse in on yourself and it can be hard to maintain your energy. But when you’re standing, you have a little more blood flow, a little more oxygen flowing around. You tend to be more engaged. I think the teachers are seeing that.”

“If they’ve just come off a hard PE period and need to sit, they can sit, but if they’re getting into the legs of the day after lunch, they can stand.”

In addition to standing desks

in the middle school grades, the lower school was provided with new stools designed by Hokki, which are ergonomically designed to strengthen students’ core muscles and encourage better posture.

Baytosk said that standing desks were unlikely to be introduced across all grades due to their size, but the idea

variety of locations across the U.S. and Europe for the last two decades, Olmstead said the benefits are apparent in class.

“Rather than expecting [students] to sit still and do their work, they can be in one location and continue to do their work, be engaged in their work, but at the same time they’re moving,” she said. “For example, they might be sitting on the ball, and when they sit they have to have both feet flat on the ball for stability but they can still bounce up and down on the ball. They do it as they need it.”

“Sometimes they’ll be still for a while and other times they’ll be moving. They can also rock back and forth on the ball, they can rock side to side on the ball or they can move in a circular motion, clockwise and counter clockwise.”

With more and more research suggesting that alternative ways to sit in class can be beneficial to students, the use of standing desks, fitness balls and other methods may well grow further across the city and the country as time goes on.



Fifth graders at Alexandria Country Day School give standing a try at their new adjustable desks, introduced in the middle school grades this year.

of improving the posture of the youngest students is something that has permeated other schools in Alexandria.

At Douglas MacArthur Elementary School, second grade teacher Jan Olmstead pioneered the use of fitness balls as an alternative to standard seats for her students, with the seats also available for those who want them. Having used them in a




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OCTOBER 15, 2015 | 17

EPISCOPAL FROM | 16

game we were really pushing it through from the beginning and got it straight down to the circle and tried to get a goal as fast as possible because once we did that, they knew that we were a threat."

On the strength of that performance, Episcopal appeared to have put the disappointment of a blowout loss to its cross-town rival behind it, albeit after taking some hard lessons from the defeat.

"Having a loss to St. Stephen's, it really put our season in perspective," Phillips said. "It showed us that we can't always win, that we need to push through it and we need to learn from this mistake and have it in the back of our minds but not think about it all day. It's definitely an uphill climb from here."

"[The defeat] just showed us what we needed to work on," Winants added. "Even though it brought us down, it showed us that we need to really improve, and it showed us what parts of the game we were weak at. I think we worked on it this game and got a lot better."

It has been an up and down season so far for Episcopal, which saw an initial two-game winning streak wiped

out by a three-game losing run, followed by a thumping four-match win streak. Even with some difficult moments, Montgomery is adamant her players are talented enough to make an impact in future games.

"I've been telling them,

“ [The defeat] just showed us what we needed to work on. Even though it brought us down, it showed us that we need to really improve, and it showed us what parts of the game we were weak at. I think we worked on it this game and got a lot better.”

- Eleanor Winants,
Episcopal field hockey player

and I truly do believe this, that they have absolutely so much potential," she said. "I'm really waiting for them to keep taking it to the next level because it's been fun to coach them as they've jumped on absolutely every-

thing I've sent their way."

With a No. 7 ranking in the last two state polls, the Maroon may have one eye on the postseason, especially having lost in the quarterfinals of both the Independent School League and Virginia Independent Schools Athletic Association playoffs last season. The players and coaches are well aware of what still needs to be done moving forward.

"I think we just [shouldn't] change what we have already, keep getting better and working harder," Phillips said. "I think the team works really well together and we're good about switching positions and helping each other out and having a lot of give-and-take. From here, we just need to push through and we need to remember the fundamentals and not let it get really scrappy."

"One thing that we've been focusing on is playing together and being super intentional about the time that we have to practice," Montgomery said. "It's not about practicing more or necessarily harder, it's really just being smart about our practicing. I think if we continue to do that, we're going to continue to make these improvements that we've been making and be in a good place to be successful at the end of the season."

SPORTS SHORTS

Local football teams see mixed results

With the majority of the city's high school football teams having played six games, there have been plenty of intriguing results so far, led by Bishop Ireton with a 5-1 record.

On the back of a state final appearance last season, the Cardinals began with a three-game winning streak and have more recently won two straight, including on October 3 at home against local rivals St. Stephen's and St. Agnes. Ireton travels to Benedictine of Richmond

this Saturday.

Ireton's only defeat so far this season came at the hands of Episcopal, which holds a 3-0 record so far. The Maroon also defeated SSSAS by the handy margin of 41-13, and will have the biggest test of the season Saturday as they welcome Bullis. The Bulldogs are defending Interscholastic Athletic Conference champions, having finished ahead of Episcopal last season.

It has been a mixed season so far for SSSAS, which has lost to both of its local rivals

but hold a 3-3 record at this stage. The Saints are currently on a two-game losing streak and welcome Landon to Moss Field on Saturday.

T.C. Williams has struggled and is 2-4 overall, with two two-game losing streaks sandwiching its only other victory since opening day: a 27-6 defeat of Mount Vernon. The Titans are 0-3 at home after losses to Westfield, South County and Lake Braddock, and travel to West Springfield on Friday night.

- Chris Teale

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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Stand by Your Ad Complaint – Supporters of Jacqueline Smith for Clerk of the Circuit Court

Executive Summary: Darrell Jordan submitted a complaint to the Department of Elections that alleged that Supporters of Jacqueline Smith for Clerk of the Circuit Court had distributed pamphlets and posted a website with disclosure statements that deviate from those required by statute. The Department recommends a fine of \$400; \$100 for each of three different improperly disclosed pamphlets, and an additional \$100 for an improperly disclosed website.

Complainant: Darrell Jordan

Background: On July 24 and August 12, 2015, Mr. Jordan sent letters to the State Board of Elections that alleged several violations of Stand by Your Ad law related to advertisements for Ms. Smith that omitted the necessary disclosures. These advertisements include pamphlets and the campaign website: www.smithforclerk.com. Scans of the letters, photos of the advertisements, and screen grabs of the website in question are attached.

Relevant Statutory and Policy Provisions:

§ 24.2-955 states that “The disclosure requirements of this Chapter [Stand by Your Ad] apply to any sponsor of an advertisement in the print media [...] the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 [the Campaign Finance Disclosure Act].”

§ 24.2-955.1 defines “Advertisement” as “any message appearing in the print media [...] that constitutes an expenditure under Chapter 9.3.”

§ 24.2-955.1 defines “Print Media” as “billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, yard signs, and outdoor advertising facilities. If a single print media advertisement



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consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.”

§ 24.2-945.1 defines “expenditure” as “money and services of any amount, and any other thing of value, paid [...] by any candidate, [or] campaign committee [...] for the purpose of expressly advocating the election or defeat of a clearly identified candidate.”

§ 24.2-956 requires a print media advertisement sponsored by a candidate committee to “[bear] the legend or includes the statement: ‘Paid for by _____ [Name of candidate or campaign committee].’ Alternatively, if the advertisement is supporting a candidate who is the sponsor and the advertisement makes no reference to any other clearly identified candidate, then the statement ‘Paid for by _____ [Name of sponsor]’ may be replaced by the statement ‘Authorized by _____ [Name of sponsor].’”

§ 24.2-955.3(A) provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000.”

§ 24.2-955.3(E) provides that “It shall not be deemed a violation of this chapter if the contents of the disclosure legend or statement convey the required information.” At its December 16, 2015 meeting the Board decided that this provision was meant to protect committees that are in substantial compliance with the law. At its January 8, 2016 meeting the State Board decided that if a disclosure statement is at all ambiguous in conveying the information required by the chapter, the committee shall be found in violation of Stand by Your Ad.

In its November 16, 2015 meeting the State Board set a practice of fining on a per occurrence basis for violations of print media requirements. During that same meeting, the Board also set a practice of fining first time violators of Stand by Your Ad \$100 per occurrence.

Analysis: The first step in an analysis of a Stand by Your Ad complaint is to determine if the communication at issue falls within the scope of the law requiring disclosures. To do so, § 24.2-955 requires a communication to be an “advertisement” as defined by § 24.2-955.1. The definition of “advertisement” requires the communication be an “expenditure” according to § 24.2-945.1. According to the definition in that section, something is a reportable expenditure only when it is “for the purpose of expressly advocating the election or defeat of a clearly identified candidate.” Therefore, for a communication to fall under the scope of § 24.2-955 it must contain what is known as “express advocacy.” Express advocacy is a term of art which includes any communication containing express words of advocacy of election or defeat, such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “reject,” or some variation thereof. These are the so called “magic words.”

The communications disseminated by the Smith campaign contain the magic words “Elect Jacqueline Smith” and therefore qualify as express advocacy. They also appear to be communications for which the



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Smith campaign paid something of value and are therefore expenditures under § 24.2-945.1. Furthermore, these communications (pamphlets and a website) fall squarely within the definition of print media and therefore qualify as advertisements under § 24.2-955.1. Because these communications are advertisements falling within the scope of the Stand by Your Ad law provided in § 24.2-955, they are required to contain disclosure statements.

The second step in an analysis of a Stand by Your Ad complaint is to determine whether an advertisement within the scope of that law contains the appropriate disclosure. For an advertisement in print media purchased by a candidate or their campaign committee, the required disclosure is provided in § 24.2-956. The advertisement must include the statement "Paid for by _____ [Name of sponsor]," or "Authorized by _____ [Name of sponsor]" for an advertisement that mentions no other candidate. However, § 24.2-955.3(E) provides that "It shall not be deemed a violation of this chapter if the contents of the disclosure legend or statement convey the required information."

The print media advertisements disseminated by the Jacqueline Smith campaign do not contain either of the specific disclosure statements provided by § 24.2-956; however, each of the advertisements in question do contain what appear to be disclosure legends. The information provided by those disclosure legends may constitute substantial compliance under § 24.2-955.3(E). In its November 16, 2015 meeting, the Board referenced § 24.2-955.3(E) in finding that an advertisement with the disclosure legend "sponsored by [Name of sponsor]" was in substantial compliance with the law. Before finding any other advertisements in substantial compliance under that subsection, the Board requested that the Department look into the history § 24.2-955.3(E).

The language used in § 24.2-955.3(E) was first introduced to the *Code of Virginia* in 2005, in a previous version of the Stand by Your Ad law. That language was retained when what is now Chapter 9.5 of Title 24.2 was enacted by the legislature in 2006. A conversation with Chris Piper, former manager of Election Services for the Department and co-writer of the language in question, revealed that the section was intended to function as a substantial compliance provision. Mr. Piper described the motivating incident to be one where a candidate used the disclosure legend "[Name of campaign] paid for this ad." The candidate was accused of violating the provisions of Stand by Your Ad because of the absence of the exact wording "Paid for by [Name of campaign]." Mr. Piper also indicated that to his knowledge the State Board had never been presented with a case that caused it to take up interpreting this subsection.

In light of this history, at its December 16, 2015 meeting, the Board voted to adopt a narrow standard for interpreting substantial compliance. The Board decided that an advertisement is only substantially compliant under § 24.2-955.3(E) if the words used in the disclosure statement *unambiguously* convey the information required by Chapter 9.5. Under this standard, advertisement disclaimers must communicate to a reasonable person what is intended by the statute and may not admit to alternative interpretations.

This matter now comes back for consideration, and the Board is tasked with determining whether or not the disclosure legends provided in advertisements disseminated by the Jacqueline Smith campaign constitute substantial compliance under § 24.2-955.3(E).



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The advertisements in question are print media sponsored by a candidate campaign committee alone that make no reference to any other candidate. As such, these advertisements fall under the requirements in § 24.2-956(1). That section requires that the campaign disclose who “paid for” or “authorized” the advertisements. The Meriam Webster’s Dictionary Online defines “pay” as follows:

- 1: to give (as money) in return for services received or for something bought <Pay the taxi driver.> <I paid for a ticket.>
- 2: to give money for (something owed) <I have to pay the rent.>
- 3: to get even with <She wants to pay them back for the insult.>
- 4: to give or offer freely <pay a compliment> <pay attention>
- 5: to have a worthwhile result: be worth the effort or pains required <It pays to drive carefully.>

Of these, definitions 1 and 2, which imply the exchange of money for goods, are most relevant. The same source offers the following definition of “authorize”:

- 1: to give power to: give authority to <Their guardian is authorized to act for them.>
- 2: to give legal or official approval to <Who authorized the closing of school?>

Under the standard adopted by the State Board the disclosure statement used by the Smith campaign must have a meaning that is the same as “paid for” or “authorized by” but may not admit to any other meaning.

Ms. Smith’s campaign provides two different disclosure legends in the advertisements in question. The first, found on the pamphlets, reads “Created in-house by volunteers for the supporters of Jacqueline Smith for Clerk of the Circuit Court.” It is the opinion of the Department that the “Created in-house...” disclosure statement fails to communicate either of the required meanings.

First, the words used in the disclosure statement fail to clearly communicate who paid for or authorized the advertisements. According to the Meriam Webster Dictionary Online the word “create” means “to cause to exist: bring into existence: produce.” The word “created” does not imply the exchange of money for goods nor does it imply a grant of official approval. Even if it did, it would also imply production, rendering it ambiguous and outside the scope of the substantial compliance provision in § 24.2-955.3(E).

Furthermore, even if “create” or “created in house” did unambiguously imply the exchange of money for goods or a grant of official authority the wording of the advertisement would communicate that either the volunteers did the paying/authorizing on behalf of the Smith campaign or that an organization called “Volunteers for the friends of Jacqueline Smith for Clerk of the Circuit Court” did the paying/authorizing. In any case, the meaning is ambiguous and outside the scope of the substantial compliance provision in § 24.2-955.3(E).



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The second disclosure legend used by the Jacqueline Smith campaign, found on the campaign website, reads “Website courtesy of the Supporters of Jacqueline Smith for Clerk of the Circuit Court.” It is the opinion of the Department that this disclosure also fails to unambiguously convey the required information.

The Meriam Webster’s Dictionary Online defines “courtesy” as follows:

- 1 a: behavior marked by polished manners or respect for others: courteous behavior
- b: a courteous and respectful act or expression
- 2 a: general allowance despite facts: indulgence <hills called mountains by courtesy only>
- b: consideration, cooperation, and generosity in providing something (as a gift or privilege); also: agency, means —used chiefly in the phrases through the courtesy of or by courtesy of or sometimes simply courtesy of

Of these the second definition is most relevant. “Allowance” and “consideration” may be construed to mean something like “authorized” (i.e. a grant of authority). Consideration and generosity could mean something like “paid for” (i.e. exchange of money for goods). However, the statement “courtesy of [Name of campaign]” could also include the meaning “by agency or means.” In this case it is ambiguous and more like the “created in house...” disclosure statement discussed above. Simply indicating who produced an advertisement might obscure who paid for and who authorized the advertisement. Because of the ambiguity inherent in the language used by the Jacqueline Smith campaign it is uncertain whether the disclosure statement used on the campaign website communicates to voters who paid for or who authorized the creation of the website.

The forgoing analysis rests on the finding by the Board that the substantial compliance provision in § 24.2-955.3(E) should be read narrowly for all the reasons articulated in the January 8, 2016 Substantial Compliance – History and Standards memo. First, it would encourage political committees under the scope of Stand by Your Ad to read and carefully comply with the law as written. Second, it would ensure that the information that the legislature intended be communicated to voters is actually communicated. Third, it would prevent the exception from becoming so capacious that it could be used for nefarious purposes like concealing the source of funds.

Conclusion: Supporters of Jacqueline Smith for Clerk of the Circuit Court has failed to properly comply with Stand by Your Ad in regards to the print media advertisements at issue.

Staff Recommendations: The State Board should find that Jacqueline Smith for Clerk of the Circuit Court has violated the provisions of Stand by Your Ad and should fine the campaign accordingly in an amount not to exceed \$1,000. Since Ms. Smith is a first time violator of Stand by Your Ad, the Department would suggest her campaign be fined \$100 per occurrence; or a total of \$400 in this instance.



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Suggested Motion: “I move that, subject to the Board’s authority under § 24.2-955.3 of the *Code of Virginia*, Supporters of Jacqueline Smith for Clerk of the Circuit Court has been found to be in violation of the print media disclosure requirements of Stand by Your Ad for the first time and on four separate instances and is thereby fined \$400.”

Authority: § 24.2-955.3(D) provides that “The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty.” § 24.2-955.3(A) provides that “Any sponsor violating Article 2 [...] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000.”



Appendix A: Letters

July 24, 2015

Mr. James B. Alcorn
Dr. Clara Belle Wheeler
Ms. Singleton B. McAllister
State Board of Elections
1100 Bank Street First Floor
Richmond, VA 23219

28 JUL 2015 11:33

Dear State Board of Elections Members:

The campaign committee of Supporters of Jacqueline Smith for Clerk of the Circuit Court has not affixed proper authorization per § 24.2-956. Requirements for print media advertisements sponsored by a candidate campaign committee. Both a palm card (a copy of which is enclosed) and website lack a statement of "Paid for" or "Authorized by".

Website www.smithforclerk.com has the following information:
"Website courtesy of the Supporters of Jacqueline Smith for Clerk of the Circuit Court
"Copyright Supporters of Jacqueline Smith for Clerk of the Circuit Court. All rights reserved."

In her most recent campaign report she did not indicate any in-kind contributions. I request that not affixing proper authorization be investigated.

In addition, I have sent a letter to Commonwealth Attorney Paul Ebert requesting that he investigate the following per § 24.2-1019

It appears that Jacqueline C. Smith, Democrat candidate for Clerk of Court, did not file a statement of organization within 10 days of payment of a filing fee for any party nomination method § 24.2-947.1.

Item 2 of the Democratic Call to Caucus states there is a \$50 fee for any person filing as a Candidate. www.pwcdems.com states that on May 12 the election was cancelled due to only one filing.

The Statement of Organization was not filed until June 5.

I appreciate your immediate attention to this.

Sincerely,

Sincerely,
Darrell Jordan
Vice Chairman, Prince William County Republican Committee
4431 Prince William Pkwy, Woodbridge, VA 22192, (703) 680-7388



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DEPARTMENT *of* ELECTIONS

August 12, 2015

Mr. James B. Alcorn
Dr. Clara Belle Wheeler
Ms. Singleton B. McAllister
State Board of Elections
1100 Bank Street First Floor
Richmond, VA 23219

Dear State Board of Elections Members:

On July 24, I wrote you to bring to your attention a violation with the campaign committee of Supporters of Jacqueline Smith for Clerk of the Circuit Court (it had not affixed proper authorization per § 24.2-956). Accompanied to this letter is another violation of requirements for print media advertisements sponsored by a candidate campaign committee. These palm cards lack a statement of "Paid for" or "Authorized by".

My July 24 letter also accompanies this letter. I appreciate your immediate attention to this.

Sincerely,

Sincerely,
Darrell Jordan
Vice Chairman, Prince William County Republican Committee
4431 Prince William Pkwy, Woodbridge, VA 22192, (703) 680-7388

Received by SBE AUG 14 15



Appendix B: Evidence

Exhibit 1: Pamphlet A

<div style="text-align: center;"> <p>★ ELECT JACQUELINE ★</p> <h1>SMITH</h1> <p>CLERK OF THE CIRCUIT COURT</p>  <p>FOR A BALANCED, EFFICIENT & RESPONSIVE CIRCUIT COURT</p> <p>SMITHFORCLERK.COM <i>Received by SBE AUG 14 '15</i></p> <p><small>CREATED IN-HOUSE BY VOLUNTEERS FOR THE SUPPORTERS OF JACQUELINE SMITH FOR CLERK OF THE CIRCUIT COURT</small></p> </div>	<div style="text-align: center;"> <p>★ ELECT JACQUELINE ★</p> <h1>SMITH</h1> <p>CLERK OF THE CIRCUIT COURT</p> <p><u>BALANCED</u></p> <p>Our Problem: Clerk and the appointed Deputy Clerk created an environment hostile to some members of our county based on their religious beliefs, the color of their skin and their sexual identity.</p> <p>Smith's Promise: Ensure justice and services are available to ALL Prince William County taxpayers.</p> <p><u>EFFICIENT</u></p> <p>Our Problem: Computerized documents and files are disorganized and can be unavailable to judges, clerks and taxpayers.</p> <p>Smith's Promise: Ensure electronic files are available to judges and Prince William County taxpayers.</p> <p><u>RESPONSIVE</u></p> <p>Our Problem: Phones not answered by a live person and taxpayers' questions left unanswered.</p> <p>Smith's Promise: Ensure phones will be answered by staff so taxpayers' questions are answered promptly.</p> <p style="text-align: right;"><i>Received by SBE AUG 14 '15</i></p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><small>Check the facts</small></p> <ol style="list-style-type: none"> 1. Va. Republican Leaders Call on GOP Party Treasurer to Resign Over Facebook Post, <i>Washington Post</i>, February 27, 2014 2. Va. GOP Treasurer is Said to Offer Resignation After Facebook Post on Muslims, <i>Washington Post</i>, July 31, 2014 3. Va. GOP Official Resigns After Controversial Facebook Post, <i>Washington Post</i>, August 7, 2014 4. Prince William Clerk Part of Same Sex Marriage Case, <i>Prince William Times</i>, January 25, 2014 </div> </div>
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Exhibit 2: Website

www.smithforclerk.com

Elect
JACQUELINE SMITH
CLERK OF THE CIRCUIT COURT

HOME ABOUT JACQUELINE WHY JACQUELINE? CONTACT

www.smithforclerk.com

Court in Dumfries, Virginia.
November 3 at 8:24am
Pete Singh came over from the office to wish us luck!

Website courtesy of the Supporters of Jacqueline Smith for Clerk of the Circuit Court.
Copyright Supporters of Jacqueline Smith for Clerk of the Circuit Court. All rights reserved.



Exhibit 3: Pamphlet B

ELECT
JACQUELINE
SMITH
CLERK OF THE
CIRCUIT COURT
FOR A BALANCED,
EFFICIENT &
RESPONSIVE
CIRCUIT COURT
SMITHFORCLERK.COM

CREATED IN-HOUSE BY VOLUNTEERS FOR
THE SUPPORTERS OF JACQUILINE SMITH FOR CLERK OF THE CIRCUIT COURT



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DEPARTMENT of ELECTIONS

Exhibit 4: Pamphlet C

ELECT
★ JACQUELINE ★
SMITH
CLERK OF CIRCUIT COURT



FOR A FAIR,
EFFICIENT
& RESPONSIVE
CIRCUIT COURT
CREATED BY THE SEBY VOLUNTEERS FOR THE SUPPORTERS
OF JACQUELINE SMITH FOR CLERK OF THE CIRCUIT COURT
SMITHFORCLERK.COM
(571) 762-2191

ELECT
★ JACQUELINE ★
SMITH
CLERK OF CIRCUIT COURT

★ FAIR ★

The Problem: Clerk and the appointed Deputy Clerk created an environment hostile to some members of our county based on their religious beliefs, the color of their skin and their sexual identity.*

Smith's Promise: Ensure justice and services are available to ALL Prince William County taxpayers.

★ EFFICIENT ★

The Problem: Computerized documents and files are disorganized and can be unavailable to judges, clerks and taxpayers.

Smith's Promise: Ensure electronic files are available to judges and Prince William County taxpayers.

★ RESPONSIVE ★

The Problem: Phones not answered by a live person and taxpayers' questions left unanswered.

Smith's Promise: Ensure phones will be answered by staff so taxpayers' questions are answered promptly.

- Check the facts:
1. Va. Republican Leaders Call on GOP Party Treasurer to Resign Over Facebook Post, *Washington Post*, February 27, 2014
 2. Va. GOP Treasurer to Step to Offer Resignation After Facebook Post on Muslims, *Washington Post*, July 31, 2014
 3. Va. GOP Official Resigns After Controversial Facebook Post, *Washington Post*, August 7, 2014
 4. Prince William Clerk Part of Same-Sex Marriage Case, *Prince William Times*, January 25, 2014



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Appendix C: Letter From Jacqueline Smith's Attorney,
Dated December 15, 2015



SMITH
FRANCIS
LAW
GROUP

December 15, 2015

Via Email

Brooks C. Braun, Esquire
1100 Bank Street
Washington Building-First Floor
Richmond, VA 23219-3974

Re: Supporters of Jacqueline Smith for Clerk of the Circuit Court (the "Committee")

Dear Mr. Braun:

Thank you for your response to my November 17, 2015 letter, which my client received on December 10, 2015. Per your request, please allow me to share with you my initial thoughts concerning the complaint filed against my client. Specifically, my client has been accused of violating Virginia Code Section 24.2-956 (Requirements for print media advertisements sponsored by a candidate campaign committee) because the print advertising materials and website allegedly did not include the "magic words" "paid for by" or "authorized by" as listed in the statute. As you will recall, an attribution statement did appear on each piece in question. More specifically, the website included the following statement "Website courtesy of the Supporters of Jacqueline Smith for Clerk of the Circuit Court". Likewise, the print materials in question included the statement "Created in-house by volunteers for the Supporters of Jacqueline Smith for Clerk of the Circuit Court".

Although it has been asserted that the attribution statements violate the statute because they do not include the "magic words", Virginia Code Section 24.2-955.3 (E) (Penalties for violations of this chapter) mandates "It *shall not* be deemed a violation of this chapter if the contents of the disclosure legend or statement *convey the required information*" (*emphasis added*). In this case, my client made clear that the advertisements were paid for and authorized by the Committee as they were created in-house using the Committee's resources and labor. Further, the resources used to create these items were timely reported as expenditures to the State Board of Elections.

Furthermore, the phrase "authorized by" has been met by the print advertising materials and the website. "Authorized by" as used in Virginia Code Section 24.2-956 is defined in Virginia Code Section 24.2-955.1 as having the same definition as "authorization" from Virginia Code Section 24.2-945.1. "Authorization" is defined by Virginia Code Section 24.2-945.1 as "express approval or express consent by the candidate, the candidate's campaign committee, or an agent of the candidate or his campaign committee after coordination." Materials which are "Created in-house by volunteers for the Supporters of Jacqueline Smith for Clerk of the Circuit Court" are necessarily "authorized by" as defined by the Virginia Code, and a "Website courtesy of the Supporters of Jacqueline Smith for Clerk of the Circuit Court" is also necessarily "authorized by" as defined by the Virginia Code. Even if it is somehow determined that "authorized by" has not been met, the attribution statements clearly "convey the required information." For these reasons, the complaint filed against my client must immediately be dismissed.

As you know, my client and I were prohibited from attending the November 16, 2015 public hearing of the complaint filed against my client as we did not receive notice of the hearing until after the hearing was held. Similarly, as you are aware, we are unable to attend the hearing set for December 16,

2525 POINTE CENTER COURT, SUITE 150, DUMFRIES, VIRGINIA 22026
TEL (571) 529-9379 FAX (571) 659-6194



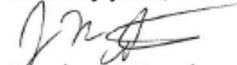
★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS



SMITH
FRANCIS
LAW
GROUP

2015 as we only received notice of same on Thursday. We respectfully request that the complaint filed against my client be immediately dismissed, or in the alternative, that the hearing of this complaint be continued to the next available hearing date. I understand from our recent telephone conference that you are confident a continuance will be granted. I look forward to hearing from you soon.

Sincerely yours,



Jonathan N. Francis

2525 POINTE CENTER COURT, SUITE 150, DUMFRIES, VIRGINIA 22026
TEL (571) 529-9379 FAX (571) 659-6194

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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Stand by Your Ad Complaint – Friends of Dusty Sparrow Reed

Executive Summary: Ryan Gleason submitted a complaint to the Department of Elections alleging that Friends of Dusty Sparrow Reed had distributed yard signs without disclosure statements. The Department recommends a fine of \$200 for an improperly disclosed yard sign distributed within the 14 days on or before the election.

Complainants: Ryan Gleason

Background: On election day, November 3, 2015, Mr. Gleason sent ELECT an email complaint regarding yard signs put out by the Friends of Dusty Sparrow Reed campaign, which omitted the necessary disclosures. Mr. Gleason provided a photograph of the signs. The email and photograph are attached.

Relevant Statutory and Policy Provisions:

§ 24.2-955 states that “The disclosure requirements of this Chapter [Stand by Your Ad] apply to any sponsor of an advertisement in the print media [...] the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 [the Campaign Finance Disclosure Act].”

§ 24.2-955.1 defines “Advertisement” as “any message appearing in the print media [...] that constitutes an expenditure under Chapter 9.3.”

§ 24.2-955.1 defines “Print Media” as “billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, yard signs, and outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.”



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§ 24.2-955.1 defines “Yard sign” as “a sign paid for or distributed by a candidate, [or] campaign committee [...] to be placed on public or private property. Yard signs paid for or distributed prior to July 1, 2015, shall not be subject to the provisions of §§ 24.2-956 and 24.2-956.1.”

§ 24.2-945.1 defines “expenditure” as “money and services of any amount, and any other thing of value, paid [...] by any candidate, [or] campaign committee [...] for the purpose of expressly advocating the election or defeat of a clearly identified candidate.”

§ 24.2-956 requires a print media advertisement sponsored by a candidate committee to “[bear] the legend or includes the statement: ‘Paid for by _____ [Name of candidate or campaign committee].’ Alternatively, if the advertisement is supporting a candidate who is the sponsor and the advertisement makes no reference to any other clearly identified candidate, then the statement ‘Paid for by _____ [Name of sponsor]’ may be replaced by the statement ‘Authorized by _____ [Name of sponsor].’”

§ 24.2-955.3 provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.” In its November 16, 2015 meeting the State Board set a practice of fining on a per occurrence basis for violations of print media requirements. During that same meeting, the Board also set a practice of fining first time violators of Stand by Your Ad \$100 per occurrence. At its subsequent meeting on December 16, 2015, the Board set a practice of doubling fines for persons who posted signs in the 14 days prior to or on the day of the election.

Analysis: The first step in an analysis of a Stand by Your Ad complaint is to determine if the communication at issue falls within the scope of the law requiring disclosures. To do so, § 24.2-955 requires a communication to be an “advertisement” as defined by § 24.2-955.1. The definition of “advertisement” requires the communication be an “expenditure” according to § 24.2-945.1. According to the definition in that section, something is a reportable expenditure only when it is “for the purpose of expressly advocating the election or defeat of a clearly identified candidate.” Therefore, for a communication to fall under the scope of § 24.2-955 it must contain what is known as “express advocacy.” Express advocacy is a term of art which has come to mean any communication containing express words of advocacy of election or defeat, such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “reject,” or some variation thereof. These are the so called “magic words.”

The communication disseminated by the Reed campaign contains the magic words “Dusty for School Board” and therefore qualifies as express advocacy. It also appears to be a communication for which the Reed Campaign paid something of value and is therefore an expenditures under § 24.2-945.1. Furthermore, this communication (a yard sign) falls squarely within the definition of print media and therefore qualifies as an advertisement under § 24.2-955.1. Because this communication is an



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advertisement falling within the scope of the Stand by Your Ad law provided in § 24.2-955, it is required to contain a disclosure statement.

The second step in an analysis of a Stand by Your Ad complaint is to determine whether an advertisement within the scope of that law contains the appropriate disclosure. For an advertisement in print media purchased by a candidate or their campaign committee, the required disclosure is provided in § 24.2-956. The advertisement must include the statement “Paid for by _____ [Name of sponsor],” or “Authorized by _____ [Name of sponsor]” for an advertisement that mentions no other candidate. Disclosures must be “displayed in a conspicuous manner in a minimum font size of seven point.”

The print media advertisement disseminated by the Reed campaign does not appear to contain any disclosure statement indicating who paid for or authorized it.

Conclusion: The Reed campaign has failed to properly comply with Stand by Your Ad in regards to the print media advertisements at issue.

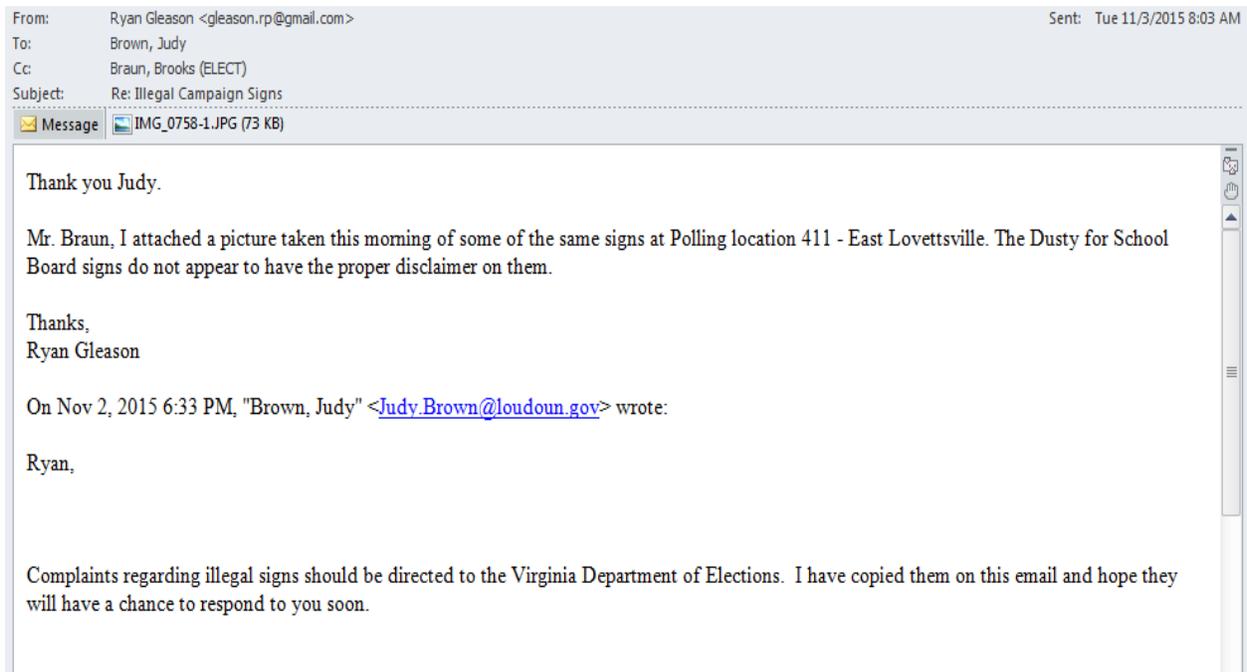
Staff Recommendations: The State Board should find that Friends of Dusty Sparrow Reed has violated the provisions of Stand by Your Ad and should fine the campaign accordingly in an amount not to exceed \$2,500. Since Ms. Reed is a first time violator of Stand by Your Ad, the Department would normally suggest she be fined \$100. However, since the complaint indicates that the signs were posted on election day, the department suggests that the fine be doubled to \$200.

Suggested Motion: “I move that, subject to the Board’s authority under § 24.2-955.3 of the *Code of Virginia*, Friends of Dusty Sparrow Reed has been found to be in violation of the print media disclosure requirements of Stand by Your Ad, and is thereby fined \$200 for a first time violation.”

Authority: § 24.2-955.3(D) provides that “The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty.” § 24.2-955.3(A) provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.”



Appendix A: Email





Appendix B: Photograph





Appendix C: Exhibits Submitted by Friends of Dusty Sparrow Reed

Exhibit 1: Road Sign (Disclosure at Bottom)





Exhibit 2: Yard Sign (Disclosure at Top Left)





Exhibit 3: Close-up of Disclosure

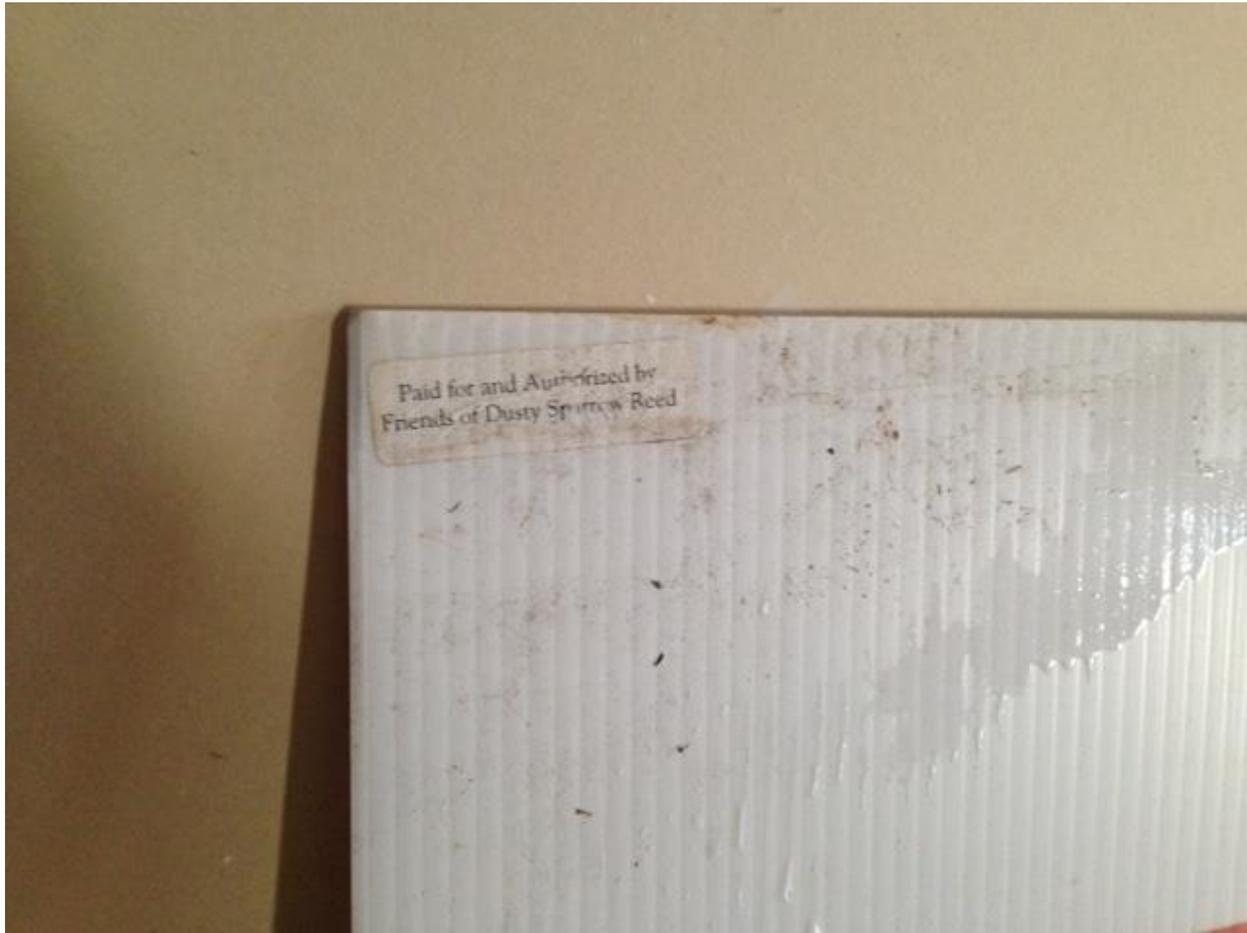




Exhibit 4: Signs at the Precinct (Disclosure at Bottom Right)





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Exhibit 5: Signs at Precinct (Disclosure Bottom Right)





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Exhibit 6: Facebook Exchange

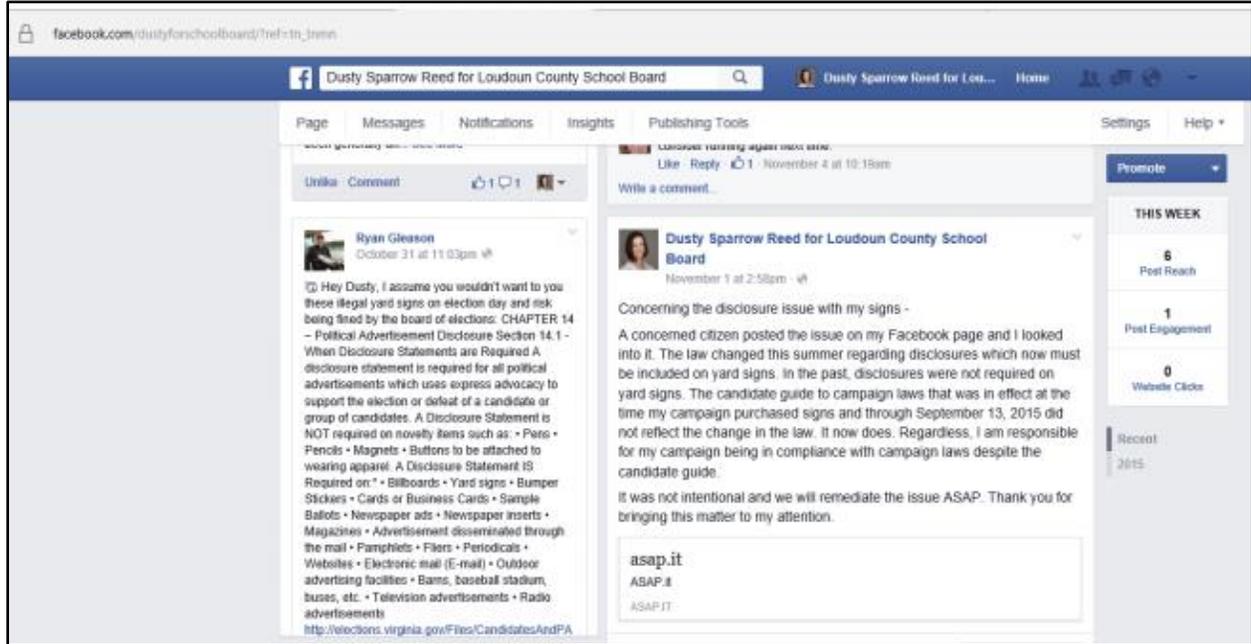


Exhibit 7: Sign Purchase Disclosure

**Friends of Dusty Sparrow Reed
(CC-15-00506)**

Reporting Period: 09/01/2015 Through: 09/30/2015
Page: 4 of 9

Schedule D: Expenditures Person or Company Paid and Address	Item or Service	Name of Person Authorizing Expenditure	Date of Expenditure	Amount Paid
Paypal 12312 Port Grace Boulevard La Vista, NE 68128	Credit Card Processing Fee	Dusty Sparrow Reed	09/01/2015	\$3.20
Signsonthecheap.com 11525a Stonehollow Drive Suite 100 Austin, TX 78758	Yard Signs	Dusty Sparrow Reed	09/08/2015	\$458.07
Capitol Promotions PO Box 231 Glenside, PA 19038	Road Signs	Dusty Sparrow Reed	09/18/2015	\$425.00
Home Depot 43675 Greenway Corporate Dr Ashburn, VA 20147	Stakes and supplies for Road Signs	Dusty Sparrow Reed	09/28/2015	\$80.66
Total This Period				\$966.93



Exhibit 8: Campaign Finance Guide (Revised October 28, 2014)

CHAPTER 14 – Political Advertisement Disclosure

Section 14.1 - When Disclosure Statements are Required

A disclosure statement is required for all political advertisements which uses express advocacy to support the election or defeat of a candidate or group of candidates.

A Disclosure Statement is NOT required on:

- Yard Signs;
 - The Virginia Department of Elections is currently working on a regulation to define “yard sign”.
- Novelty items such as;
 - Pens
 - Pencils
 - Magnets
 - Buttons to be attached to wearing apparel.

A Disclosure Statement IS Required on:*

- Billboards;
- Bumper Stickers;
- Cards or Business Cards;
- Sample Ballots;
- Newspaper ads;
- Newspaper inserts;
- Magazines;
- Advertisement disseminated through the mail;
- Pamphlets;
- Fliers;
- Periodicals;
- Websites;
- Electronic mail (E-mail);
- Outdoor advertising facilities
- Buses, baseball stadium, buses, etc.;
- Television advertisements;
- Radio advertisements.

* No disclosure is required for individuals who incur only referendum expenses or whose aggregate expenditures for or against a candidate, in an election cycle, do not exceed \$200 for a non-statewide candidate or \$1,000 for a statewide candidate.



Exhibit 9: Campaign Finance Guide (Revised September 14, 2015)

CHAPTER 14 – Political Advertisement Disclosure

Section 14.1 - When Disclosure Statements are Required

A disclosure statement is required for all political advertisements which uses express advocacy to support the election or defeat of a candidate or group of candidates.

A Disclosure Statement is NOT required on novelty items such as:

- Pens
- Pencils
- Magnets
- Buttons to be attached to wearing apparel.

A Disclosure Statement IS Required on:*

- Billboards
- Yard signs
- Bumper Stickers
- Cards or Business Cards
- Sample Ballots
- Newspaper ads
- Newspaper inserts
- Magazines
- Advertisement disseminated through the mail
- Pamphlets
- Fliers
- Periodicals
- Websites
- Electronic mail (E-mail)
- Outdoor advertising facilities
- Buses, baseball stadium, buses, etc.
- Television advertisements
- Radio advertisements

* No disclosure is required for individuals who incur only referendum expenses or whose aggregate expenditures for or against a candidate, in an election cycle, do not exceed \$200 for a non-statewide candidate or \$1,000 for a statewide candidate.

Section 14.2 - Requirements for Publications

It is unlawful for any of the entities listed below, to accept or receive or agree to accept or receive any money or other valuable consideration for supporting or advocating the election or defeat of any candidate:

- Owner;



Exhibit 10: Bull Elephant Article

LATEST Rights and Wrongs on the Berg Affair about 21 hours ago Search... Sui



Home Article Archive NoVA News Fun Stuff Contact About

Loudoun Candidate Violates Campaign Law

October 31, 2015 Jeanine Martin 8 comments



Fun Stuff

-  17 Weird Things We Do In Virginia
November 8, 2015
-  The Ten Drunkest Cities and Counties in Virginia
October 26, 2015
-  Ten Most Sinful Cities in Virginia
October 16, 2015



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STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

February 23, 2016

Friends of Dusty Sparrow Reed

21015 Hooded Crow Drive

Leesburg, VA 20175

Dear Ms. Reed,

The State Board of Elections (SBE) received a complaint about a possible violation of the Campaign Finance Disclosure Act. Specifically, yard signs placed at a polling location, which omitted the disclosure statement required by § 24.2-956 of the Code of Virginia. “Stand by Your Ad” provisions require disclaimers on political advertisements appearing in print media, television ads and on radio.

The § 24.2-955.3 of the Code of Virginia provides that all disclaimer complaints go to the Board to determine the amount of civil penalties to be assessed. Civil penalties for violations of the Campaign Finance Disclosure Act may not exceed \$2,500.

The Board is holding its public meeting on Tuesday, March 15, 2016 at 10:00 a.m. You may attend and/or provide information to the Board which may help the Board reach a decision. If you cannot appear you will be notified by letter of the Board decision. Should the Board decide to assess a penalty, payment must be made within 30 days of the receipt of a letter advising you of the Board decision.

If you need further information please contact me at 1-800-552-9745 ext. 8924.

Sincerely,

Brooks C. Braun, Esq.
Policy Analyst

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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Stand by Your Ad Complaint – Constance “Sis” Kelly-Rice

Executive Summary: David Clary submitted a complaint to the Department of Elections alleging that Constance “Sis” Kelly-Rice had distributed sample ballots without disclosure statements. The Department recommends a fine of \$200 for an improperly disclosed sample ballot distributed within the 14 days on or before the election.

Complainants: David Clary

Background: On November 16, 2015, Mr. Clary sent ELECT an email regarding sample ballots being handed out by Constance “Sis” Kelly-Rice, which omitted the necessary disclosures. Mr. Clary provided a photograph of the sample ballot. The email and photograph are attached.

Relevant Statutory and Policy Provisions:

§ 24.2-955 states that “The disclosure requirements of this Chapter [Stand by Your Ad] apply to any sponsor of an advertisement in the print media [...] the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 [the Campaign Finance Disclosure Act].”

§ 24.2-955.1 defines “Advertisement” as “any message appearing in the print media [...] that constitutes an expenditure under Chapter 9.3.”

§ 24.2-622 provides that “All sample ballots, excepting those official sample ballots authorized by electoral boards, are advertisements for purposes of [Stand by Your Ad]”

§ 24.2-945.1 defines “expenditure” as “money and services of any amount, and any other thing of value, paid [...] by any candidate, [or] campaign committee [...] for the purpose of expressly advocating the election or defeat of a clearly identified candidate.”



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DEPARTMENT *of* ELECTIONS

§ 24.2-956 requires a print media advertisement sponsored by a candidate committee to “[bear] the legend or includes the statement: ‘Paid for by _____ [Name of candidate or campaign committee].’ Alternatively, if the advertisement is supporting a candidate who is the sponsor and the advertisement makes no reference to any other clearly identified candidate, then the statement ‘Paid for by _____ [Name of sponsor]’ may be replaced by the statement ‘Authorized by _____ [Name of sponsor].’”

§ 24.2-955.3 provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.” In its November 16, 2015 meeting the State Board set a practice of fining on a per occurrence basis for violations of print media requirements. During that same meeting, the Board also set a practice of fining first time violators of Stand by Your Ad \$100 per occurrence. At its subsequent meeting on December 16, 2015, the Board set a practice of doubling fines for persons who distributed advertisements in the 14 days prior to or on the day of the election.

Analysis: The first step in an analysis of a Stand by Your Ad complaint is to determine if the communication at issue falls within the scope of the law requiring disclosures. To do so, § 24.2-955 requires a communication to be an “advertisement” as defined by § 24.2-955.1. The definition of “advertisement” requires the communication be an “expenditure” according to § 24.2-945.1. According to the definition in that section, something is a reportable expenditure only when it is “for the purpose of expressly advocating the election or defeat of a clearly identified candidate.” Therefore, for a communication to fall under the scope of § 24.2-955 it must contain what is known as “express advocacy.” Express advocacy is a term of art which has come to mean any communication containing express words of advocacy of election or defeat, such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “reject,” or some variation thereof. These are the so called “magic words.”

The communication disseminated by Ms. Kelly-Rice contains the magic words “Vote For” with the box next to Ms. Kelly-Rice’s name filled in and therefore qualifies as express advocacy. It also appears to be a communication for which Ms. Kelly-Rice paid something of value and is therefore an expenditures under § 24.2-945.1. Furthermore, this communication (a sample ballot) is an advertisement for the purposes of Stand by Your Ad by virtue of § 24-622. . Because this communication is an advertisement falling within the scope of the Stand by Your Ad law provided in § 24.2-955, it is required to contain a disclosure statement.

The second step in an analysis of a Stand by Your Ad complaint is to determine whether an advertisement within the scope of that law contains the appropriate disclosure. For an advertisement in print media purchased by a candidate or their campaign committee, the required disclosure is provided in § 24.2-956. The advertisement must include the statement “Paid for by _____ [Name of sponsor],” or “Authorized by _____ [Name of sponsor]” for an advertisement that mentions no other



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candidate. Disclosures must be “displayed in a conspicuous manner in a minimum font size of seven point.”

The print media advertisement disseminated by Ms. Kelly-Rice does not appear to contain any disclosure statement indicating who paid for or authorized it.

Conclusion: Ms. Kelly-Rice has failed to properly comply with Stand by Your Ad in regards to the print media advertisements at issue.

Staff Recommendations: The State Board should find that Constance “Sis” Kelly-Rice has violated the provisions of Stand by Your Ad and should fine the campaign accordingly in an amount not to exceed \$2,500. Since Ms. Kelly-Rice is a first time violator of Stand by Your Ad, the Department would normally suggest she be fined \$100. However, since the complaint indicates that the violation occurred within the 14 days prior to or on the day of the election, the fine should be doubled to \$200.

Suggested Motion: “I move that, subject to the Board’s authority under § 24.2-955.3 of the *Code of Virginia*, Constance “Sis” Kelly-Rice has been found to be in violation of the print media disclosure requirements of Stand by Your Ad within the 14 days prior to or on the election, for the first time, and in a single instance and is thereby fined \$200.”

Authority: § 24.2-955.3(D) provides that “The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty.” § 24.2-955.3(A) provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.”



Appendix A: Complaint

 **RE: Voter Complaint: 11/12/2015 1:54:24 PM** [Hide Details](#)

From: govote025@brunswickco.com Date: 11/16/15 11:41 AM

To: matthew.davis@elections.virginia.gov; wasay43@yahoo.com; dutchessangel@aol.com; eggs.22@live.com; brooks.braun@elections.virginia.gov

Matt,

Mrs. Kelly-Rice has not reported these suspected violations to my office. I received a few phone calls concerning this matter on election day and my Board was informed by a poll worker that there was a white sample ballot being distributed around at the precincts. Our Chairman, Mr. Sayko, went to the poll in question and discovered that the ballot was a shade of blue. The first two attachments are of one of the sample ballots in question. I called Mr. Braun about the legality of this and he informed me that there was nothing in the code that would not allow this. The third attachment is of another sample ballot that was being distributed by Mrs. Kelly-Rice. Does the lack of "Authorized or payed (paid) for by the candidate" apply to her sample ballot and does it violate VA Code 24.2-956?

In regards to Arnika T. Green's signs, I didn't not personally see or know about this violation. However, I was informed about signs for Mr. Timothy F. Puryear (See Attachments), by several candidates and citizens. None of his signs displayed "Authorized or paid for by." Mr. Puryear's signs were noted **two days prior to election** and the larger sign is still in place.

I have not respond to Mrs. Kelly-Rice's complaint in this email at this time, but I have forwarded this to my Board and Mr. Braun. Please let me know how I should finalize these matters with Mrs. Kelly-Rice.

Thanks,
David Clary



Appendix B: Evidence

SAMPLE BALLOT

CLERK OF COURT

(VOTE FOR ONLY ONE)

Timothy F. Puryear (Withdraw)

Arnika T. Green

Constance "Sis" Kelly-Rice

V. Earl Stanley, Jr.



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Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

Yard Sign





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STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

February 23, 2016

Constance "Sis" Kelly-Rice
22622 Christanna Hwy
Lawrenceville VA 23868-2403

Dear Ms. Kelly-Rice,

The State Board of Elections (SBE) received a complaint about a possible violation of Virginia's Stand by Your Ad law; specifically, sample ballots disseminated by your campaign (attached) that omit the disclosure statement required by § 24.2-956 of the Code of Virginia. Stand by Your Ad provisions require disclaimers on political advertisements appearing in print media, television ads and on radio.

The § 24.2-955.3 of the Code of Virginia provides that all disclaimer complaints go to the Board to determine the amount of civil penalties to be assessed. Civil penalties for violations of the print media requirements of Stand by Your Ad may not exceed \$2500.

The Board is holding its public meeting on Tuesday, March 15, 2016 at 10:00 a.m. You may attend and/or provide information to the Board which may help the Board reach a decision. If you cannot appear you will be notified by letter of the Board decision. Should the Board decide to assess a penalty, payment must be made within 30 days of the receipt of a letter advising you of the Board decision.

If you need further information please contact me at 1-800-552-9745 ext. 8924.

Sincerely,

Brooks C. Braun, Esq.
Policy Analyst



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STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

Exhibit A: Sample Ballot

SAMPLE BALLOT

CLERK OF COURT

(VOTE FOR ONLY ONE)

Timothy F. Puryear (Withdrawn)

Arnika T. Green

Constance "Sis" Kelly-Rice

V. Earl Stanley, Jr.

Blank Page



Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Stand by Your Ad Complaint – Timothy Puryear

Executive Summary: David Clary submitted a complaint to the Department of Elections alleging that Timothy Puryear had distributed yard signs without disclosure statements, posted in the 14 days before the election. The Department recommends a fine of \$200 for an improperly disclosed yard sign distributed within the 14 days on or before the election.

Complainants: David Clary

Background: On November 12, 2015, Mr. Clary filed a complaint with the Department of Elections regarding yard signs posted by Mr. Puryear “two days prior to [the] election” on Tuesday, November 3, 2015. The complaint contained photographic evidence that the yard signs did not contain the required disclosure statements. The complaint and photographs are attached.

Relevant Statutory and Policy Provisions:

§ 24.2-955 states that “The disclosure requirements of this Chapter [Stand by Your Ad] apply to any sponsor of an advertisement in the print media [...] the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 [the Campaign Finance Disclosure Act].”

§ 24.2-955.1 defines “Advertisement” as “any message appearing in the print media [...] that constitutes an expenditure under Chapter 9.3.”

§ 24.2-955.1 defines “Print Media” as “billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, yard signs, and outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.”



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§ 24.2-955.1 defines “Yard sign” as “a sign paid for or distributed by a candidate, [or] campaign committee [...] to be placed on public or private property. Yard signs paid for or distributed prior to July 1, 2015, shall not be subject to the provisions of §§ 24.2-956 and 24.2-956.1.”

§ 24.2-945.1 defines “expenditure” as “money and services of any amount, and any other thing of value, paid [...] by any candidate, [or] campaign committee [...] for the purpose of expressly advocating the election or defeat of a clearly identified candidate.”

§ 24.2-956 requires a print media advertisement sponsored by a candidate committee to “[bear] the legend or includes the statement: ‘Paid for by _____ [Name of candidate or campaign committee].’ Alternatively, if the advertisement is supporting a candidate who is the sponsor and the advertisement makes no reference to any other clearly identified candidate, then the statement ‘Paid for by _____ [Name of sponsor]’ may be replaced by the statement ‘Authorized by _____ [Name of sponsor].’”

§ 24.2-955.3 provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.” In its November 16, 2015 meeting the State Board set a practice of fining on a per occurrence basis for violations of print media requirements. During that same meeting, the Board also set a practice of fining first time violators of Stand by Your Ad \$100 per occurrence. In its December 16, 2015 meeting the State Board set a practice of doubling the fine for a first time violator to \$200 for a violation occurring in the 14 days prior to or on the day of the election.

Analysis: The first step in an analysis of a Stand by Your Ad complaint is to determine if the communication at issue falls within the scope of the law requiring disclosures. To do so, § 24.2-955 requires a communication to be an “advertisement” as defined by § 24.2-955.1. The definition of “advertisement” requires the communication be an “expenditure” according to § 24.2-945.1. According to the definition in that section, something is a reportable expenditure only when it is “for the purpose of expressly advocating the election or defeat of a clearly identified candidate.” Therefore, for a communication to fall under the scope of § 24.2-955 it must contain what is known as “express advocacy.” Express advocacy is a term of art which has come to mean any communication containing express words of advocacy of election or defeat, such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “reject,” or some variation thereof. These are the so called “magic words.”

The communication disseminated by Mr. Puryear contains the magic words “Re-elect Timothy F. Puryear” and therefore clearly qualifies as express advocacy. It also appears to be a communication for which Mr. Puryear paid something of value and is therefore an expenditure under § 24.2-945.1. Furthermore, this communication (yard sign) falls squarely within the definition of print media and therefore qualifies as an advertisement under § 24.2-955.1. Because this communication is an



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DEPARTMENT *of* ELECTIONS

advertisement falling within the scope of the Stand by Your Ad law provided in § 24.2-955, it is required to contain a disclosure statement.

The second step in an analysis of a Stand by Your Ad complaint is to determine whether an advertisement within the scope of that law contains the appropriate disclosure. For an advertisement in print media purchased by a candidate or their campaign committee, the required disclosure is provided in § 24.2-956. The advertisement must include the statement "Paid for by _____ [Name of sponsor]," or "Authorized by _____ [Name of sponsor]" for an advertisement that mentions no other candidate. Disclosures must be "displayed in a conspicuous manner in a minimum font size of seven point."

The print media advertisement disseminated by Mr. Puryear does not contain any disclosure statement indicating who paid for or authorized it.

Conclusion: Mr. Puryear has failed to properly comply with Stand by Your Ad in regards to the print media advertisements at issue.

Staff Recommendations: The State Board should find that Mr. Timothy Puryear has violated the provisions of Stand by Your Ad and should fine his campaign accordingly in an amount not to exceed \$2,500. Since Mr. Puryear is a first time violator of Stand by Your Ad, the Department would normally suggest he be fined \$100 per occurrence. However, because the infraction occurred in the period two weeks before an election, the Department suggests a fine of \$200.

Suggested Motion: "I move that, subject to the Board's authority under § 24.2-955.3 of the *Code of Virginia*, Mr. Timothy Puryear has been found to be in violation of the print media disclosure requirements of Stand by Your Ad within the 14 days prior to or on the election, for the first time, and in a single instance and is thereby fined \$200."

Authority: § 24.2-955.3(D) provides that "The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty." § 24.2-955.3(A) provides that "Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500."



Appendix A: Complaint

 **RE: Voter Complaint: 11/12/2015 1:54:24 PM** [Hide Details](#)

From: govote025@brunswickco.com Date: 11/16/15 11:41 AM

To: matthew.davis@elections.virginia.gov; wasay43@yahoo.com; dutchessangel@aol.com; eggs.22@live.com; brooks.braun@elections.virginia.gov

Matt,

Mrs. Kelly-Rice has not reported these suspected violations to my office. I received a few phone calls concerning this matter on election day and my Board was informed by a poll worker that there was a white sample ballot being distributed around at the precincts. Our Chairman, Mr. Sayko, went to the poll in question and discovered that the ballot was a shade of blue. The first two attachments are of one of the sample ballots in question. I called Mr. Braun about the legality of this and he informed me that there was nothing in the code that would not allow this. The third attachment is of another sample ballot that was being distributed by Mrs. Kelly-Rice. Does the lack of "Authorized or payed (paid) for by the candidate" apply to her sample ballot and does it violate VA Code 24.2-956?

In regards to Arnika T. Green's signs, I didn't not personally see or know about this violation. However, I was informed about signs for Mr. Timothy F. Puryear (See Attachments), by several candidates and citizens. None of his signs displayed "Authorized or paid for by." Mr. Puryear's signs were noted two days prior to election and the larger sign is still in place.

I have not respond to Mrs. Kelly-Rice's complaint in this email at this time, but I have forwarded this to my Board and Mr. Braun. Please let me know how I should finalize these matters with Mrs. Kelly-Rice.

Thanks,
David Clary



Appendix B: Evidence





Appendix C: Submissions by Timothy Puryear

Exhibit 1: Detailed Photograph





Exhibit 2: Candidate Statement

Good Morning,

I hope all is well. Today, I write to confirm that I am in receipt of the correspondence sent regarding a compliant (possible violation of Stand by Your Ad law- § 24.2956) that was filed as well as an upcoming public hearing. Since the receipt of this correspondence, I have been in contact with Mr. Braun and he has advised that I have a right to submit a copy of exhibits in which I would like to be considered during the public hearing. As a result of the aforementioned, I have attached a copy of the campaign sign used during bid for re-election to the Totaro District School Board seat attached to the body of this email. I hope that this will answer any questions is in which the Board may have relative to my compliance with the law. I would like to request in advance that if there are any additional questions that arise during the public hearing that was not clearly stated in the noted correspondence that I be contact so I may personally attend to address accordingly.

In another matter, I am growing increasing concerned with what appears to be a clear Conflict of Interest with the Brunswick County Registrar. As you may or may not be aware, during the November General Election I sought re-election as write-in candidate. During this election, other individuals campaigned and submitted their name to be considered for the noted position as well. One particular individual (Donald Bain Clary) is the father of the Brunswick County Registrar (David Clary). When I first announced that I would seek re-election, I was quite optimistic that this would be a fair and untainted election process; yet information in which I received and actions in in which I witnessed firsthand has casted a substantial amount of doubt. In attempt to make this brief, I am going to put the following in bullet points and I have witnesses to support the following claims and statements.

Prior to Election Day 2015

1. Once absentee voting commenced, I began to received calls that the Registrar was advising voters who came to the Central Absentee Precinct (located in registrar office) of the candidate(s) who we were running as write- ins for the Totaro District seat (which to include the Registrar's father).

Points of inquiry

- a. What are the laws governing campaigning and/or advocating for candidates in polling places?
- b. Furthermore, what does the law states regarding the Registrar campaigning for particular candidates, especially in the precinct and/or their office?
- c. Are Registrar allowed to utilize their official capacity to influence election results?
- d. Are there laws governing possible conflict of interest regarding Registrar and their official position?

Election Day



2. A number of concerns were raised during this election regarding the use of sample ballots which has been a practice that complied with State Statute for quite some time. This practice garnered much attention from a special interest group in which the above named individual has close ties. As a result, the Registrar engaged in numerous conversations and provided guidance in an attempt to have this practice ceased on Election Day and thereafter. After candidates and political parties consulted other individuals the practice was able to continue on that day. The Registrar continuing to be concerned with this matter (despite being advised of the law); pursued this further by collecting and maintaining copies of the ballots on his desk several days after the election.

3. On Election Day, Election Officials were instructed by the Registrar not to count the write-in ballots which included the Totaro District School Board seat where no one was on the ballot. The ballots were counted the next day. At that time, some preliminary numbers were posted to the Virginia State Board of Election website. These numbers continue to vary throughout the process causing some skepticism. Based on the preliminary count (Nov. 4th) of votes casted at the actual precinct on Election Day it appeared that I has successfully won a re-election bid. It is to my understanding from several witnesses the Registrar insisted that the absentee ballots be counted as it may change the results. I understand that every vote had to be counted and I agree that all votes must be counted before a winner is declared. It is based upon the item noted in #1 that caused me to doubt the results. Coincidentally, the largest amount of absentee ballots of the entire county and all districts came from the Totaro District, where Donald Bain Clary (the father of the Registrar) was the primary beneficiary of the votes. Closing the margin to only a few votes where the determination rested upon only about four provisional ballots. After numerous phone calls to the local Registrar office, I was told that no information even preliminary information could be provided to me at that time (November 4 & 5) and that the results should be final on Friday, November 6. I received a called on Thursday, stating that a close relative of the Registrar had advised them that there would be no change in the results and to include who had come in to satisfy the requirements to have their votes counted. Due to the surmounting doubt, I departed the training in which I attended to observe the count of the provisional ballots. Coincidentally, the results for the Totaro District remained unchanged.
Please note: During the counting of the votes the Registrar was very instrumental in providing guidance to the local electoral Board as to which votes could be counted.

After the Election

4. After the final votes were tallied, I waited patiently for the Board and/or the Registrar to declare a winner that never happened. I was passed from the Board to the Registrar from the Registrar to the Board with the Registrar eventually getting frustrated. He later came in dropped the print out of all the votes cast for write in on the desk in which I was sitting. When asked who won and he said that it was right there. I had to look through the results to determine that I had won.



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DEPARTMENT *of* ELECTIONS

Prior to November 6th, I had already I spoke with someone from the State Board of Elections and advised that I would like to seek a recount due to the concern in which I had relative this year's election process. I was advised that I could not request a recount until the results were final and if I was the winner/successful candidate I would not be able to ask for a recount.

5. On December 10, 2015 (37 days after the election and 34 days after final votes counted), I received an email correspondence from Mr. David Clary stating that he had been contacted by the Virginia State Board of Elections stating the following:

***“Mr. Puryear, I have been ask by the State Board of Elections to verify if you met any of the conditions in Virginia State Code [§ 24.2-947.1 \(A\)](#). If you have accepted any contributions, expended any funds, designated a campaign depository, or appointed a treasurer you needed to file a Statement of Organization (SOO) within 10 days of that time. Pursuant to [§ 24.2-948.2](#), if the previous code applies and you need to file campaign finance reports, then you cannot take office until those reports are filed and a late filing penalty may be required.*”**

Concerned by this correspondence, I reached out to the State Board of Elections and guidance was advised to speak with the local electoral board if there were any additional questions and/or concerns. A meeting was scheduled and very little guidance could be provided at the Electoral Board advised that a vast majority of the authority has been taken away from the Board and given to the Registrar. This presented its own dilemma as the Registrar was the one in which I suspect there could be a conflict of interest. Please note that I was advised during the meeting with the local Electoral Board that Mr. Clary had work with the State Board of elections to get the fine and/or late filing fee reduced to \$200.00. This was a supposedly reduction from \$2,500 dollars that the Board stated that I may be subjected to yet I was never personally contacted by the State Board of Elections.

In addition, the Board could not advise me of any other write-in candidate that the State Board of Elections contacted the Registrar on to verify if they had met Campaign Finance Disclosure requirements. Please note that there were several individuals that who names appeared as a write in candidate for this particular position. Eager to get the matter resolved I ensured that I satisfied any and all requirements so that I may be able to office.

6. On February 27, 2016, I received a certified letter from State Board of Elections regarding a compliant about a possible violation of Virginia's Stand by Your Ad Law. I spoke with Mr. Braun and I ask if he could pull a copy of the picture which is presented as Exhibit A and I directed where he could find my disclaimer. He asked if I could provide a clearer copy and I stated that I could and I have attached it to this correspondence. I further inquired as to who filed the complaint as I vividly recall a conversation that was taking place on election day between the



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above noted candidate and members of this Special Interest group. It was to my surprise that the complaint came from the Registrar the son of the candidate that placed second in this race. If this was a concern why wasn't this matter brought forth earlier. In addition, the picture had to be taken prior to the sign being taken down so why was this just mentioned nearly three months later.

I attempted to make this brief (omitting other incidents that would further solidify my case) so that the Board can get an idea of what has been transpiring; could investigate this matter and take actions that they feel is most appropriate.

If there are any additional questions please feel free to contact me.



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STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

February 23, 2016

Timothy Puryear
105 E Fifth AVE
Lawrenceville VA 23868-2403

Dear Mr. Puryear,

The State Board of Elections (SBE) received a complaint about a possible violation of Virginia's Stand by Your Ad law; specifically, yard signs disseminated by your campaign (attached) that omit the disclosure statement required by § 24.2-956 of the Code of Virginia. Stand by Your Ad provisions require disclaimers on political advertisements appearing in print media, television ads and on radio.

The § 24.2-955.3 of the Code of Virginia provides that all disclaimer complaints go to the Board to determine the amount of civil penalties to be assessed. Civil penalties for violations of the print media requirements of Stand by Your Ad may not exceed \$2500.

The Board is holding its public meeting on Tuesday, March 15, 2016 at 10:00 a.m. You may attend and/or provide information to the Board which may help the Board reach a decision. If you cannot appear you will be notified by letter of the Board decision. Should the Board decide to assess a penalty, payment must be made within 30 days of the receipt of a letter advising you of the Board decision.

If you need further information please contact me at 1-800-552-9745 ext. 8924.

Sincerely,

Brooks C. Braun, Esq.
Policy Analyst



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

Exhibit A: Yard Sign



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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Express Advocacy Update – Request for Dismissal – Edwards for Virginia State Senate

Complaint Summary: On October 13, 2015, Mr. Lx Fangonilo sent the members of the State Board of Elections an email complaint regarding a TV advertisement produced by the Edwards for Virginia State Senate campaign, which omitted the necessary disclosures. Mr. Fangonilo provided the following link to a YouTube video of the advertisement playing on a TV: <https://www.youtube.com/watch?v=rHDxKZy-4Q>. The advertisement does not explicitly ask viewers to vote for Mr. Edwards or against his opponent. The complaint was forwarded to the Department of Elections. On November 6, 2015 the State Board decided to defer a hearing on the complaint until a decision was made on the issue of express advocacy.

Background: Several complaints alleging improper disclosure of advertisements in the November, 2015 election are pending hearings before the Board until a decision regarding interpretation of the term “expressly advocating” as used in the *Code of Virginia* § 24.2-945.1 is rendered. As explained in the January 8, 2016 meeting, the Board’s legal authority in this area is unclear. In that same meeting the State Board directed their council in the Attorney General’s office to work with the Department to determine the extent of the Board’s authority to interpret this provision of the code and the permissible breadth of any such interpretation made by the Board. While the Department has continued to work with the Attorney General’s office to provide sound legal guidance to the Board on this matter, it is still not clear what the timeline might be for producing a final recommendation. Even if such a recommendation were to materialize in the near term, it is possible that it may indicate the need to produce a regulation on express advocacy before proceeding to adjudicate complaints in which express advocacy is an issue.

Suggested Action: In lieu of a clear timeframe in which the issue of express advocacy can be resolved, and in view of the already considerable delay endured by the Edwards campaign, the Department of Elections feels that further delay of these complaints is unjust. Accordingly, the Department suggests that the Board dismiss the currently pending complaints against Edwards for Virginia State Senate.



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DEPARTMENT *of* ELECTIONS

Suggested Motion: “I move that the complaint against Edwards for Virginia State Senate stemming from alleged violations of advertisement disclosure requirements during the November 3, 2015 election, be dismissed.”

Authority: § 24.2-955.3(D) provides that “The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty.” § 24.2-955.3(A) provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.”



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STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

February 23, 2016

Edwards for Virginia State Senate

P.O. Box 1179

Roanoke, VA 24015

Dear Sen. Edwards,

The Department of Elections received a complaint about a possible violation of Virginia's Stand by Your Ad law by your campaign pertaining to the November 3, 2015 general election. The State Board of Elections will be holding a public meeting on Tuesday, March 15, 2016 on a topic that may affect the disposition of the complaint against your committee. Your attendance is not required, but you may provide general input at this open meeting if you wish. In any event, you will be notified of any changes in the status of this complaint, or of any future meetings that may affect its outcome.

If you need further information please contact me at 1-800-552-9745 ext. 8924.

Sincerely,

Brooks C. Braun, Esq.
Policy Analyst

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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Express Advocacy Update – Request for Dismissal – Parisot for Delegate

Complaint Summary: On August 13, 2015 Mr. William E. Sudow e-mailed the Department a complaint alleging violations of campaign finance law by Parisot for Delegate; specifically, the Parisot campaign’s failure to properly disclose a letter to potential voters in Great Falls, VA. The letter did not explicitly ask readers to vote for Mr. Parisot or against his opponent. The complaint was forwarded to the Department of Elections. On November 6, 2015 the State Board decided to defer a hearing on the complaint until a decision was made on the issue of express advocacy.

Background: Several complaints alleging improper disclosure of advertisements in the November, 2015 election are pending hearings before the Board until a decision regarding interpretation of the term “expressly advocating” as used in the *Code of Virginia* § 24.2-945.1 is rendered. As explained in the January 8, 2016 meeting, the Board’s legal authority in this area is unclear. In that same meeting the State Board directed their council in the Attorney General’s office to work with the Department to determine the extent of the Board’s authority to interpret this provision of the code and the permissible breadth of any such interpretation made by the Board. While the Department has continued to work with the Attorney General’s office to provide sound legal guidance to the Board on this matter, it is still not clear what the timeline might be for producing a final recommendation. Even if such a recommendation were to materialize in the near term, it is possible that it may indicate the need to produce a regulation on express advocacy before proceeding to adjudicate complaints in which express advocacy is an issue.

Suggested Action: In lieu of a clear timeframe in which the issue of express advocacy can be resolved, and in view of the already considerable delay endured by the Parisot campaign, the Department of Elections feels that further delay of these complaints is unjust. Accordingly, the Department suggests that the Board dismiss the currently pending complaints against Parisot for Delegate.

Suggested Motion: “I move that the complaint against Parisot for Delegate stemming from alleged violations of advertisement disclosure requirements during the November 3, 2015 election, be dismissed.”



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DEPARTMENT *of* ELECTIONS

Authority: § 24.2-955.3(D) provides that “The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty.” § 24.2-955.3(A) provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.”



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STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

February 23, 2016

Parisot for Delegate

1350 Beverly Rd., Ste 115, PMB 466

McLean, VA 22101-3633

Dear Mr. Parisot,

The Department of Elections received a complaint about a possible violation of Virginia's Stand by Your Ad law by your campaign pertaining to the November 3, 2015 general election. The State Board of Elections will be holding a public meeting on Tuesday, March 16, 2016 on a topic that may affect the disposition of the complaint against your committee. Your attendance is not required, but you may provide general input at this open meeting if you wish. In any event, you will be notified of any changes in the status of this complaint, or of any future meetings that may affect its outcome.

If you need further information please contact me at 1-800-552-9745 ext. 8924.

Sincerely,

Brooks C. Braun, Esq.
Policy Analyst

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Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Brooks C. Braun, Policy Analyst

Date: March 15, 2016

Re: Express Advocacy Update – Request for Dismissal – Wood for Council

Complaint Summary: On October 1, 9, and 15, 2015, Ms. Holly Wallace e-mailed the Department of Elections PDF copies of the Alexandria Times that, on three separate publication dates, contained advertisements for Mr. Wood, which omitted the necessary disclosures. The advertisements do not explicitly ask readers to vote for Mr. Wood or against his opponent. On November 6, 2015 the State Board decided to defer a hearing on the complaint until a decision was made on the issue of express advocacy.

Background: Several complaints alleging improper disclosure of advertisements in the November, 2015 election are pending hearings before the Board until a decision regarding interpretation of the term “expressly advocating” as used in the *Code of Virginia* § 24.2-945.1 is rendered. As explained in the January 8, 2016 meeting, the Board’s legal authority in this area is unclear. In that same meeting the State Board directed their council in the Attorney General’s office to work with the Department to determine the extent of the Board’s authority to interpret this provision of the code and the permissible breadth of any such interpretation made by the Board. While the Department has continued to work with the Attorney General’s office to provide sound legal guidance to the Board on this matter, it is still not clear what the timeline might be for producing a final recommendation. Even if such a recommendation were to materialize in the near term, it is possible that it may indicate the need to produce a regulation on express advocacy before proceeding to adjudicate complaints in which express advocacy is an issue.

Suggested Action: In lieu of a clear timeframe in which the issue of express advocacy can be resolved, and in view of the already considerable delay endured by the Wood campaign, the Department of Elections feels that further delay of these complaints is unjust. Accordingly, the Department suggests that the Board dismiss the currently pending complaints against Wood for Council.

Suggested Motion: “I move that the complaint against Wood for Council stemming from alleged violations of advertisement disclosure requirements during the November 3, 2015 election, be dismissed.”



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DEPARTMENT *of* ELECTIONS

Authority: § 24.2-955.3(D) provides that “The State Board, in a public hearing, shall determine whether to find a violation of this chapter and to assess a civil penalty.” § 24.2-955.3(A) provides that “Any sponsor violating [the print media requirements] of this chapter shall be subject to (i) a civil penalty not to exceed \$1,000; or (ii) in the case of a violation occurring within the 14 days prior to or on the election day of the election to which the advertisement pertains, a civil penalty not to exceed \$2,500.”



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STATE BOARD *of* ELECTIONS

Clara Belle Wheeler
Vice Chair

James B. Alcorn
Chairman

Singleton McAllister
Secretary

February 23, 2016

Wood for Council

711 Potomac St.

Alexandria, VA 22314

Dear Mr. Wood,

The Department of Elections received a complaint about a possible violation of Virginia's Stand by Your Ad law by your campaign pertaining to the November 3, 2015 general election. The State Board of Elections will be holding a public meeting on Tuesday, March 15, 2016 on a topic that may affect the disposition of the complaint against your committee. Your attendance is not required, but you may provide general input at this open meeting if you wish. In any event, you will be notified of any changes in the status of this complaint, or of any future meetings that may affect its outcome.

If you need further information please contact me at 1-800-552-9745 ext. 8924.

Sincerely,

Brooks C. Braun, Esq.
Policy Analyst

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★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

New Business

BOARD WORKING PAPERS



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Certification Of Presidential Primary

BOARD WORKING PAPERS
Reiko Doğu
Senior Elections Administrator



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DEPARTMENT *of* ELECTIONS

Memorandum

To: Members of the State Board of Elections

From: Reiko T. Dogu, Senior Elections Administrator

Date: March 15, 2016

Re: Certification of March 1, 2016 Presidential Primary Results

Suggested motion for a Board member to make

I move that the Board certify the results of the 2016 Presidential Primary Elections to the Political Parties.

Applicable Code Section

Va. Code § 24.2- 545D which reads in pertinent part: “The State Board shall certify the results of the presidential primary to the state chairman.”

Background

The Electoral Boards of Virginia have certified the results of the March 1, 2016 Presidential Primary elections to the Department of Elections. The results from each city and county has been verified for accuracy and the totals from the various localities are summarized in the Abstracts of Votes that are before you today.

We ask that you certify two copies of each Abstract. The Department of Elections will retain an certified copy of each. The second certified copy of the Democratic Presidential Primary results will be sent to Susan Swecker, Chairwoman of the Democratic Party of Virginia. The second certified copy of the Republican Presidential Primary results will be sent to John Whitbeck, Chairman of the Republican Party of Virginia.

The Department of Elections also provides electronic election results at elections.virginia.gov. This electronic data can be organized by congressional district, locality, or precinct. The Department of Elections remains available to the parties should they require the results data in another format.

ABSTRACT of VOTES

Cast in the 2016 March Democratic Presidential Primary Election held on 03/01/2016 for,

President

<i>NAMES OF CANDIDATES ON THE BALLOT</i>	<i>TOTAL VOTES RECEIVED</i>
Hillary Clinton	504790
Bernie Sanders	276387
Martin J. O'Malley	3930
Total Number of Overvotes for Office	83
Write-in	0

We, the undersigned State Board of Elections, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on 03/01/2016, do hereby certify that the above is the true and correct Abstract of Votes cast at said election for the President

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

ABSTRACT of VOTES

Cast in the 2016 March Republican Presidential Primary Election held on 03/01/2016 for,

President

<i>NAMES OF CANDIDATES ON THE BALLOT</i>	<i>TOTAL VOTES RECEIVED</i>
Donald Trump	356896
Marco Rubio	327935
Ted Cruz	171162
John Kasich	97791
Ben Carson	60237
Jeb Bush	3645
Rand Paul	2920
Mike Huckabee	1459
Chris Christie	1102
Carly Fiorina	914
Jim Gilmore	653
Lindsey Graham	444
Rick Santorum	399
Total Number of Overvotes for Office	59
Write-in	0

We, the undersigned State Board of Elections, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on 03/01/2016, do hereby certify that the above is the true and correct Abstract of Votes cast at said election for the President

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Absentee Ballot Issues

BOARD WORKING PAPERS
Edgardo Cortés
ELECT Commissioner



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ELECTIONS

Edgardo Cortés
Commissioner

Elizabeth L. Howard
Deputy Commissioner

February 29, 2016

Ms. Tara Morgan
General Registrar, City of Hampton
1919 Commerce Drive, Suite 280
Hampton, VA 23666
VIA EMAIL

Dear Registrar Morgan:

I am writing to request your appearance at the State Board of Elections (“Board”) meeting to be held on March 15, 2016. At the meeting the Board would like to discuss the issues surrounding the distribution of a small number of pre-marked ballots to absentee by-mail voters in the City of Hampton and corrective action taken by your office.

In discussing these issues, the Board would like to focus on the lessons learned and your suggestions that might help other localities avoid similar mistakes in the future.

The next scheduled meeting of the Board is Tuesday, March 15, at 10:00 a.m. in House Room C of the General Assembly Building on Broad Street, Richmond, Virginia 23219. The Board will be certifying the election results of the March 1, 2016 Presidential Primary at this meeting and we will make every effort to schedule you early on the agenda.

We truly appreciate the high level of cooperation we have received from your staff. Your efforts to communicate with every affected voter to ensure that each had an opportunity to cast a ballot for the candidate of their choice in the March 1 Presidential Primary are valued. While mistakes are never happy occasions, the remedial actions taken can make all the difference.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Howard".

Elizabeth Howard
Deputy Commissioner

cc: Members of the City of Hampton Electoral Board



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ELECTIONS

Edgardo Cortés
Commissioner

Elizabeth L. Howard
Deputy Commissioner

March 7, 2016

Mr. Gary Fox
VA Customer Service Manager
Printelect
4606 Cedar Cliff Road
Chester, Virginia 23831
VIA EMAIL

Dear Mr. Fox:

I am writing to request your appearance at the State Board of Elections ("Board") meeting to be held on March 15, 2016. At this meeting the Board would like to discuss issues surrounding the distribution of a small number of pre-marked ballots to absentee by-mail voters in the City of Hampton. In discussing these matters, the Board would like to focus on the lessons learned and your suggestions that might help other localities avoid similar circumstances in the future.

The next scheduled meeting of the Board is Tuesday, March 15, at 10:00 a.m. in House Room C of the General Assembly Building on Broad Street, Richmond, Virginia 23219. The Board will be certifying the election results of the March 1, 2016 Presidential Primary at this meeting and we will make every effort to schedule you early on the agenda.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Mash", with a long horizontal flourish extending to the right.

Martin Mash
Confidential Policy Advisor



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ELECTIONS

Edgardo Cortés
Commissioner

Elizabeth L. Howard
Deputy Commissioner

March 7, 2016

Ms. Kay Chitwood
General Registrar, Franklin County
1255 Franklin Street, Suite 106
Rocky Mount, Virginia 24151
VIA EMAIL

Dear Registrar Chitwood:

I am writing to request your appearance at the State Board of Elections ("Board") meeting to be held on March 15, 2016. At this meeting the Board would like to discuss issues surrounding the incorrect date being printed on absentee ballots in Franklin County and any corrective actions that have been taken by your office. In discussing these matters, the Board would like to focus on lessons learned and your suggestions that might help other localities avoid similar circumstances in the future.

The next scheduled meeting of the Board is Tuesday, March 15, at 10:00 a.m. in House Room C of the General Assembly Building on Broad Street, Richmond, Virginia 23219. The Board will be certifying the election results of the March 1, 2016 Presidential Primary at this meeting and we will make every effort to schedule you early on the agenda.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Mash", with a long horizontal flourish extending to the right.

Martin Mash
Confidential Policy Advisor

cc: Members of the Franklin County Electoral Board



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Ballot Printing Issues

BOARD WORKING PAPERS
Edgardo Cortés
ELECT Commissioner



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ELECTIONS

Edgardo Cortés
Commissioner

Elizabeth L. Howard
Deputy Commissioner

March 7, 2016

Ms. Linda Lindberg
General Registrar, Arlington County
Voter Registration & Elections
2100 Clarendon Blvd, Suite 320
Arlington, Virginia 22201
VIA EMAIL

Dear Registrar Lindberg:

I am writing to request your appearance at the State Board of Elections ("Board") meeting to be held on March 15, 2016. At the meeting the Board would like to discuss issues surrounding your need to print emergency ballots for voters in Arlington County and any corrective actions that have been taken by your office. In discussing these matters, the Board would like to focus on the lessons learned and your suggestions that might help other localities avoid similar circumstances in the future.

The next scheduled meeting of the Board is Tuesday, March 15, at 10:00 a.m. in House Room C of the General Assembly Building on Broad Street, Richmond, Virginia 23219. The Board will be certifying the election results of the March 1, 2016 Presidential Primary at this meeting and we will make every effort to schedule you early on the agenda.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Mash", with a long horizontal flourish extending to the right.

Martin Mash
Confidential Policy Advisor

cc: Members of the Arlington County Electoral Board

From: Linda Lindberg [<mailto:Llindberg@arlingtonva.us>]
Sent: Thursday, March 10, 2016 4:49 PM
To: Cortes, Edgardo (ELECT); Howard, Elizabeth (ELECT); Mash, Martin (ELECT); Mansfield, Rose (ELECT)
Cc: Charlene Bickford (bickford@gwu.edu); Dave Bell (othelloabel@aol.com)
Subject: RE: Request to Appear - SBE-March 15, 2016

I respectfully decline the request to appear at the State Board of Election's meeting on March 15, 2016.

For the March 1, 2016 primary, Arlington County ordered Republican ballots in a quantity equal to more than 220% of the Republican ballots voted in the 2008 primary. Our contingency plan was to reproduce ballots for delivery to our polling places if needed, should we exhaust our supply of extra pre-printed ballots.

As precincts began reporting concerns about the unusually high number of voters requesting Republican ballots, in an abundance of caution, we began implementing this plan, first by delivering excess pre-printed ballots and later by reproducing ballots and delivering them our polling places. Because we are small geographically, such a distribution can be accomplished very quickly. We also have a means of sending text blasts to chiefs to advise them to contact us when low on ballots and to remind them the ballot marker is an option as well.

Some of the reproduced ballots were ultimately voted and counted in some, but certainly not all, polling places. Most precincts used either pre-printed ballots or the ballot marking device. At no time did any polling place run out of ballots, and no voters were denied the opportunity to vote a Republican ballot.

To recap, we had a plan and we successfully executed the plan. There were no voter complaints or disruptions to the election.

Linda Lindberg, Director of Elections
Office of Elections
2100 Clarendon Blvd., Suite 320
Arlington, VA 22201-5400
703-228-3456 main office number | 703-228-3462 direct line
703-228-3659 fax | 703-228-4611 tty | 571-481-8576 mobile
llindberg@arlingtonva.us | vote.arlingtonva.us

"Every election is determined by the people who show up."

- Larry J. Sabato, *Pendulum Swing*



Please consider the environment before printing this e-mail.

This communication is subject to public disclosure under the Virginia Freedom of Information Act.

From: Mansfield, Rose (ELECT) [<mailto:Rose.Mansfield@elections.virginia.gov>]
Sent: Tuesday, March 08, 2016 5:06 PM

To: Linda Lindberg <Lindberg@arlingtonva.us>; 'bickford@gwu.edu' <bickford@gwu.edu>; 'othelloabel@aol.com' <othelloabel@aol.com>; Voters <Voters@arlingtonva.us>
Cc: Cortes, Edgardo (ELECT) <Edgardo.Cortes@elections.virginia.gov>; Howard, Elizabeth (ELECT) <Elizabeth.Howard@elections.virginia.gov>; Mash, Martin (ELECT) <Martin.Mash@elections.virginia.gov>
Subject: Request to Appear - SBE-March 15, 2016

Good afternoon All:

The attached letter is a request to appear at the SBE Board Meeting on March 15, 2016. Please do not hesitate to call if you have any questions or concerns.

Take care,
Rose

Rose Mansfield

Ms. Rose Mansfield
Board Liaison & Agency Business Coordinator
Office of the Commissioner & SBE
Department of Elections
The Washington Building-Capitol Square
1100 Bank Street
Richmond, VA 23219
Phone: 804-864-8944 Fax: 804-371-0194



Remember - Virginia law now requires photo identification when voting in person.



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

General Registrar's Full-Time Requests

BOARD WORKING PAPERS
Martin Mash
ELECT Policy Advisor



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STATE BOARD *of* ELECTIONS

General Registrar's
Full-Time
Request
Charles City County

BOARD WORKING PAPERS
Martin Mash
ELECT Policy Advisor



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

Memorandum

To: Members of the State Board of Elections
From: Edgardo Cortés, Commissioner
Date: March 15, 2016
Subject: Electoral Board Request for Full-Time Status for General Registrar

Suggested motion for a Board member to make:

Move that the Board approve the request from the Electoral Board of Charles City County for the period of April 18, 2016 through June 17, 2016.

Applicable Code Sections: Chapter 3, 2014 Acts of the Assembly, Item 84(C)

Attachments:

Your Board materials include the following

- Signed request for temporary full-time status from Charles City County Electoral Board

Background:

The Virginia Budget authorizes and funds general registrars with a population in most counties under 10,000 and cities under 7,500 to work on a part-time basis for most of the year. While the Budget does provide funding for the registrars to be compensated to work full-time for the months surrounding each year's May General Election (March through May), the Budget does not account for other elections, including local elections and primaries.

Chapter 3, 2014 Acts of the Assembly, Item 84(C) (the "Budget") does include an appropriation from the general fund to provide temporary full-time status for part-time general registrars. Specifically, the Budget states:

C. Included in the appropriation for this Item is \$30,900 the first year and \$30,900 the second year from the general fund to provide temporary full-time status for part-time general registrars. Such temporary full-time status may be granted by the Board of Elections, upon request of the Local Electoral Board, in recognition of temporary or permanent increases in workload. In making its determination, the Board of Elections shall consider elections, if any, required to be conducted by the locality during January through July, and evidence submitted by the Local Electoral Board to document increases in workload. Such evidence shall include specific data with comparisons, by transaction type and by month experienced, of

past and present workloads. Temporary full-time status, if granted, may include all or part of the time normally worked on a part-time basis.

ELECT staff recommendation is to approve the request from Charles City County. The request is reasonable and reflects the timeframe in which the obligations for the March Primary reach the point where a part-time registrar should be in the office full-time. Part-time registrars have the same obligations as registrars in larger localities, including meeting important absentee ballot deadlines, administering in-person absentee voting and all the other assorted duties and responsibilities associated with properly administering an election.

**OFFICE OF THE ELECTORAL BOARD
CHARLES CITY COUNTY
BARBARA E. HAYES, SECRETARY
Telephone Home: (804) 829-2663
Telephone Work: (804) 359-4902 8:30 a.m. to 4:30 p.m.**

March 3, 2016

Rose Mansfield, Board Liaison & Agency Business Coordinator
Office of the Commissioner and SBE
DEPARTMENT OF ELECTIONS
The Washington Building-Capitol Square
1100 Bank Street
Richmond, Virginia 23219

By Fax: (804) 371-0194 and Rose.Mansfield@elections.virginia.gov

Re: Electoral Boards Request for Full-Time Status for Registrar

Dear Ms. Mansfield:

The Charles City County Electoral Board respectfully requests that you authorize Catrinia Barneycastle, Registrar, to maintain office hours five days per week for a period of April 18, 2016 until June 17, 2016.

Mrs. Barneycastle is a part-time Registrar, with no office staff at this time, and we want to insure that our citizens have full time office hours to implement the voting process by being available for five days per week for this U.S. House of Representatives Republican-Democratic Primary.

Thank you for your assistance and cooperation in this request.

Very truly yours,

Barbara E. Hayes, Secretary

BEH:

c. Catrinia Barneycastle, Registrar



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STATE BOARD *of* ELECTIONS

General Registrar's Full-Time Request Covington City

BOARD WORKING PAPERS
Martin Mash
ELECT Policy Advisor



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DEPARTMENT *of* ELECTIONS

Memorandum

To: Members of the State Board of Elections
From: Edgardo Cortés, Commissioner
Date: March 15, 2016
Subject: Electoral Board Request for Full-Time Status for General Registrar

Suggested motion for a Board member to make:

Move that the Board approve the request from the Electoral Board of the City of Covington for the period of April 1, 2016 through June 30, 2016.

Applicable Code Sections: Chapter 3, 2014 Acts of the Assembly, Item 84(C)

Attachments:

Your Board materials include the following

- Signed request for temporary full-time status from the City of Covington Electoral Board

Background:

The Virginia Budget authorizes and funds general registrars with a population in most counties under 10,000 and cities under 7,500 to work on a part-time basis for most of the year. While the Budget does provide funding for the registrars to be compensated to work full-time for the months surrounding each year's May General Election (March through May), the Budget does not account for other elections, including local elections and primaries.

Chapter 3, 2014 Acts of the Assembly, Item 84(C) (the "Budget") does include an appropriation from the general fund to provide temporary full-time status for part-time general registrars. Specifically, the Budget states:

C. Included in the appropriation for this Item is \$30,900 the first year and \$30,900 the second year from the general fund to provide temporary full-time status for part-time general registrars. Such temporary full-time status may be granted by the Board of Elections, upon request of the Local Electoral Board, in recognition of temporary or permanent increases in workload. In making its determination, the Board of Elections shall consider elections, if any, required to be conducted by the locality during January through July, and evidence submitted by the Local Electoral Board to document increases in workload. Such evidence shall include specific data with comparisons, by transaction type and by month experienced, of

past and present workloads. Temporary full-time status, if granted, may include all or part of the time normally worked on a part-time basis.

ELECT staff recommendation is to approve the request from the City of Covington. The request is reasonable and reflects the timeframe in which the obligations for the March Primary reach the point where a part-time registrar should be in the office full-time. Part-time registrars have the same obligations as registrars in larger localities, including meeting important absentee ballot deadlines, administering in-person absentee voting and all the other assorted duties and responsibilities associated with properly administering an election.

General Registrar



Electoral Board

CITY OF COVINGTON

515 East Pine Street
Covington, Virginia 24426

December 15, 2015

Dear Mr. Cortes,

The Covington City Electoral Board is asking The Department of Elections to allow Betty Leitch Temporary Full Time Status for the Months of April –June 2016, IF a Primary is called.

With a Primary, we feel we could better serve the voters with the extended hours of her office for absentee Voting, and also help her prepare for this Election.

Thank you for your consideration on this matter. We will await your response.

Sincerely,

Lewis D. Kemper, Secretary

A handwritten signature in cursive script that reads "Lewis D. Kemper".

Covington City Electoral Board

Cc : Betty Leitch, Milton Humphreys, William Caperton



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STATE BOARD *of* ELECTIONS

General Registrar's Full-Time Request Emporia City

BOARD WORKING PAPERS
Martin Mash
ELECT Policy Advisor



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

Memorandum

To: Members of the State Board of Elections
From: Edgardo Cortés, Commissioner
Date: March 15, 2016
Subject: Electoral Board Request for Full-Time Status for General Registrar

Suggested motion for a Board member to make:

Move that the Board approve the request from the Electoral Board of the City of Emporia for the period of April 1, 2016 through June 30, 2016.

Applicable Code Sections: Chapter 3, 2014 Acts of the Assembly, Item 84(C)

Attachments:

Your Board materials include the following

- Signed request for temporary full-time status from the City of Emporia Electoral Board

Background:

The Virginia Budget authorizes and funds general registrars with a population in most counties under 10,000 and cities under 7,500 to work on a part-time basis for most of the year. While the Budget does provide funding for the registrars to be compensated to work full-time for the months surrounding each year's May General Election (March through May), the Budget does not account for other elections, including local elections and primaries.

Chapter 3, 2014 Acts of the Assembly, Item 84(C) (the "Budget") does include an appropriation from the general fund to provide temporary full-time status for part-time general registrars. Specifically, the Budget states:

C. Included in the appropriation for this Item is \$30,900 the first year and \$30,900 the second year from the general fund to provide temporary full-time status for part-time general registrars. Such temporary full-time status may be granted by the Board of Elections, upon request of the Local Electoral Board, in recognition of temporary or permanent increases in workload. In making its determination, the Board of Elections shall consider elections, if any, required to be conducted by the locality during January through July, and evidence submitted by the Local Electoral Board to document increases in workload. Such evidence shall include specific data with comparisons, by transaction type and by month experienced, of

past and present workloads. Temporary full-time status, if granted, may include all or part of the time normally worked on a part-time basis.

ELECT staff recommendation is to approve the request from the City of Emporia. The request is reasonable and reflects the timeframe in which the obligations for the March Primary reach the point where a part-time registrar should be in the office full-time. Part-time registrars have the same obligations as registrars in larger localities, including meeting important absentee ballot deadlines, administering in-person absentee voting and all the other assorted duties and responsibilities associated with properly administering an election.

Office of
The General Registrar
City of Emporia
P. O. Box 1092
201 South Main Street
Emporia, Virginia 23847
434 634-9533

January 27, 2016

Dear Commissioner Cortes,

The Emporia City Electoral Board is asking The Department of Elections to allow General Registrar for the City of Emporia, Ashley Wall, Temporary Full Time Status for the months of April – June 2016.

With a dual primary in March and the possibility of a primary in June, we feel that we can better serve voters and the community with the extended hours of her office for Absentee Voting, and also help her prepare for the upcoming elections.

Thank you for your consideration on this matter. We will await your response.

Sincerely,



Norris Dickerson, Secretary
Emporia City Electoral Board



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STATE BOARD *of* ELECTIONS

Periodic Review Of Regulations Chapters 60 & 80

BOARD WORKING PAPERS
Myron McClees
ELECT Policy Analyst



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STATE BOARD *of* ELECTIONS

Periodic Review Of Regulation Chapter 60

BOARD WORKING PAPERS
Myron McClees
ELECT Policy Analyst



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STATE BOARD *of* ELECTIONS

Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Myron McClees, Policy Analyst

Date: March 15, 2016

Re: Public Comment for Periodic Reviews of Chapter 60 (1VAC 20-60)

Suggested Motion for a Board member to make: *I move that the Board seek public comment, for a period of 21 calendar days, on the proposed amendments to its regulations in Chapter 60, Election Administration, to implement recommendations received from the Department of Elections.*

Affected Regulations: 1VAC 20-60-10 through 20-60-60

Board Materials:

- 2016 Proposed Changes to Chapter 60
- 2013 Proposed Changes to Chapter 60
- Comments received during 2013 Periodic Review Comment Period
- Court ruling for the case *Rideout v. Gardner*

Background:

On May 15, 2013, the previous membership of the State Board of Elections announced a periodic review of all of its regulations pursuant to Regulation 20-10-120 calling for a review of all regulations after each presidential election. The objectives of this periodic review was similar to those set forth in Executive Order 14 for all executive agencies—effectiveness, efficiency, necessity, clarity and cost of compliance.

The original comment period for Chapter 60 opened June 3, 2013, and closed June 24, 2013. During this time period, only four comments from one commenter were received. These comments, and the suggested edits based thereon, were presented to the Board during its meeting held on December 2, 2013. The proposed changes addressed the use of electronic devices in the polling place, replacement of the word “precinct” with the more appropriate term “polling place,” provided parameters in the regulation defining when a ballot is cast for provisional



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STATE BOARD *of* ELECTIONS

ballots, and provided guidance to election officials on the process of emptying an overfull ballot container in single-party primaries. To ensure that the public fully had the opportunity to address their concerns with the suggested regulations, the Board voted to open the regulations up to a foreshortened public comment period. This second comment period opened on December 30, 2013 and closed on January 8, 2014. No comments were received during the second public comment period.

The previous Board did not take up the matter again before the expiration of its term. Because of this, it is respectfully requested that the current Board complete the approval process. Due to the extended period of inaction on this item, the underlying standards upon which previous analyses were based have changed considerably. It is for this reason that there is an entire standard change on the subject of cameras and electronic devices being used in the polling place.

During the 2015 Session of the General Assembly a bill was passed (SB 1351) that specifically allows authorized representatives to use devices containing a camera or filming capacity so long as the functions are not actually used in the polling place. This was already contained within the edits suggested at the December 2, 2013 meeting, but now there is a statutory standard that is counter to the current regulation's provisions.

In regards to voters, the edit suggested at the December 2, 2013 meeting fully disallowed persons other than members of the media to film or take photographs in the polling place. This standard may not be tenable. The U.S. Court of Appeals for the First Circuit recently ruled in favor of voters that took photographs of their voted ballot in violation of a New Hampshire law disallowing such acts. The Court ruled that taking pictures of one's own ballot is protected political speech, and thus any curtailment must be narrowly tailored to further a compelling state interest. In the opinion of the Court, protection against vote buying was not a compelling state interest without specific instances of vote buying facilitated by use of "ballot selfies." To fully avoid potential costly litigation on this matter, the suggested regulation now allows use of cameras by voters, but provides specific safeguards to protect others' privacy within the polling place, and to ensure that the voting process can carry on without unreasonable disturbance.

ELECT respectfully requests that the Board approve a 21 day public comment period for the suggested edits to Chapter 60. A public comment period is necessitated for multiple reasons, most important of which is that such is required in Governor McAuliffe's Executive Order Number 17. Over 180 days have elapsed since any previous action on this item, and thus the public should be able to provide full and proper input in the name of transparency.

1 **1VAC20-60-10. Definitions.**

2 (Reserved.)

3 **1VAC20-60-20. Material Omissions on Referendum Petitions and Petition Signature**
4 **Qualifications.**

5 A. Pursuant to the requirements of § 24.2-684.1 of the Code of Virginia, a petition or a petition
6 signature should not be rendered invalid if it contains an error or omission not material to its
7 proper processing.

8 B. The following omissions are always material and any petition containing such omissions shall
9 be rendered invalid if:

- 10 1. The petition submitted is not the double-sided document, or a double-sided copy thereof,
11 provided by the State Board of Elections;
- 12 2. The "question" or "referendum issue" is not stated in a manner set forth by law on the front of
13 the petition;
- 14 3. The circulator has not signed the petition affidavit and provided his current address;
- 15 4. The circulator is a minor or a felon whose voting rights have not been restored;
- 16 5. The circulator has not signed the affidavit for the petition he circulated in the presence of a
17 notary;
- 18 6. The circulator has not had a notary sign the affidavit for each petition submitted;
- 19 7. A person other than the circulator signed the petition affidavit;
- 20 8. The notary has not affixed a photographically reproducible seal;
- 21 9. The notary has not included his registration number and commission expiration date; or
- 22 10. Any combination of the aforementioned scenarios exists.

23 C. The following omissions related to individual petition signatures are always material and any
24 petition signature containing such omission shall be rendered invalid if:

- 25 1. The signer is not qualified to cast a ballot for the referendum for which the petition was
26 circulated;
- 27 2. The signer is also the circulator of the petition;
- 28 3. The signer provided an accompanying date that is subsequent to the date upon which the
29 notary signed the petition;
- 30 4. The signer did not sign the petition; or
- 31 5. The signer provided an address that does not match the petition signer's address in the Virginia
32 voter registration system, unless the signer provided an address that is within the same precinct
33 where a voter is currently registered in the Virginia voter registration system, and the signer can
34 be reasonably identified as the same registered voter.
- 35 D. The following omissions shall be treated as nonmaterial provided the general registrar can
36 independently and reasonably verify the validity of the petition or signature:
- 37 1. An older version of the petition is used (provided that the information presented complies with
38 current laws, regulations, and guidelines);
- 39 2. The "election information" including: (i) county, city, or town in which the election will be
40 held; (ii) election type; and (iii) date of election are omitted;
- 41 3. The circulator has not provided the last four digits of his social security number in the
42 affidavit;
- 43 4. The signer omits his first name, provided he provides a combination of his first or middle
44 initials or a middle name and last name and address that matches a qualified voter within the
45 Virginia voter registration system;
- 46 5. The signer provided a derivative of his legal name as his first or middle name (e.g., "Bob"
47 instead of "Robert");
- 48 6. The signer prints his name on the "Print" line and prints his name on the "Sign" line; or
- 49 7. The signer fails to provide the date but a period of time that qualifies can affirmatively be
50 established with previous and subsequent dates provided by other signers upon the petition page.

51 E. A signature upon a petition shall be included in the count toward meeting the petition
52 signature requirements only if:

53 1. The petition signer is a qualified voter who is maintained on the Virginia voter registration
54 system either (i) with active status or (ii) with inactive status and qualified to vote for the office
55 for which the petition was circulated;

56 2. The signer provides his name; and

57 3. The signer provides an address that matches the petition signer's address in] the Virginia voter
58 registration system , or the signer provided an address that is within the same precinct where a
59 voter is currently registered in the Virginia voter registration system, and the signer can be
60 reasonably identified as the same registered voter.

61 **1VAC20-60-30. Electronic Devices in Polling Place.**

62 A. Representatives of candidates and political parties authorized to observe the election may use
63 cell phones or other electronic devices provided that the ~~device contains no camera or video~~
64 ~~recording capacity~~ camera function is not used within the polling place. The officers of election
65 are ~~responsible~~ authorized to monitor the use of electronic devices for observation of the election
66 and may regulate or prohibit any use the officers determine will hinder or delay a voter or officer
67 of election or otherwise impede the orderly conduct of the election.

68 Whether a particular call or calls by any authorized representative is deemed to interfere or
69 disrupt the voting process is within the discretion of the officers of election at each ~~precinct~~
70 polling place as a majority. Any authorized representative may be required to cease the call,
71 make or receive any such calls outside the ~~precinct~~ polling place, or be removed from the polling
72 ~~precinct~~ place.

73 B. Voters are permitted to use cameras and/or audio or visual recording devices inside the
74 polling place. Officers of election may regulate or restrict the use of these devices by voters if
75 the use hinders, delays or disrupts the voting process, or the voter attempts to intimidate other
76 voters through use of the device.

77

78 Whether a voter's use of a device is deemed in violation of subsection B is within the discretion
79 of the officers of election at each polling place as a majority. Any voter may be required to cease

80 using the device, but no voter may be removed from the polling place for using a device until
81 after the voter has cast his ballot.

82 ~~Use of cell phones and other electronic devices by other persons at polling places shall be~~
83 ~~monitored by the officers of election who may regulate or prohibit any use the officer determines~~
84 ~~will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the~~
85 ~~election. Use of electronic devices may not interfere nor disrupt the voting process, nor attempt~~
86 ~~to solicit or attempt to influence any person in casting his vote. Once a voter enters the prohibited~~
87 ~~area at the polls as designated in § 24.2-604 of the Code of Virginia, the use of a cell phone or~~
88 ~~other electronic communication device may be prohibited if deemed a violation of § 24.2-~~
89 ~~1006 of the Code of Virginia, or if otherwise deemed disruptive to the voting process.~~

90 C. Grounds for regulating or prohibiting use of electronic devices by authorized representatives
91 include but are not limited to (i) the making or receiving of calls that interfere with or become
92 disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or
93 influence any person in casting his vote; ~~or~~ (iii) the person using the device is conducting himself
94 in a noisy or riotous manner at or about the polls so as to disturb the election.

95 D. ~~An officer of election may require any individual using an electronic device subject to~~
96 ~~regulation under subsection C of this section to cease such use, make or receive calls outside the~~
97 ~~precinct, or remove the use of the device from the polling place.~~ No policy disallowing use of all
98 electronic devices by all voters is allowed.

99 E. ~~Any action taken pursuant to this section is within the judgment of the officers of election as a~~
100 ~~majority.~~

101 ~~F.~~ The determination of the officers of election of any dispute concerning the use of electronic
102 devices shall be subject to immediate appeal to the local electoral board.

103

104 **1VAC20-60-40. When Ballot Cast.**

105 A. A voter, voting in person on election day or voting absentee in-person, has not voted until a
106 permanent record of the voter's intent is preserved.

107 B. A permanent record is preserved by a voter pressing the vote or cast button on a direct
108 recording electronic machine, inserting an optical scan ballot into an electronic counter, or

109 placing a paper ballot in an official ballot container or relinquishing possession of a completed
110 provisional ballot envelope containing the ballot to the possession of an officer of election.

111 C. A vote has not been cast by the voter unless and until the voter or an officer of election or
112 assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of
113 Virginia completes these actions to preserve a permanent record of the vote.

114 D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot
115 be cast by any officer of election or other person present. Notwithstanding the previous sentence,
116 if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by
117 the scanner due to an undervote or overvote, the officer of election may cast the ballot for the
118 absent voter.

119 E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the
120 moment he personally delivers the ballot to the general registrar or electoral board or
121 relinquishes control over the ballot to the United States Postal Service or other authorized carrier
122 for returning the ballot as required by law.

123 **1VAC20-60-50. Overfull Optical Scan Ballot Container.**

124 If an optical scan reader in use in a registrar's office or a polling place malfunctions because the
125 connected ballot container includes too many ballots, election officials may open the ballot
126 container and empty the ballots with the following safeguards:

127 1. The optical scan ballot container shall be opened in plain sight of any authorized party
128 representatives or other observers and, once the ballots have been deposited into an auxiliary
129 ballot container, both ballot containers shall remain in plain sight in the polling place.

130 2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the
131 Code of Virginia.

132 3. In a general, special, or dual-party primary election, A minimum of two officers of
133 election, not representing ~~both the same political parties~~ party, shall execute such a transfer of
134 ballots. In a single-party primary election, the transfer shall be conducted by a minimum of
135 two officers of election who may be members of the same party.

136 **1VAC20-60-60. Provisional Votes.**

137 The electoral board or general registrar may attempt to contact an individual who has voted a
138 provisional ballot when required by § 24.2-643 of the Code of Virginia and remind the individual

139 that he is permitted to provide a copy of a form of identification as specified in subsection B of
140 § 24.2-643 of the Code of Virginia to arrive no later than noon on the Friday after election day.
141 However, there shall be no requirement that the electoral board or general registrar contact such
142 individual.
143



Proposed Text

Action: 2013 Periodic Review Chapter 60 Election Administration

Stage: Proposed

12/17/13 10:04 AM [latest] ▼

1VAC20-60-30

1VAC20-60-30. Electronic devices in polling place.

A. Representatives of candidates and political parties authorized to observe the election may use cell phones or other electronic devices provided that the ~~device contains no camera or video recording capacity~~ camera function is not used within the polling place. The officers of election are responsible to monitor the use of electronic devices for observation of the election and may regulate or prohibit any use the officers determine will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election.

Whether a particular call or calls by any authorized representative is deemed to interfere or disrupt the voting process is within the discretion of the officers of election at each ~~precinct~~ polling place as a majority. Any authorized representative may be required to cease the call, make or receive any such calls outside the ~~precinct~~ polling place, or be removed from the polling ~~precinct~~ place.

B. Use of cell phones and other electronic devices by other persons at polling places shall be monitored by the officers of election who may regulate or prohibit any use the officer determines will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election. Use of electronic devices may not interfere nor disrupt the voting process, nor attempt to solicit or attempt to influence any person in casting his vote. At no time may any person use a camera or the camera function on an electronic device to film, digitally capture, or take pictures within the polling place unless such person is an authorized member of the media filming in accordance with § 24.2-604 J of the Code of Virginia. Once a voter enters the prohibited area at the polls as designated in § 24.2-604 of the Code of Virginia, the use of a cell phone or other electronic communication device may be prohibited if deemed a violation of § 24.2-1006 of the Code of Virginia, or if otherwise deemed disruptive to the voting process.

C. Grounds for regulating or prohibiting use of electronic devices include but are not limited to (i) the making or receiving of calls that interfere with or become disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or influence any person in casting his vote; ~~or~~ (iii) the usage of the camera function to film within the polling place or beyond the 40-foot prohibited area; or (iv) the person using the device is conducting himself in a noisy or riotous manner at or about the polls so as to disturb the election.

D. An officer of election may require any individual using an electronic device subject to regulation under subsection C of this section to cease such use, make or receive calls ~~outside the precinct~~ polling place, or remove the use of the device from the polling place.

E. Any action taken pursuant to this section is within the judgment of the officers of election as a majority.

F. The determination of the officers of election of any dispute concerning the use of electronic devices shall be subject to immediate appeal to the local electoral

board.

1VAC20-60-40

1VAC20-60-40. When ballot cast.

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter (i) pressing the vote or cast button on a direct recording electronic machine, (ii) inserting an optical scan ballot into an electronic counter, ~~or~~ (iii) placing a paper ballot in an official ballot container, or (iv) relinquishing possession of a completed provisional ballot envelope containing the ballot to the possession of an officer of election.

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present.

Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an undervote or overvote, the officer of election may cast the ballot for the absent voter.

E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the United States Postal Service or other authorized carrier for returning the ballot as required by law.

1VAC20-60-50

1VAC20-60-50. Overfull optical scan ballot container.

If an optical scan reader in use in a registrar's office or a polling place malfunctions because the connected ballot container includes too many ballots, election officials may open the ballot container and empty the ballots with the following safeguards:

1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall remain in plain sight in the polling place.
2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the Code of Virginia.
3. A minimum of two officers of election, representing both political parties, shall execute such a transfer of ballots. In a single-party primary election, the transfer shall be conducted by a minimum of two officers of election who may be members of the same party.

Commenter	Regulation	Comment	Staff Recommendation	Action Needed
W.T. Latham	20-60-20	<p>1 VAC 20-60-20</p> <p>I suggest reviewing 1 VAC 20-60-20 to ensure that the material and nonmaterial omissions rules are comparable to those for candidate petitions. In particular, 20-60-20(E)(2) may need to be changed so that the procedures in 20-60-20 are similar to those governing candidate petitions.</p> <p>Also, there should be a section in 20-60-20 that clearly states that the provisions of 20-60-20 are subordinate to more particular provisions in city, town, and county charters that pertain to referendum petitions.</p>	<p>These two regulations were made synonymous with the most recent changes approved on 6/25/13.</p> <p>This is a general principle of law (that more specific provisions are given sway over general wording so long as the two are not counter to each other). General principles of statutory construction are not normally added to our regulations, but wording can be added if the board so desires.</p>	
W.T. Latham	20-60-30	<p>Questions about 1 VAC 20-60-30</p> <p>Issues in 1 VAC 20-60-30:</p> <ul style="list-style-type: none"> Paragraph (A) forbids the use of cell phones or other electronic devices "provided that the device contains no camera or video recording capacity." This seems to go further than the wording of Va. Code 24.2-604(C) as well as the "Dos and Don'ts," adopted in August 2012. See IV, 9 of the August 2012 "Dos and Don'ts." Admittedly, 24.2-604(C) is ambiguous, 	<p>All the recommendations should be adopted</p>	

		<p>though a textual reading of 604(C) seems to forbid--- not the presence of phones with camera or video recording capacity---but the use of that capacity to photograph or record things in the polling place.</p> <ul style="list-style-type: none"> • Paragraph (A): delete the word "precinct" at the end and replace it with the word "place." • Paragraph (D): in the phrase "make or receive calls outside the precinct," change the word "precinct" to "polling place." "Precinct" is a legal term defined in 24.2-101, and it refers to the territory served by a polling place. 		
W.T. Latham	20-60-40	<p>Amending 1 VAC 20-60-40</p> <p>A couple of issues with 1 VAC 20-60-40:</p> <ul style="list-style-type: none"> • I suggest inserting language in 20-40-60 clarifying when a provisional ballot is "cast." At this time, it does not appear to be clearly covered by any of the scenarios listed in 20-40-60. • Also, the language pertaining to the casting of a paper ballot indicates that a ballot is cast by a voter ". . . placing a paper ballot in an official ballot container." Because Va. Code 24.2-646 requires that a paper ballot be handed to the appropriate officer of election, and it is the officer of election who places the paper ballot into the ballot container, I suggest amending the wording of 20-60-40 to make the paper ballot references in this part of the Administrative Code conform to the 	<p>Wording on when a provisional vote is cast has been added</p> <p>A change for allowing an officer of election to cast the ballot is unnecessary based on Section C, which states that the action can indeed be carried out by an officer of election at the voter's behest.</p>	

		requirements of 24.2-646.		
W.T. Latham	20-60-50	<p>Amending 1 VAC 20-60-50</p> <p>I suggest the following amendments (changes are <i>bolded and italicized</i>):</p> <ol style="list-style-type: none"> 1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into <i>a box or envelope provided for the purpose of packaging used ballots after the close of the polls, both the ballot container and the box, or envelope,</i> shall remain in plain sight in the polling place. 2. [delete] 3. <i>2. In a general, special, or dual-party primary election, a minimum of two officers of election, representing both political parties, shall execute such a transfer of ballots. In a single-party primary election, the transfer shall be conducted by a minimum of two officers of election.</i> <p>The reason for the amendment in paragraph 1 and the deletion of old paragraph 2 is that most, if not all, localities do not have extra ballot boxes---as that term is defined in Va. Code 24.2-623--to use merely for storage at the polling places.</p>	<p>The recommended change within section 1 should not be adopted on account of voting security.</p> <p>Section 2 may be deleted if the Board so desires.</p> <p>The recommendation for section 3 should be adopted as written.</p>	

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Leon H. Rideout,
Andrew Langlois, and
Brandon D. Ross

v.

Case No. 14-cv-489-PB
Opinion No. 2015 DNH 154 P

William M. Gardner,
New Hampshire Secretary
of State

MEMORANDUM AND ORDER

New Hampshire recently adopted a law that makes it unlawful for voters to take and disclose digital or photographic copies of their completed ballots in an effort to let others know how they have voted. Three voters, who are under investigation because they posted images of their ballots on social media sites, have challenged the new law on First Amendment grounds. As I explain in this Memorandum and Order, the new law is invalid because it is a content-based restriction on speech that cannot survive strict scrutiny.

I. BACKGROUND

It has been unlawful since at least 1979 for a New Hampshire voter to show his ballot to someone else with an intention to disclose how he plans to vote. See [N.H. Rev. Stat.](#)

Ann. § 659:35, I (2008). In 2014, the legislature amended section 659:35, I of the New Hampshire Revised Statutes ("RSA 659:35, I") to provide that:

No voter shall allow his or her ballot to be seen by any person with the intention of letting it be known how he or she is about to vote or how he or she has voted except as provided in RSA 659:20.¹ This prohibition shall include taking a digital image or photograph of his or her marked ballot and distributing or sharing the image via social media or by any other means.

N.H. Rev. Stat. Ann. § 659:35, I (Supp. 2014) (emphasis added to identify the modifications that became effective September 1, 2014). At the same time, the legislature reduced the penalty for a violation of RSA 659:35, I from a misdemeanor to a violation. 2014 N.H. Legis. Serv. 80 (codified as amended at N.H. Rev. Stat. Ann. § 659:35, IV). Thus, anyone who violates the new law faces a possible fine of up to \$1,000 for each violation. N.H. Rev. Stat. Ann. § 651:2, IV(a) (establishing maximum penalty for a violation).

A. Legislative History

State Representative Timothy Horrigan introduced a bill to amend RSA 659:35, I on January 3, 2013. See Exhibit G to the

¹ RSA 659:20 allows a voter who needs assistance marking his or her ballot to receive assistance. N.H. Rev. Stat. Ann. § 659:20.

Declaration of Gilles Bissonnette, Esq. in Support of Plaintiffs' Motion for Summary Judgment ("Legislative History") at 000048, 000140, Rideout v. Gardner, No. 14-cv-489-PB (filed Mar. 27, 2015).² As initially proposed, the bill simply stated that "[n]o voter shall take a photograph or a digital image of his or her marked ballot." Id. at 000144. In testimony in favor of the bill, Representative Horrigan explained why he was proposing his amendment:

Last fall, in late October 2012, one of the workers at my local Democratic campaign office received her absentee ballot. After she filled it out, she was about to have a photo of her ballot taken to be posted to her social media accounts. We began to worry taking such a photo might be a violation of federal and state election laws. It turns out that this may not necessarily have been a violation of the letter of the law - but it would definitely be a violation of the spirit of RSA 659:35 "Showing or Specially Marking a Ballot."

Id. at 000142. He also stated, "The main reason this bill is necessary is to prevent situations where a voter could be coerced into posting proof that he or she voted a particular way." Id.

² The plaintiffs filed a legislative history as Exhibit G to the Declaration of Gilles Bissonnette, Esq. in Support of Plaintiffs' Motion for Summary Judgment. The exhibit is not available electronically because it exceeds the size allowed by ECF. The parties have agreed to the exhibit's authenticity by stipulation. See Doc. No. [19-7](#).

The bill first went to the House Committee on Election Law (the "Election Committee"), which recommended its passage with only a slight organizational change and the requirement that posters be placed in polling places informing voters of the new law. See Legislative History at 000110, 000114. Members of the Election Committee noted that "showing your ballot on social media could cause und[ue] influence from employers or parents" and that the bill "protects privacy of voter[s] and stops coercion." Id. at 000130. Representative Mary Till wrote the statement of intent for the Election Committee, noting, "RSA 659:35 was put in place to protect voters from being intimidated or coerced into proving they voted a particular way by showing their completed ballot or an image of their completed ballot." Id. at 000114.

The bill was then referred to the House Committee on Criminal Justice and Public Safety (the "Criminal Justice Committee"), a majority of which recommended approval of the bill with the penalty reduced from a misdemeanor to a violation. See Legislative History at 000076, 000078. Notes from the Criminal Justice Committee's hearing indicate that some committee members were concerned with whether the bill and its penalties were necessary. See id. at 000099-000100.

Representative Horrigan defended the law during the hearing, explaining that it "tightens up" existing law governing election fraud. Id. at 000099. Deputy Secretary of State David Scanlan also spoke in support of the bill, providing a "history of voting irregularities, including votes being bought."³ Id. at 000100. When asked whether the bill was necessary, Deputy Secretary Scanlan responded that the "privacy of [the] ballot must be preserved." Id. Ultimately, a majority of the Criminal Justice Committee recommended passing the bill so long as the penalty was decreased to a violation. Id. at 000076, 000078.

A minority of the Criminal Justice Committee, however, filed a report concluding that it would be "inexpedient to legislate" the bill. See Legislative History at 000083. The minority wrote:

Although the Minority agrees that the Criminal Justice Committee acted wisely in reducing the penalty from a misdemeanor to a violation, we believe this remains a very bad bill. . . . [I]t is not needed because we already have laws which prohibit people from selling their votes for financial gain, and that was the only reason supporters gave for passing the bill. . . . [T]his bill as drafted is overly broad. As such, it represents an intrusion on free speech. It fights a bogey man, which does not exist, at the expense of yielding even more of our freedoms.

³ The legislative history does not further describe Deputy Secretary Scanlan's testimony on this point.

Id. The minority suggested further amendment of the final sentence of paragraph I as follows:

This prohibition shall include taking a digital image or photograph of his or her marked ballot and distributing or sharing the image via social media or by any other means **only if the distribution or sharing is for the purpose of receiving pecuniary benefit, as defined in RSA 640:2, II(c),⁴ or avoiding harm, as defined in RSA 640:3.⁵**

Id. at 000097 (emphasis added to denote minority's suggestions). Such an amendment, they argued, would make it illegal only to post a photo for financial gain or to avoid harm. Id. at 000083. They noted that this was the original intent of the bill according to the Secretary of State. Id. Nevertheless, the amendment was not supported by the majority of the Criminal Justice Committee and accordingly was not added to the bill that was presented to the House of Representatives. Id. at 000076,

⁴ Section 640:2, II(c) of the New Hampshire Revised Statutes provides: "'Pecuniary benefit' means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally." N.H. Rev. Stat. Ann. § 640:2, II(c).

⁵ Section 640:3, II of the New Hampshire Revised Statutes provides: "'Harm' means any disadvantage or injury, to person or property or pecuniary interest, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official, or voter is interested" N.H. Rev. Stat. Ann. § 640:3, II.

000078.

The bill, as amended by the Election Committee and the majority of the Criminal Justice Committee, passed the full House by a veto-proof 198-96 majority. See Legislative History at 000063. On April 9, 2014, the Senate Public and Municipal Affairs Committee held a hearing, at which Representatives Horrigan and Till and Deputy Secretary Scanlan testified in support of the bill. Representative Horrigan stated that the practice of posting images of ballots on social media accounts “compromises the security of the polling place and the secrecy of the ballot.” Id. at 000063. He also cautioned that “[t]he new high-tech methods of showing a ballot absolutely could be used to further a serious vote-buying scheme.” Id. Similarly, Representative Till explained that “the seemingly innocent bragging about how one voted by posting a photo of one’s completed ballot on Facebook, could undermine efforts to [e]nsure that no one is coerced into voting a particular way.” Id. at 000064. On April 17, 2014, the Senate Committee on Public and Municipal Affairs recommended that the bill “ought to pass,” and the Senate then passed the bill. Id. at 000057. On June 11, 2014, Governor Maggie Hassan signed the bill into law, effective September 1, 2014.

The new law's legislative history reveals that its opponents were concerned that the proposed law would infringe freedom of speech. In response, Representative Horrigan stated:

The bill's opponents framed this as a free speech issue, but political speech is in fact prohibited at the polling place. You absolutely have the right to engage in as much free speech as you want to beyond the boundary marked by the "No Electioneering" signs. However, the space inside that boundary is a secure space where the debate stops and the secret balloting begins.

Legislative History at 000063. Representative Till also addressed the opponents' concern, stating:

[E]very voter is free to tell as many people as they desire, in whatever forum they choose, how they voted. What is not allowed is to show one's completed ballot since, once cast, the ballot is the property of the state and in order to protect the secrecy of the ballot cannot be publicly identified with a particular voter.

Id. at 000064.

B. Vote Buying and Voter Coercion

Secretary of State William Gardner, the defendant in this action, defends the new law on the grounds that it is needed to prevent vote buying and voter coercion.

1. Evidence of Vote Buying and Voter Coercion in New Hampshire

The legislative history of the 2014 amendment to RSA 659:35 contains only a single reference to an actual alleged instance of vote buying in New Hampshire. As Representative Till

described the incident:

I was told by a Goffstown resident that he knew for a fact that one of the major parties paid students from St Anselm's \$50 to vote in the 2012 election. I don't know whether that is true or not, but I do know that if I were going to pay someone to vote a particular way, I would want proof that they actually voted that way.

Legislative History at 000064. She did not provide any other details about the incident, and it is not discussed elsewhere in the legislative history.

The summary judgment record does not include any evidence that either vote buying or voter coercion has occurred in New Hampshire since the late 1800s. See Doc. No. 18-1 at 2. Moreover, the state has received no complaints that images of marked ballots have been used to buy or coerce other votes. See Exhibit B to the Declaration of Gilles Bissonnette, Esq. in Support of Plaintiffs' Motion for Summary Judgment ("Exhibit B") at 11, Rideout v. Gardner, No. 14-cv-489-PB (filed Mar. 27, 2015).

2. Vote Buying and Voter Coercion in the United States

There is no doubt that vote buying and voter coercion were at one time significant problems in the United States. See Doe v. Reed, 561 U.S. 186, 226 (2010) (Scalia, J., concurring) (citing Burson v. Freeman, 504 U.S. 191, 202 (1992) (plurality opinion)); Susan C. Stokes, et al., Brokers, Voters, and

Clientelism: The Puzzle of Distributive Politics 200 (2013);
Richard Hasen, Vote Buying, 88 Cal. L. Rev. 1323, 1327 (2000);
Jill Lepore, Rock, Paper, Scissors: How We Used To Vote, New
Yorker, Oct. 13, 2008, [http://www.newyorker.com/magazine/
2008/10/13/rock-paper-scissors](http://www.newyorker.com/magazine/2008/10/13/rock-paper-scissors).

Initially, the United States followed the viva voce system of voting used in England, in which voting “was not a private affair, but an open, public decision, witnessed by all and improperly influenced by some.” Burson, 504 U.S. at 200. Gradually, states repealed the viva voce system in favor of written ballots. Id. At first, voters were expected to provide their own pen and paper, but when that became too complex, parties provided voters with printed ballot paper with a “ready-made slate of candidates.” L.E. Fredman, The Australian Ballot: The Story of an American Reform 21 (1968).

Because early written ballots were not secret ballots, they provided an opportunity for parties to buy votes. The parties used ballot paper that “was colored or otherwise recognizable” from a distance to ensure that the voter used the ballot he was given. Id. at 22; see Burson, 504 U.S. at 200. Ballot peddlers or district captains then paid voters as they emerged from the polling place. Fredman, supra, at 22. For instance, in 1892,

16% of Connecticut voters were "up for sale" at prices ranging from \$2 to \$20. Id. at 23. Similarly, in 1887, a "study of New York City politics estimated that one-fifth of voters were bribed." Stokes, supra, at 227.

By the end of the 19th century, most of the United States had adopted a new voting method referred to as the "Australian ballot." Fredman, supra, at 83. The Australian ballot is a method of voting using a secret ballot that was first used in Australia in the mid-19th century. Id. at 7-9. It has four characteristics: (1) ballots are "printed and distributed at public expense"; (2) ballots contain the names of all nominated candidates; (3) ballots are distributed "only by . . . election officers at the polling place"; and (4) "detailed provisions" are made for physical arrangements to ensure secrecy when casting a vote. Id. at 46. In 1888, Louisville, Kentucky became the first American city to adopt the Australian ballot, and in November 1889, Massachusetts was the first to use it statewide. Id. at 31, 36-39; Lepore, supra. New Hampshire has used the Australian ballot since 1891. Legislative History at 000062.

The Australian ballot drastically changed the utility of bribing voters because party workers could no longer monitor how

voters voted. See Fredman, supra, at 47. Professor L.E. Fredman used the differences between the 1888 and 1892 presidential elections to highlight the effect. See id. at 83. Both elections featured Republican Benjamin Harrison against Democrat Grover Cleveland, but in the interim, 38 states had adopted the Australian ballot. Id. In 1888, the treasurer of the Republican National Committee instructed local officials: "Divide the floaters in blocks of five, and put a trusted man, with necessary funds, in charge of these five, and make them responsible that none get away." Id. at 22. Although the memorandum exposed the extent of bribery during that election, Benjamin Harrison was elected. In the 1892 election, by contrast, "[t]here seemed to be more factual argument and fewer noisy processions, and the day itself was generally quiet and orderly." Id. at 83; see also Stokes, supra, at 228 ("Historians also note the rising importance of party platforms in the late nineteenth century, another sign that vote buying was yielding to electoral strategies that, in [Theodore] Hoppen's phrase, 'depended upon words.'") (quoting Theodore K. Hoppen, The Mid-Victorian Generation: 1846-1886 (2000)).

For the most part, the Australian ballot is credited with delivering "a blow against clientelism," Stokes, supra, at 241,

and ending "direct bribery and intimidation." Fredman, supra, at 129; see Burson, 504 U.S. at 204 ("The success achieved through these reforms was immediately noticed and widely praised."). Nevertheless, although the Australian ballot drastically reduced incentives to resort to vote buying, it did not eradicate the phenomenon entirely. For example, in Adams County, Ohio, vote buying was able to persist due to the "relative smallness" of the area. See Fabrice Lehoucq, When Does a Market for Votes Emerge?, in Elections for Sale: The Causes and Consequences of Vote Buying 33, 38 (Frederic C. Schaffer ed., 2007). There, in 1910, the "price of a vote oscillated between a drink of whisky and US\$25, with the average price being US\$8 per vote" Id. (citing Genevieve B. Gist, Progressive Reform in a Rural Community: The Adams County Vote-Fraud Case, 48 Miss. Valley Historical Rev. 60, 62-63 (1961), <http://www.jstor.org/stable/1902404>). Similarly, due to rural populations with high poverty rates, "vote buying remained endemic well into the twentieth century" in many southern states. Stokes, supra, at 229.

Although "isolated and anachronistic," there continue to be some reports of vote buying in the twenty-first century. Stokes, supra, at 231. For example, there have been recent

prosecutions for violations of federal vote-buying statutes in Kentucky, North Carolina, and Illinois. See [United States v. Thomas](#), 510 F.3d 714, 717 (7th Cir. 2007); [United States v. Shatley](#), 448 F.3d 264, 265 (4th Cir. 2006); [United States v. Johnson](#), No. 5:11-cr-143, 2012 WL 3610254, at *1 (E.D. Ky. Aug. 21, 2012); Stokes, supra, at 231. None of these cases, however, involved the use of a digital or photographic image of a marked ballot.

In addition to the introduction of the Australian ballot, anti-vote buying laws were a major cause of the decline of vote buying. See Allen Hicken, [How Do Rules and Institutions Encourage Vote Buying?](#), in [Elections for Sale: The Causes and Consequences of Vote Buying](#) 47, 57 (Frederic C. Schaffer ed., 2007) (explaining that the strength of anti-vote buying rules “has the most direct impact on the expected utility of vote buying.”). In the United States, federal law makes it a crime to buy votes or engage in voter coercion. See [52 U.S.C. § 10307\(b\)](#) (voter intimidation, threats, and coercion prohibited); [52 U.S.C. § 10307\(c\)](#) (vote buying in certain federal elections prohibited). New Hampshire law also prohibits vote buying and voter coercion. [N.H. Rev. Stat. Ann. § 659:40, I](#) (“No person shall directly or indirectly bribe any person not to register to

vote or any voter not to vote or to vote for or against any question submitted to voters or to vote for or against any ticket or candidate for any office at any election.”); [N.H. Rev. Stat. Ann. § 659:40, II](#) (“No person shall use or threaten force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting, vote or refrain from voting for any particular candidate or ballot measure, or refrain from registering to vote.”); see also [N.H. Rev. Stat. Ann. § 659:37](#) (voter interference prohibited); [N.H. Rev. Stat. Ann. § 659:39](#) (giving liquor to voter to influence an election prohibited); [N.H. Rev. Stat. Ann. § 659:40, III](#) (voter suppression prohibited).

C. The Plaintiffs

The New Hampshire Attorney General’s Office is currently investigating four individuals for alleged violations of RSA 659:35, I, including the three plaintiffs in this case. Doc. No. [18-1](#) at 9. The allegations concerning each of the plaintiffs arise from their votes in the September 9, 2014 Republican primary election, but the state does not contend that any of the plaintiffs were involved in vote buying. See Doc. No. [29](#) at 3.

Plaintiff Leon Rideout, who represents District 7 in Coos

Country in the New Hampshire House of Representatives, voted in Lancaster, New Hampshire where he was on the ballot. Prior to casting his marked ballot, he took photographs of it with his phone. The ballot reflected that he voted for himself as well as other Republican candidates. Hours after he cast his ballot, he posted the photograph to Twitter with the text, "#COOS7 vote in primary 2014#nhpolitics." Doc. No. 18-1 at 9. He also posted the photograph to his House of Representatives Facebook page. In a September 11, 2014 article in the Nashua Telegraph, Rideout explained, "I did it to make a statement. . . . I think [RSA 659:35, I is] unconstitutional. . . . It's really just an overreach of the government trying to control something that, in my opinion, doesn't need to be regulated." David Brooks, You Didn't Take a Picture of Your Ballot Tuesday, Did You? (It's Illegal), Nashua Telegraph, Sept. 11, 2014, <http://www.nashuatelegraph.com/news/1046026-469/you-didnt-take-a-picture-of-your.html>. After Rideout posted the image, Paul Brodeur, an investigator from the Attorney General's Office, called him and requested an interview, which was conducted on September 16, 2014. The Attorney General's Office threatened to prosecute Rideout under RSA 659:35, I, but no complaint was served because the plaintiffs entered into agreements with the

state to toll the statute of limitations period. Doc. No. 18-1 at 11.

The Attorney General's Office is also investigating Andrew Langlois, who voted in Berlin, New Hampshire. Because Langlois did not approve of his Republican choices for U.S. Senate, he wrote the name of his recently-deceased dog, "Akira," as a write-in candidate. He took a photograph of his ballot on his phone while in the ballot booth. He later posted the photograph on Facebook, writing in part, "Because all of the candidates SUCK, I did a write-in of Akira" Doc. No. 19-20 at 2. Brodeur called Langlois after the election and explained that he was being investigated for posting his ballot on social media. Because Langlois was unaware of RSA 659:35, I, he initially thought Brodeur's call was a "joke." Doc. No. 18-1 at 12.

Brandon Ross, the third plaintiff, voted in Manchester, where he was a candidate for the New Hampshire House of Representatives. With his phone, Ross took a photograph of his marked ballot, which reflected his vote for himself and other Republican candidates. He took the picture to keep a record of his vote and to preserve the opportunity to show his marked ballot to friends. He was aware of RSA 659:35, I when he took the photograph, and he did not immediately publish it because of

the law's penalties. After learning that the Attorney General's Office was investigating voters for violating RSA 659:35, I, on September 19, 2014, Ross posted the photograph of his marked ballot on Facebook with the text "Come at me, bro." Doc. No. 19-22 at 2. Representative Horrigan, the sponsor of the bill to amend RSA 659:35, filed an election law complaint, which triggered an investigation of Ross by the Attorney General's Office.

D. Procedural History

On October 31, 2014, Rideout, Langlois, and Ross filed a complaint pursuant to 42 U.S.C. § 1983 challenging the constitutionality of RSA 659:35. They requested declarations that the new law is facially unconstitutional and unconstitutional as applied to the plaintiffs. Doc. No. 1 at 20-21. They also sought an injunction to prohibit the state from enforcing RSA 659:35, I. Id. at 21.

On November 11, 2014, the plaintiffs filed a motion for a preliminary injunction. Ten days later, the parties agreed to an expedited discovery schedule in order to allow the issue to be decided on the merits rather than on a motion for a preliminary injunction. See Fed. R. Civ. P. 65(a)(2) (authorizing court to consolidate preliminary injunction hearing

and trial).

The parties have filed cross motions for summary judgment. See Doc. Nos. 18, 22. Both parties agree that there is no need for a trial because none of the material facts are in dispute.⁶ Doc. No. 29 at 2.

II. STANDARD OF REVIEW

This case will be resolved on cross motions for summary judgment.

Summary judgment is appropriate when the record reveals “no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The evidence submitted in support of the motion must be considered in the light most favorable to the nonmoving party,

⁶ The plaintiffs argue that the new law is unconstitutional in all of its applications - and thus, is facially invalid - for the same reasons that it cannot be constitutionally applied to them. In response, the Secretary claims only that the plaintiffs' claims should be rejected because the new law can be constitutionally applied to everyone, including the plaintiffs. He does not argue that the law can be properly invoked in certain applications even if it cannot be constitutionally applied to the plaintiffs. Thus, I accept the plaintiffs' contention that this is an appropriate case for a facial challenge to the statute's constitutionality. See United States v. Stevens, 559 U.S. 460, 472-73 (2009) (describing standard for facial challenge based on First Amendment grounds).

drawing all reasonable inferences in its favor. See Navarro v. Pfizer Corp., 261 F.3d 90, 94 (1st Cir. 2001).

A party seeking summary judgment must first identify the absence of any genuine dispute of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A material fact "is one 'that might affect the outcome of the suit under the governing law.'" United States v. One Parcel of Real Prop. with Bldgs., 960 F.2d 200, 204 (1st Cir. 1992) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). If the moving party satisfies this burden, the nonmoving party must then "produce evidence on which a reasonable finder of fact, under the appropriate proof burden, could base a verdict for it; if that party cannot produce such evidence, the motion must be granted." Ayala-Gerena v. Bristol Myers-Squibb Co., 95 F.3d 86, 94 (1st Cir. 1996); see Celotex, 477 U.S. at 323.

On cross motions for summary judgment, the standard of review is applied to each motion separately. See Am. Home Assurance Co. v. AGM Marine Contractors, Inc., 467 F.3d 810, 812 (1st Cir. 2006); see also Mandel v. Boston Phoenix, Inc., 456 F.3d 198, 205 (1st Cir. 2006) ("The presence of cross-motions for summary judgment neither dilutes nor distorts this standard of review."). Hence, I must determine "whether either of the

parties deserves judgment as a matter of law on facts that are not disputed.” [Adria Int'l Group, Inc. v. Ferré Dev., Inc.](#), 241 F.3d 103, 107 (1st Cir. 2001).

III. ANALYSIS

Plaintiffs challenge only the portion of RSA 659:35, I that makes it unlawful for a voter to take and disclose an image of his or her marked ballot. As they see it, this act of disclosure, which ordinarily occurs far from the polling place and will generally be accomplished through the use of social media, is an important and effective means of political expression that is protected by the First Amendment. In contrast, Secretary Gardner defends the law primarily by arguing that it is a necessary restraint on speech that is required to prevent vote buying and voter coercion.

The Supreme Court has developed a template for resolving conflicts between speech rights and governmental interests. Speech restrictions are first sorted by whether they are content based or content neutral. Content-based restrictions are subject to strict scrutiny, “‘which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.’” [Reed v. Town of](#)

Gilbert, 135 S. Ct. 2218, 2231 (2015) (quoting Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 131 S. Ct. 2806, 2817 (2011)). Content-neutral restrictions, however, are subject only to intermediate scrutiny, meaning "the government may impose reasonable restrictions on the time, place, or manner of protected speech," so long as "they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.'" Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (quoting Clark v. Cmty. For Creative Non-Violence, 468 U.S. 288, 293 (1984)).

I begin by determining whether the 2014 amendment to RSA 659:35, I is a content-based or content-neutral restriction on speech.

A. Content Neutrality

As the Supreme Court recently explained in Reed v. Town of Gilbert, "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." 135 S. Ct. at 2227. A law that distinguishes between permitted and prohibited speech based on the subject matter, function, or purpose of the speech is content based on its face. Id. Additionally, even a

facially-neutral law will be deemed to be content based if it either cannot be justified without reference to the content of the speech or discriminates based on the speaker's point of view. Id.

A law that is content based on its face will be subject to strict scrutiny even though it does not favor one viewpoint over another and regardless of whether the legislature acted with benign motivations when it adopted the law. See id. at 2229-30. As the Reed court explained, "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech." Id. at 2229; see also [Turner Broad. Syst., Inc. v. FCC, 512 U.S. 622, 642-43 \(1994\)](#) ("Nor will the mere assertion of a content-neutral purpose be enough to save a law which, on its face, discriminates based on content.").

In Reed, the Court applied these principles to invalidate a sign code that governed the manner in which people could display outdoor signs in Gilbert, Arizona. [Reed, 135 S. Ct. at 2226](#). The sign code generally prohibited the display of outdoor signs anywhere within the town without a permit. It exempted twenty-three categories of signs from that requirement, but placed

various lesser requirements on each of those twenty-three categories. For example, a political sign could be larger than a temporary directional sign and could be displayed for a longer amount of time. The Court held that the sign code was content based on its face because it treated each sign category differently dependent upon the type of content conveyed. Id. at 2227. Because the sign code was facially content based, the Court subjected it to strict scrutiny without attempting to identify the legislature's purpose or justification. Id.

In the present case, as in Reed, the law under review is content based on its face because it restricts speech on the basis of its subject matter. The only digital or photographic images that are barred by RSA 659:35, I are images of marked ballots that are intended to disclose how a voter has voted. Images of unmarked ballots and facsimile ballots may be shared with others without restriction. In fact, the law does not restrict any person from sharing any other kinds of images with anyone. In short, the law is plainly a content-based restriction on speech because it requires regulators to examine the content of the speech to determine whether it includes impermissible subject matter. Accordingly, like the sign code at issue in Reed, the law under review here is subject to strict

scrutiny even though it does not discriminate based on viewpoint and regardless of whether the legislature acted with good intentions when it adopted the law.

The Secretary nevertheless contends that the new law should be exempt from strict scrutiny even if it is a content-based restriction on speech because it is only a partial ban on speech about how a voter has voted. In other words, because the new law leaves voters free to use other means to inform others about how they have voted, the Secretary argues that the law is merely a time, place, or manner restriction on speech that is subject only to intermediate scrutiny. This argument is a nonstarter. As the Supreme Court explained in United States v. Playboy Entertainment Group, Inc., “[t]he distinction between laws burdening and laws banning speech is but a matter of degree. The Government’s content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.” 529 U.S. 803, 812 (2000). Here, the law at issue is a content-based restriction on speech that deprives voters of one of their most powerful means of letting the world know how they voted. The legislature cannot avoid strict scrutiny when it adopts such a law merely by leaving voters with other arguably less effective means of speaking on the subject.

The Secretary also argues that the law should not be considered a content-based restriction on speech because paragraph II of RSA 659:35 additionally prohibits a voter from placing "a distinguishing mark upon his or her ballot." See N.H. Rev. Stat. Ann. § 659:35, II. That is, because paragraph II prohibits another type of marking on ballots, the new law barring a voter from disclosing an image of a marked ballot is content neutral. This argument fails. The two paragraphs simply regulate two different categories of speech: paragraph I regulates a certain type of speech that ordinarily occurs outside the polling place and paragraph II regulates what types of markings a voter can make on a ballot while in the polling place. Because paragraph I regulates speech based on the content conveyed, paragraph II cannot save it from being a content-based restriction on speech.

In a last-ditch effort to save the law from strict scrutiny, the Secretary argues that completed ballots are a form of government speech and thus do not trigger First Amendment protection at all. He cites Walker v. Texas Division, Sons of Confederate Veterans, which held that Texas's specialty license plate designs constituted government speech and thus Texas was entitled to refuse to issue plates featuring a group's proposed

design. 135 S. Ct. at 2253. In reaching its decision, the Court in Walker relied on the facts that (1) license plates “long have communicated messages from the States,” (2) Texas license plate designs “are often closely identified in the public mind with the State,” and (3) Texas maintains direct control over the messages conveyed on its specialty plates. Id. at 2248-49 (internal quotations and alterations omitted). The problem at issue here, however, is quite different from the problem the Court resolved in Walker. First, ballots do not communicate messages from the state; they simply list slates of candidates. Second, although blank ballots may be identified with the state, there is no possibility that a voter’s marking on a ballot will be misinterpreted as state speech. Third, New Hampshire does not maintain direct control over the messages that people convey on ballots, apart from the restriction that they place no distinguishing mark on their ballot. See N.H. Rev. Stat. Ann. § 659:35, II. Accordingly, any markings that voters place on their ballots clearly do not qualify as government speech.

Although the Secretary does not press the point, Representative Horrigan also suggested during debate on the new law that it could be justified because it regulates speech at

the polling place where electioneering is not permitted. I disagree. RSA 659:35, I does not bar voters from taking pictures of their completed ballots before they are cast. What they may not do is disclose images of a completed ballot to others. Because disclosure will generally take place far away from the polling place, the Secretary cannot prevent the new law from being subject to strict scrutiny by claiming that it is merely a restriction on speech in a nonpublic forum, where speech rights are more limited. See e.g., [Burson v. Freeman](#), 504 U.S. 191, 214 (1992) (Scalia, J., concurring in the judgment) (arguing that viewpoint-neutral restrictions on speech in the vicinity of polling places should not be subject to strict scrutiny because they restrict speech in what is traditionally a nonpublic forum).

For similar reasons, a law that restricts a person's ability to tell others how he has voted is not exempt from strict scrutiny merely because the ballot itself is a nonpublic forum. See, e.g., [Timmons v. Twin Cities Area New Party](#), 520 U.S. 351, 363 (1997) ("Ballots serve primarily to elect candidates, not as forums for political expression"). The law at issue here does not restrict what a voter may write on his ballot; it regulates the way in which he can disclose his vote

to others. Thus, the nonpublic forum doctrine cannot be invoked to save the law from strict scrutiny because the speech that the law restricts necessarily occurs in forums that the government does not own or control. To illustrate the point, consider a law that bans public discussion of what is said at a candidate debate held by a public broadcaster. Is there any doubt that such a law would be subject to strict scrutiny even though the Supreme Court has held that the debate itself occurs in a nonpublic forum? See [Ark. Educ. Television Comm'n v. Forbes](#), 523 U.S. 666, 680 (1998) (debate conducted by a public broadcaster is a nonpublic forum). Obviously not. For the same reasons, the law at issue here is not exempt from strict scrutiny merely because the ballot itself is a nonpublic forum.

B. Strict Scrutiny

Because the 2014 amendment to RSA 659:35, I is a content-based restriction on speech, it can stand only if it survives strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” [Reed](#), 135 S. Ct. at 2231 (quoting [Ariz. Free Enter.](#), 131 S. Ct. at 2817). The Secretary bears the burden of establishing both requirements. See [id.](#) As I explain below, he has failed to meet his burden on either part

of the strict scrutiny test.

1. State Interests

The Secretary argues that a ban on displays of completed ballots serves the state's compelling interest in preventing vote buying and voter coercion.⁷ While both interests are plainly compelling in the abstract, the mere assertion of such interests cannot sustain a content-based speech restriction.

For an interest to be sufficiently compelling, the state must demonstrate that it addresses an actual problem. Brown v. Entm't Merchs. Ass'n, 131 S. Ct. 2729, 2738 (2011) ("The state must specifically identify an 'actual problem' in need of solving" (quoting Playboy, 529 U.S. at 822-23)); see

⁷ In his brief, the Secretary characterized the state's interests in three different ways, apparently dependent upon which level of scrutiny applies. First, asserting that the law is content neutral, he argued that the law furthers "the important governmental interest of ensuring the purity and integrity of our elections." Doc. No. 22-1 at 2 (emphasis added). Second, applying the standard for content-neutral restrictions on speech, the Secretary identified the state's "significant interest in thwarting one party's ability to confirm how another party has voted thereby making it impossible for a party purchasing a vote to visually confirm the vote that is being purchased." Id. at 8 (emphasis added). Finally, he argued that even if strict scrutiny applies, "preventing voter intimidation and election fraud is a compelling interest." Id. at 14 (emphasis added). Collectively, these three characterizations address two interests: preventing vote buying and preventing voter coercion. I treat these two interests as the government's asserted interests.

also Asociación de Educación Privada de Puerto Rico, Inc. v. García-Padilla, 490 F.3d 1, 18 (1st Cir. 2007) (“We cannot conclude that [the Puerto Rico Department of Consumer Affairs] has a legitimate state interest in fixing a problem it has not shown to exist.”). To satisfy this requirement, the government ordinarily must point to sufficient evidence in the law’s legislative history or in the record before the court to show that the problem exists. See Turner, 512 U.S. at 667 (explaining that without evidence of an actual problem, “we cannot determine whether the threat [asserted by the government] is real enough” to survive strict scrutiny). “Anecdote and supposition” cannot substitute for evidence of a real problem. Playboy, 529 U.S. at 822; Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y., 447 U.S. 530, 543 (1980) (“Mere speculation of harm does not constitute a compelling state interest.”).

In the present case, neither the legislative history nor the evidentiary record compiled by the Secretary in defense of this action provide any support for the view that the state has an actual or imminent problem with images of completed ballots being used to facilitate either vote buying or voter coercion. The law’s legislative history contains only a single

unsubstantiated third-hand report that vote buying occurred in Goffstown during the 2012 election. See Legislative History at 000064. Although the Secretary was given the opportunity to do so,⁸ he produced no evidence that either vote buying or voter coercion are current problems in New Hampshire. Plaintiffs, in contrast, have produced undisputed evidence that there have been no vote buying prosecutions and no complaints of vote buying in the state since at least 1976. Exhibit B at 11. More to the point, even though small cameras capable of taking photographic images of ballots have been available for decades and cell phones equipped with digital cameras have been in use for nearly 15 years, the Secretary has failed to identify a single instance anywhere in the United States in which a credible claim has been made that digital or photographic images of completed ballots have been used to facilitate vote buying or voter coercion. Although legislatures are entitled to deference when making predictive judgments,⁹ deference cannot be blind to the complete

⁸ I invited both parties to present additional information and have given them every opportunity to come forward with any evidence they have. Both parties agreed that a trial was unnecessary and that the case should be decided on cross motions for summary judgment. Doc. No. 29 at 2.

⁹ The degree of deference that must be accorded to legislative judgments in First Amendment cases will vary based on a variety of circumstances. In Turner Broadcasting System, Inc. v. FCC,

absence of evidence when speech restrictions are at issue. Here, the Secretary offers only anecdote and speculation to sustain the law, which is insufficient when it is applied to a content-based restriction on speech.

The Secretary invokes the Supreme Court's plurality decision in Burson v. Freeman to support his claim that content-based speech restrictions can be justified without evidence that compelling state interests are under actual threat. There, the statute under review established a buffer zone around polling places to protect voters from solicitation and the distribution of campaign materials. Burson, 504 U.S. at 193-94 (plurality opinion). In sustaining the statute against a First Amendment challenge, the plurality relied heavily on historical evidence demonstrating that predecessor statutes to the one under review had been adopted long ago to respond to a situation in which

the Court deferred to Congress's predictive judgment that the law under review furthered important governmental interests. 520 U.S. 180, 185 (1997). In that case, however, the challenged law was a content-neutral restriction on speech, the legislative judgment concerned a complex regulatory regime in an area undergoing rapid technological change, and the proposed law was based on years of testimony and volumes of documentary evidence. Id. at 196, 199. The law at issue here is very different because it is a content-based restriction on speech, the law does not address a complex regulatory problem, and the legislative judgment is not based on evidence concerning the existence of the alleged problem.

"[a]pproaching the polling place . . . was akin to entering an open auction place." Id. at 202. The Court concluded that it was appropriate for the state to act without evidence of a current problem in part because the "long, uninterrupted and prevalent" use of similar statutes throughout the United States made it difficult for the state to determine what would happen if the challenged law were invalidated. Id. at 208.

Burson, however, is a very different case from the one I decide today. In contrast to the statute at issue in Burson, the 2014 amendment to RSA 659:35, I is quite new and cannot be tied to historical evidence of recent vote fraud. Although it is true that vote buying was a problem in this country before the adoption of the Australian ballot, the historical record establishes that vote buying has not been a significant factor in elections in more than 100 years. Further, because the law at issue here is new and the technology it targets has been in use for many years, it is reasonable to expect that if the problem the state fears were real, it would be able to point to some evidence that the problem currently exists. Under these circumstances, both history and common sense undermine rather than support the state's contention that vote buying and voter coercion will occur if the state is not permitted to bar voters

from displaying images of their completed ballots.

Because the Secretary has failed to demonstrate that the law serves a compelling state interest, it fails to satisfy strict scrutiny.

2. Narrow Tailoring

Even if the Secretary had proved that the new law serves a compelling interest, it would still fail the strict scrutiny test because it is not narrowly tailored to address the alleged state interests.

When the government attempts to restrict speech in order to further a state interest, it ordinarily must demonstrate that the restriction “is narrowly tailored to achieve that interest.” [Reed](#), 135 S. Ct. at 2231 (quoting [Ariz. Free Enter.](#), 131 S. Ct. at 2817). Even content-neutral restrictions require narrow tailoring because “silencing speech is sometimes the path of least resistance . . . [and] by demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily ‘sacrific[ing] speech for efficiency.’” [McCullen v. Coakley](#), 134 S. Ct. 2518, 2534 (2014) (quoting [Riley v. Nat’l Fed’n of the Blind of N.C., Inc.](#), 487 U.S. 781, 795 (1988)). This tailoring requirement is even more demanding when the state elects to restrict speech based on its

content. In such cases, the burden is on the state to demonstrate that the restriction it has adopted is the “least restrictive means” available to achieve the stated objective. [Ashcroft v. ACLU](#), 542 U.S. 656, 666 (2014); [McCullen v. Coakley](#), 134 S. Ct. 2518, 2530 (2014) (dictum); [Globe Newspaper Co. v. Pokaski](#), 868 F.2d 497, 505 (1st Cir. 1989); but cf. [Williams-Yulee v. Fla. Bar](#), 135 S. Ct. 1656, 1671 (2015) (narrow tailoring does not require perfect tailoring even when a content-based speech restriction is under review).

Among other reasons, a law is not narrowly tailored if it is significantly overinclusive. See [Brown](#), 131 S. Ct. at 2741; [Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.](#), 502 U.S. 105, 121, 123 (1991); [First Nat’l Bank of Boston v. Bellotti](#), 435 U.S. 765, 794-95 (1978). For example, in [Simon & Schuster, Inc. v. Members of New York State Crime Victims Board](#), the law at issue required that an accused or convicted criminal’s income from works describing his crime be deposited in an escrow account and made available to the victims of the crime and the criminal’s other creditors. 502 U.S. at 108. The Supreme Court held that the law was a “significantly overinclusive” means of ensuring that victims are compensated from the proceeds of crime, and therefore the law was not

narrowly tailored. Id. at 121, 123. Describing the reach of the statute, the Court stated:

Should a prominent figure write his autobiography at the end of his career, and include in an early chapter a brief recollection of having stolen . . . a nearly worthless item as a youthful prank, the [government entity] would control his entire income from the book for five years, and would make that income available to all of the author's creditors

Id. at 123. That is, the statute applied to a wide range of literature that would not enable a criminal to profit while a victim remained uncompensated. Because the law covered far more material than necessary to accomplish its goals, the Court held that the statute was vastly overinclusive and therefore not narrowly tailored. Id.

Here, like the law at issue in Simon & Schuster, the 2014 amendment to RSA 659:35, I is vastly overinclusive and is therefore not narrowly tailored to further a compelling interest. Even if the Secretary could demonstrate that New Hampshire has an actual problem with either vote buying or voter coercion and that allowing voters to display images of their ballots would exacerbate either problem, the means that the state has chosen to address the issue will, for the most part, punish only the innocent while leaving actual participants in vote buying and voter coercion schemes unscathed. As the

complaints of the voters who are now under investigation reveal, the people who are most likely to be ensnared by the new law are those who wish to use images of their completed ballots to make a political point. The few who might be drawn into efforts to buy or coerce their votes are highly unlikely to broadcast their intentions via social media given the criminal nature of the schemes in which they have become involved. As a result, investigative efforts will naturally tend to focus on the low-hanging fruit of innocent voters who simply want the world to know how they have voted for entirely legitimate reasons. When content-based speech restrictions target vast amounts of protected political speech in an effort to address a tiny subset of speech that presents a problem, the speech restriction simply cannot stand if other less restrictive alternatives exist.

Because the 2014 amendment is a content-based restriction on speech, it falls to the government to demonstrate that less speech-restrictive alternatives will not work. [Playboy](#), 529 U.S. at 816. In the present case, the state has an obviously less restrictive way to address any concern that images of completed ballots will be used to facilitate vote buying and voter coercion: it can simply make it unlawful to use an image of a completed ballot in connection with vote buying and voter

coercion schemes. The Secretary has failed to explain why this alternative would be less effective. At most, he has offered a generalized complaint that vote buying and voter coercion are difficult to detect. This explanation, however, merely highlights the ineffectiveness of the approach to the problem that the legislature has adopted. Vote buying and voter coercion will be no less difficult to detect if the statute remains in effect because people engaged in vote buying and voter coercion will not publicly broadcast their actions via social media. Accordingly, rather than demonstrating that alternatives would be ineffective, the Secretary's response only demonstrates the ineffectiveness of the law at issue.

Because the 2014 amendment to RSA 659:35, I is vastly overinclusive and the Secretary has failed to demonstrate that less speech-restrictive alternatives will be ineffective to address the state's concerns, it cannot stand to the extent that it bars voters from disclosing images of their completed ballots.

IV. CONCLUSION

The Supreme Court requires lower courts to use a categorical approach when resolving First Amendment problems of

the type at issue here. Thus, the viability of a challenged statute will turn on questions such as whether the statute is "content based," whether it serves "compelling governmental interests," and whether it is "narrowly tailored" to achieve those interests. I have followed this approach in concluding that the new law is a content-based restriction on speech that cannot survive strict scrutiny because it neither actually serves compelling state interests nor is it narrowly tailored to achieve those interests.

One sitting Supreme Court Justice has called for the lines between constitutional categories to be softened to permit judges to address the competing interests that underlie disputes such as the one at issue here more directly and with greater flexibility. See [Reed v. Town of Gilbert](#), 135 S. Ct. 2218, 2234 (Breyer, J., concurring) ("The First Amendment requires greater judicial sensitivity both to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as 'content discrimination' and 'strict scrutiny,' would permit.") Although there are sound policy reasons to allow judges greater flexibility when analyzing First Amendment questions, I would not come to a different conclusion in this case even if I were

free to more directly balance the interests that are at stake here. At its core, this dispute turns on a claim that the political speech rights of voters must be curtailed to protect the vote against those who would corrupt it with cash and coercion. If this claim could be grounded in something other than speculation, it would be more difficult to resolve because few, if any, rights are more vital to a well-functioning democracy than either the right to speak out on political issues or the right to vote free from coercion and improper influence. But the record in this case simply will not support a claim that these two interests are in irreconcilable conflict. Neither the legislative history of the new law nor the evidentiary record compiled by the parties provide support for the view that voters will be either induced to sell their votes or subjected to coercion if they are permitted to disclose images of their ballots to others. Nor is there any reason to believe that other less restrictive means could not be used to address either problem at least as effectively as the massively overinclusive law that is at issue here. Accordingly, this case does not present the type of conflict between speech rights and other governmental interests that can be used to justify a law that restricts political speech.

Although the plaintiffs have sought both declaratory and injunctive relief, I have no reason to believe that the Secretary will fail to respect this Court's ruling that the new law is unconstitutional on its face. Accordingly, I grant the plaintiffs' request for declaratory relief but determine that injunctive relief is not necessary at the present time. See [Wooley v. Maynard](#), 430 U.S. 705, 711 (1997) (injunctive relief is not required if the plaintiffs' interests will be protected by a declaratory judgment). The plaintiffs' motion for summary judgment (Doc. No. 18) is granted to the extent that it seeks a judgment for declaratory relief, and the Secretary's corresponding motion (Doc. No. 22) is denied. The clerk shall enter judgment for the plaintiffs.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

August 11, 2015

cc: William E. Christie, Esq.
Gilles Bissonnette, Esq.
Stephen G. Labonte, Esq.
Anne M. Edwards, Esq.



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Periodic Review Of Regulation Chapter 80

BOARD WORKING PAPERS
Myron McClees
ELECT Policy Analyst



Memorandum

To: James Alcorn, Chairman
ClaraBelle Wheeler, Vice Chair
Singleton McAllister, Secretary

From: Myron McClees, Policy Analyst

Date: March 15, 2016

Re: Public Comment for Periodic Reviews of Chapter 80 (1VAC 20-80)

Suggested Motion for a Board member to make: *I move that the Board seek public comment, for a period of 21 calendar days, on the proposed amendments to its regulations in Chapter 80, Recounts and Contested Elections, to implement recommendations received from the Department of Elections.*

Affected Regulations: 1VAC 20-80-10 through 20-80-20

Board Materials:

- 2016 Proposed Changes to Chapter 80
- Comments received during 2013 Periodic Review Comment Period

Background:

On May 15, 2013, the previous membership of the State Board of Elections announced a periodic review of all of its regulations pursuant to Regulation 20-10-120 calling for a review of all regulations after each presidential election. The objectives of this periodic review was similar to those set forth in Executive Order 14 for all executive agencies—effectiveness, efficiency, necessity, clarity and cost of compliance.

The original comment period for Chapter 80 opened June 3, 2013, and closed June 24, 2013. During this time period, only one comment from one commenter was received. The one comment asked that the term “paper ballot” be used properly in regulation 1VAC 20-80-20. However, this comment, nor any suggestions from the agency, was ever officially provided to the State Board of Elections for adoption due to the fact that a statewide recount was pending at the time that all other chapters were reviewed by the Board.



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The previous Board did not take up the matter again before the expiration of its term. Because of this, it is respectfully requested that the current Board complete the approval process. Due to the extended period of inaction on this item, the underlying standards upon which previous analyses were based have changed. It is for this reason that there are some suggested edits that were not captured in the public comments received.

The definitions of “paper ballot,” “printed ballot,” and “ballot scanner machine” have since been codified in Virginia Code § 24.2-101. The suggested edits for the regulation reflect their proper usage. Another change that has occurred since the initial consideration of this regulation is that the agency associated with the State Board of Elections has since been established as the Department of Elections, which is headed by a Commissioner instead of the Secretary of the State Board of Elections. There are multiple instances in the suggested edits where responsibilities that were previously assigned to the Secretary are not placed with the Commissioner.

ELECT respectfully requests that the Board approve a 21 day public comment period for the suggested edits to Chapter 80. A public comment period is necessitated for multiple reasons, most important of which is that such is required in Governor McAuliffe’s Executive Order Number 17. Over 180 days have elapsed since any previous action on this item, and thus the public should be able to provide full and proper input in the name of transparency.

1 **1VAC20-80-20. Recounts and Contested Elections.**

2 A. Standards for any recounts or contests requested in the Commonwealth of Virginia
3 shall be governed by Chapter 8 (§ 24.2-800 et seq.) of Title 24.2 of the Code of
4 Virginia.

5 B. Upon notification by the court that a recount request has been filed pursuant to
6 § 24.2-801 of the Code of Virginia, the ~~State Board~~ Department of Elections shall
7 promptly transmit to the appropriate court and electoral board or boards copies of the
8 instructions corresponding to the types of ballots and equipment used in each county
9 or city involved in the recount.

10 C. In preparation for the recount and pursuant to § 24.2-802 A of the Code of
11 Virginia, the clerks of the circuit courts shall:

12 1. Secure all ~~paper~~ printed ballots and other election materials in sealed boxes;

13 2. Place all of the sealed boxes in a vault or room not open to the public or to
14 anyone other than the clerk and his staff;

15 3. Cause such vault or room to be securely locked except when access is necessary
16 for the clerk and his staff; and

17 4. Certify that these security measures have been taken in whatever form is deemed
18 appropriate by the chief judge.

19 D. After a recount has been requested pursuant to § 24.2-801 of the Code of Virginia,
20 and prior to the preliminary hearing specified in § 24.2-802 B of the Code of Virginia,
21 the electoral board of each county or city in which the recount is to be held shall
22 provide the court and all parties to the recount with:

23 1. The recommended location and number of recount teams needed to recount ~~paper~~
24 printed ballots and to redetermine the votes cast on direct recording electronic
25 devices of the type that prints returns for the election district at large in which the
26 recount is being held.

27 2. The recommended location and number of recount teams needed to insert the
28 ballots read by ~~an electronic counting device~~ a ballot scanner machine into one or
29 more ~~counting devices~~ scanners that have been programmed to count only votes
30 cast for parties to the recount or for or against the question in a referendum recount.

31 Such machines shall also be programmed to reject all undervoted and overvoted
32 ballots as required by § 24.2-802 D of the Code of Virginia. The examination of
33 undervoted and overvoted ballots may take place at the same location before the
34 votes are totaled for that precinct, if so directed by the court. If a different team of
35 officers would be used to examine the undervoted and overvoted ballots, such teams
36 shall be included in the total number recommended for this item.

37 3. A complete list of all officers of election who served at the election to be
38 recounted, with the political party they represented at that election listed beside
39 their names, the precinct where each officer served, each officer's address and
40 phone number or numbers, and an indication of which officers served as chief or
41 assistant chief officers. Such list shall note recommended recount officials who the
42 court may appoint if the officials and alternates recommended by the parties to the
43 recount are not of sufficient number to conduct the recount within a reasonable
44 period. Such list shall be provided by the local electoral boards for both parties to
45 the recount, or by the ~~Secretary~~ Commissioner of the ~~State Board~~ Department of
46 Elections in the case of a recount for federal or statewide office or a statewide ballot
47 issue, prior to the preliminary hearing, or as soon thereafter as possible, to assist
48 them in preparing their selections of officers to be recount officials or alternates.

49 4. A list of the members of the electoral board and the political parties they
50 represent. Such list shall be provided by the local electoral boards to both parties to
51 the recount or by the ~~Secretary~~ Commissioner of the ~~State Board~~ Department of
52 Elections in the case of a recount for federal or statewide office or a statewide ballot
53 issue.

54 E. To facilitate the conduct of any pending or expected recount for a federal or
55 statewide office or statewide ballot issue, the ~~Secretary~~ Commissioner of the ~~State~~
56 ~~Board~~ Department of Elections may coordinate the gathering of the recommendations
57 and information from the electoral boards and provide such recommendations and
58 information to the court prior to the preliminary hearing specified in § 24.2-802 B of
59 the Code of Virginia on behalf of the electoral boards. The electoral board of each
60 county or city in which the recount is to be held shall provide the requested
61 information to the ~~Secretary~~ Commissioner of the ~~State Board~~ Department of
62 Elections.

63 F. Pursuant to § 24.2-802 A of the Code of Virginia, the procedures issued by the
64 State Board of Elections, and any other procedures directed by the court, shall be as
65 uniform as possible throughout the entire district in which the recount is being
66 conducted, given the differences in types of equipment and ballots used in the
67 election.

68 G. For any paper ballot that is to be counted manually and can be counted manually,
69 the guidelines adopted by the State Board of Elections for hand-counting shall be used
70 in determining the voter's intent ("Ballot Examples for Handcounting Paper or Paper-
71 Based Ballots for Virginia Elections or Recounts").

72 H. The State Board of Elections, Department of Elections, and the appropriate
73 electoral boards shall provide any other assistance requested by the court.

74



Agency Department of Elections

Board State Board of Elections

Chapter Recounts and Contested Elections [1 VAC 20 - 80]

[Back to List of Comments](#)

Commenter: W.T. Latham *

6/18/13 3:38 pm

Clarifying 1 VAC 20-80-20

I suggest defining the phrase "paper ballot" (as used in 20-80-20(D)(1) and 20-80-20(G)). In Virginia, "paper ballot" is a legal term of art that refers to ballots that are counted by hand instead of via a mechanical or direct recording process. In other words, an optical scan ballot is not a "paper ballot" in Virginia, but it is a mechanical ballot. Chapter 6 of Title 24.2 categorizes ballots, implicitly, as paper ballots (ballots that are counted by hand), mechanical ballots (ballots such as an optical scan ballot), and direct recording electronic (DRE) machine ballots (such as a touchscreen ballot).

It appears that 20-80-20 uses "paper ballot" to refer to not only purely "paper ballots," as discussed above, but also optical scan ballots. A definition of the different types of ballots, as well as additional explanations about processing each of these types of ballots in a recount, would be helpful.

* Nonregistered public user



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Recodification Of §24.2 Election Laws

BOARD WORKING PAPERS
Martha Brissette
ELECT Policy Analyst



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DEPARTMENT *of* ELECTIONS

Memorandum

To: Members of the State Board of Elections
 From: Martha Brissette, Policy Analyst
 Date: March 15, 2016
 Subject: Procedure for Requesting Recodification of Title 24.2

Suggested motion for a Board member to make:

I move that the Board direct the Commissioner to prepare a letter to the Chair of the Virginia Code Commission requesting recodification of Title 24.2 as soon as the Commission’s schedule will allow and offering the support of the Department of Elections policy team.

Applicable laws: Va. Code § 30-145.

Discussion:

Va. Code § 30-145(A) establishes the Virginia Code Commissioner membership as follows:

2 Senators	Rules	John Edwards, Chair; Ryan McDougale
2 Delegates	Speaker	James LeMunyon, Vice Chair; Gregory Habeeb
2 Circuit judges	Speaker, Senate Rules	Pamela Baskervill (ret.), Charles Sharp
Former Delegate	Speaker	Thomas Moncure, Jr.
Former Senator	Senate Rules	Robert Calhoun
Governor or designee		Carlos Hopkins
AG or AAG		Tim Oksman
DLS Director		Robert Tavenner
1-2 Citizens	Speaker, Senate Rules	E.M. Miller Chris Nolen

Under § 30-145(C), the Virginia Division of Legislative Services (DLS) provides staff support to the Commission. According to Jane Chaffin, Registrar of Regulations, who leads the DLS support team, the State Board of Elections may at any time write a letter addressed to the Chair of the Commission requesting recodification of Title 24.2 of the Code of Virginia. She predicted the next meeting could be in May. This project can be expected to take about two years. Previous election title recodifications are as follows:

- Title 24.2 enacted in 1993
- Title 24.1 enacted in 1970

1993 Senate Doc. 25, available at

[http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD251993/\\$file/SD25_1993.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD251993/$file/SD25_1993.pdf) .

The laboring oar with respect to preparing a draft will go to the DLS staff attorney responsible for elections bills (Meg Burruss). The Commission will appoint an advisory panel considering recommendations from the requesting body. For example, the 2014-2015 advisory panel for Title 23 Educational institutions consisted of 25 members of different backgrounds, including attorneys and a policy analyst.

<http://codecommission.dls.virginia.gov/documents/recodifications/23/SD16.pdf> (pp. 19-20)

Ms. Chaffin indicated the Commission has already selected its next recodification project, Title 55, Property and Conveyances. At its October 2015 meeting, the Commission heard a presentation from DLS Staff Attorney Cotter that the Virginia Bar Association (VBA) Real Estate Section, bankers and other stakeholders support recodification and the VBA was forming a committee to assist DLS. <http://codecommission.dls.virginia.gov/documents/2015/2015-10-05-minutes.pdf> (lines 52-57).



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Adjournment

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BOARD MEETING

Tuesday, March 15, 2016
General Assembly Building
Room C
10:00AM

SBE Board Working Papers
Prepared by Rose Mansfield
SBE Clerk