

1 MINUTES

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3 The State Board of Elections board meeting was held on Tuesday, June 27, 2017.
4 The meeting was held in Senate Room 3 in the Virginia State Capitol in Richmond,
5 Virginia.

6 In attendance, representing the State Board of Elections (the Board) was James
7 Alcorn, Chairman; Clara Belle Wheeler, Vice-Chair; and Singleton McAllister,
8 Secretary. Also in attendance, representing the Department of Elections (ELECT) was
9 Elizabeth Howard, Deputy Commissioner; and Martin Mash, Confidential Policy
10 Advisor. Anna Birkenheier, Assistant Attorney General, was also in attendance.
11 Chairman Alcorn called the meeting to order at 10:52AM.

12 The first order of business was to approve previous Board minutes, but Vice Chair
13 Wheeler noted additional corrections to be made before approval. The item was tabled
14 until the next meeting, after the minutes have been corrected.

15 The next order of business was the Certification of the Electronic Pollbook (EPB),
16 presented by Matthew Davis, Chief Information Officer (CIO) at ELECT. Mr. Davis
17 reviewed the requests the Board made at the May 1, 2017 meeting regarding concerns
18 that Chesterfield County staff had about the EPB. Mr. Davis stated ELECT staff went to
19 Chesterfield County, reviewed the pollbook solution with Chesterfield staff, implemented
20 changes that had been previously requested by the locality, and asked Chesterfield
21 County for a letter reviewing the changes made to the EPB. ELECT had not yet received
22 the requested letter. Mr. Davis reviewed Chesterfield County's initial concerns, namely
23 concerns regarding printer screen set-up and font size. Mr. Davis stated that all of these
24 concerns were addressed, and that the EPB went through two pilot elections and a testing
25 lab, in addition to steps taken in May.

26 Chairman Alcorn commented that he considered the concerns the Board had at the
27 May meeting adequately addressed. Vice Chair Wheeler noted the only locality to test
28 the EPB was New Kent County, which uses primarily paper pollbooks. The Vice Chair
29 expressed a need to hear directly from New Kent about their experience using the EPB,
30 and also stated the Board asked for confirmation or assessment from Chesterfield County,
31 which they did not receive.

32 Mr. Davis stated the EPB in question is a standard solution, made to meet the
33 state requirements; additionally, ELECT's EBP solution requires minimal technical
34 support and minimal training. Vice Chair Wheeler then asked if ELECT could provide a
35 cost of how much the solution took to develop, and Mr. Davis said yes. The Vice Chair
36 also asked about the cost of maintenance, and Mr. Davis replied that because the solution
37 is a software solution that is built into the Department's current system, there will be no
38 additional cost to support it. The Vice Chair asked if there will be updates or changes to
39 it, and Mr. Davis said only if there are legal requirements or changes that need to be met
40 in the future.

41 Vice Chair Wheeler then referred back to Chesterfield County's concerns
42 regarding the EPB's font size, and asked if the issue was addressed. Mr. Davis stated that
43 the font size had been increased and would be adjustable.

44 Robin Lind, an Electoral Board member from Goochland County, then spoke.
45 Mr. Lind noted that this pollbook would be used primarily by smaller localities, and
46 addressed concerns about localities' ability to address security concerns with a smaller
47 budget. Mr. Davis said that because the pollbook is a state solution, it will have state
48 protections and standards, which other vendors may not. Paul Stenbjorn, Director of
49 Election Services at ELECT, then spoke and reaffirmed Mr. Davis's statements, adding
50 that these security concerns were included in the development of the system. Cameron
51 Sasnett, Fairfax County General Registrar, made a comment that vendor-provided-
52 solutions also meet state security standards and requirements.

53 Chairman Alcorn then *moved for the Board to certify the Department of*
54 *Elections' EBP solution for use in elections in the Commonwealth of Virginia, pursuant*
55 *to the state's certification of electronic pollbook procedures and system requirements.*

56 Secretary McAllister seconded the motion. Vice Chair Wheeler stated that the Board
57 asked for comments from New Kent County, as well as an evaluation from
58 Chesterfield County. The Vice Chair commented that this was first discussed in the
59 meeting on May 1, and noted that ELECT staff did not visit Chesterfield County until
60 June 9, when the office was preparing for the June 13 dual primary elections. Vice Chair
61 Wheeler stated that she would like to hear from Chesterfield County and New Kent
62 County before the Board approved the solution. Chairman Alcorn acknowledged her

63 concerns, and called a vote. Chairman Alcorn and Secretary McAllister voted for
64 certification. Vice Chair Wheeler reiterated her concerns and voted against. The motion
65 passed two to one.

66 The next order of business was reviewing Stand by Your Ad (SBYA) violations,
67 presented by Elizabeth Howard, Deputy Commissioner at the Department of Elections.
68 The first complaint before the Board was against Awareness Manassas PAC. The five
69 complaints received included the failure to file a timely Statement of Organization (SOO)
70 with the ELECT. Chairman Alcorn noted the complaint would fall under campaign
71 finance violations. The complaint stated that Awareness Manassas's SOO was due
72 within ten (10) days of the start of campaigning, and that the SOO was not filed in a
73 timely manner. Chairman Alcorn noted it is not required that notice be provided for the
74 imposition of penalties, so if the complaint was found correct, there would be a \$100
75 penalty per §13.2 of the summary of the campaign finance violations. Chairman Alcorn
76 noted this was not included in the ELECT staff recommendations, and that the Board
77 delegated it to ELECT staff to assess these complaints. The Chairman stated the SOO
78 reports were not attached to Board materials provided.

79 Vice Chair Wheeler inquired as to why the ELECT staff member who routinely
80 investigated complaints and provided campaign finance background to the Board was not
81 present, and if that staff member still handled campaign finance and SBYA complaints.
82 Deputy Commissioner Howard noted that the Board does not have investigatory powers,
83 and stated that the ELECT staff member does still handle campaign finance-related
84 complaints. Vice Chair Wheeler clarified the staff member was not present. The Deputy
85 Commissioner confirmed they were not present. Vice Chair Wheeler inquired as to why.
86 Deputy Commissioner Howard assured the Board that she was given all the necessary
87 information to answer any questions regarding the complaints and stated the staff
88 member was unable to attend.

89 Chairman Alcorn asked if ELECT verified the facts in the complaint in regards to
90 the SOO. The Deputy Commissioner noted once again that the Board does not have
91 investigatory authority, so ELECT only provided the information provided to them in
92 regards to the SOO portion of the complaint. Deputy Commissioner Howard also added
93 that in the past the Board had the authority to assess SBYA violations, and that any

94 complaints or violations outside of SBYA were referred to the Commonwealth's
95 Attorney. Chairman Alcorn disagreed, asserting that the Board has the right to assess
96 civil penalties related to campaign finance; the Chairman stated this right is included in
97 the campaign finance violations summary posted on the ELECT website, pointing §13.2
98 which refers to the Board's authority to give civil penalties for untimely SOOs. Secretary
99 McAllister noted this matter was discussed at the last meeting, and agreed with the Vice
100 Chair about the proficiency and helpfulness of the ELECT staff member who previously
101 provided guidance to the Board. Chairman Alcorn clarified the difference between
102 investigating and providing SOO reports available to ELECT in order to see what dates
103 the SOOs were filed. Chairman Alcorn then asked if ELECT staff pulled the reports that
104 pertain to the complaint in question.

105 Deputy Commissioner Howard noted ELECT's agreement that the Board has the
106 ability to levy penalties in the event of SBYA violations, but reiterated that any other
107 complaints are referred to the Commonwealth's Attorney. Chairman Alcorn asked if
108 these complaints to be heard at the meeting had been referred to the Commonwealth's
109 Attorney. Deputy Commissioner Howard said all individuals that filed a complaint were
110 instructed to contact the Commonwealth's Attorney about non-SBYA violations. The
111 Chairman clarified that the individuals submitted the complaints, not ELECT. The
112 Deputy Commissioner confirmed. Chairman Alcorn asked counsel from Anna
113 Birkenheier, Assistant Attorney General, asking if the Board has the authority, under the
114 Code of Virginia §24.2 and the summary of the campaign finance laws adopted by the
115 Board and available on ELECT's website, to assess civil penalties for campaign finance
116 violations. Ms. Birkenheier stated that matter is controlled by the delegation of authority,
117 and that while there are provisions that have some effect on the answer, counsel would
118 need to first understand how the penalties are normally assessed within that delegation.

119 Chairman Alcorn asked if a duty was delegated to ELECT, would the Board still
120 have authority to perform those actions? The Chairman also noted that if the Board
121 delegated authority to staff, then the Board had that authority originally and staff should
122 follow through according to the Board's recommendations. Ms. Birkenheier noted that it
123 may be helpful to bifurcate the non-SBYA violations to determine what the status of

124 those were in order to determine how those violations were assessed. Ms. Birkenheier
125 requested more information on that process in order to give counsel.

126 Vice Chair Wheeler noted the Board heard campaign finance violations and
127 SBYA violations, and perhaps filing violations, in the past. The Vice Chair questioned
128 when and why the the Board's ability to review campaign violations changed. Chairman
129 Alcorn echoed the confusion, but noted the Board should move forward in reviewing the
130 complaints. The Chairman stated the Board should have authority to assess campaign
131 finance violations, including those regarding expenditure and contribution reports, SOO
132 reports, and SBYA complaints, and then suggested tabling SOO complaints in order to
133 move forward with the others until the matter was settled with counsel.

134 The second complaint in regard to Awareness Manassas PAC regarded false
135 information on the original SOO. Chairman Alcorn stated that false information usually
136 falls into two categories: late or incomplete reports and false statements. Late or
137 incomplete reports have a pathway before the Board, which requires notice to the alleged
138 violator to give time to respond or amend; whereas false statements are a criminal issue
139 that would be sent to the Commonwealth's Attorney. The Chairman noted the Board
140 could not assess a civil penalty today, as if the complaint was regarding a late or
141 incomplete report, notice is required; and if the complaint is a false statement, it will need
142 to be referred to the Commonwealth's Attorney.

143 The third complaint was in regard to a SBYA violation in the form of a set of
144 three mailers. Chairman Alcorn directed the Board to the first two mailers, and noted
145 that ELECT did not recommend penalties as there was no express advocacy on them.
146 The Chairman explained that ELECT was using the guidelines of the "magic words" of
147 express advocacy, including words like "vote for," "defeat," etc., which are expressed in
148 the campaign finance summaries adopted by the Board. Chairman Alcorn noted that
149 using those guidelines, the first two mailers did not meet the standards of express
150 advocacy. Vice Chair asked for clarification. Chairman Alcorn clarified that the first
151 two mailers were not in violation as they did not contain express advocacy as defined by
152 the Board in the past or in the campaign finance summary. The Chairman noted in the
153 past the Board did not define express advocacy through regulation or policy, but defined
154 it in the campaign finance summaries where the definition contained the use of the

155 “magic words” definition. Using that definition, the first two mailers did not meet the
156 standards for express advocacy.

157 Secretary McAllister asked to hear from the Deputy Commissioner in regards to
158 the staff recommendation. Deputy Commissioner Howard clarified the Chairman’s
159 interpretation is the ELECT’S position; the first two mailers did not contain express
160 advocacy, and therefore, did not require disclaimers. Chairman Alcorn directed the
161 Board to the third mailer, which did contain express advocacy. The Chairman clarified
162 the people present in the audience were those who filed the complaint against Awareness
163 Manassas. The Chairman noted the difference between a first-time offense with a \$100
164 civil penalty, and a remedial offense, where the offender apologized or remediated, with a
165 \$50 civil penalty. Chairman Alcorn observed that no member or representative of
166 Awareness Manassas was present, and that no apology or remedy was made on behalf of
167 the PAC.

168 Deputy Commissioner Howard directed the Board’s attention to an email from
169 Integrity Manassas, wherein the entity claimed the SBYA disclaimer errors were
170 unintentional. Chairman Alcorn considered the email an apology; therefore, as stated in
171 the campaign finance summaries, the violation would result in a reduced \$50 civil
172 penalty. Vice Chair Wheeler voiced concern with the policy regarding apologies;
173 Chairman Alcorn acknowledged the concerns, but reiterated the importance of adhering
174 to past practices of the Board.

175 The fourth and fifth complaints were in regards to SOOs; as such, these
176 complaints were tabled until the next meeting. The Chairman summarized the
177 complaints against Awareness Manassas thus far, noting items one and four were tabled
178 until a conversation with counsel about the Board’s authorities could happen; items two
179 and five were given to staff to see if notice needs to be given if evaluated as late or
180 incomplete and/or if the complaints need to be sent to the Commonwealth’s Attorney;
181 item three, which was a complaint about the disclaimers, contained mailers one and two
182 which had no express advocacy resulting in no civil penalty; and item three, constituted
183 of mailer three, did contain express advocacy for which the Board assessed a first time
184 offender’s penalty of \$100. However, considering the apology, the Board assessed a
185 reduced \$50 civil penalty.

186 Steve Hersch, a constituent from Manassas who filed the complaint against
187 Awareness Manassas, then spoke. Mr. Hersch addressed the express advocacy issue, and
188 encouraged the Board to use the definition of express advocacy from 11 CFR, §100.22 b.
189 The definition includes, in addition to the “magic words” language, the functional
190 equivalent of express advocacy; the definition of which reads: “When taken as a whole
191 and with limited reference to external events, such as the proximity to the election, could
192 only be interpreted by a reasonable person as containing advocacy of the election or
193 defeat of one or more clearly identified candidate (s) because – (1) The electoral portion
194 of the communication is unmistakable, unambiguous, and suggestive of only one
195 meaning; and (2) Reasonable minds could not differ as to whether it encourages actions
196 to elect or defeat one or more clearly identified candidate (s) or encourages some other
197 kind of action.”

198 Mr. Hersch also requested the Board direct campaign finance violations to the
199 Commonwealth’s Attorney, rather than instructing individuals to do so. Chairman
200 Alcorn thanked Mr. Hersch and agreed on both fronts, but discussed the Board’s need to
201 be transparent and follow due process, current policies, and regulations, especially in
202 regards to express advocacy. Vice Chair Wheeler asked Mr. Hersch when the first
203 complaint was submitted to ELECT, and Mr. Hersch replied that he submitted an
204 informal complaint just after the November 8, 2016 election, and a formal complaint in
205 February. Chairman Alcorn *moved the Board assess a civil penalty of \$50 against*
206 *Awareness Manassas*. Secretary McAllister seconded the motion. The motion passed
207 unanimously.

208 The next order of business was to review the complaint against Friends of Team
209 Manassas. The violation was a SBYA violation, and Chairman Alcorn and ELECT staff
210 found that the ad contained express advocacy. Chairman Alcorn noted there was a
211 disclaimer on the ad, but there also needed to be an authorization disclaimer. ELECT
212 staff recommended a \$100 civil penalty for a first time offense. The Chairman then
213 asked Mr. Hersch how many ads the complaint contained.

214 Mr. Hersch then spoke, clarifying that the complaint encompassed the website for
215 Friends of Team Manassas, the Facebook page for Friends of Team Manassas, the
216 Youtube page for Friends of Team Manassas, and three separate direct mail pieces;

217 making for a total of 6 ads. Chairman Alcorn directed the Board to the website
218 advertisement and one of the mailers. Consistent with the staff recommendation, the
219 Board found express advocacy in both ads, and while each had the required “paid for”
220 disclaimer, they did not contain the required authorization disclaimer. The Chairman
221 then asked if the Board should treat these two ads as a first and second violation, and the
222 Vice Chair and Secretary recommended treating them as two different violations.

223 Mr. Hersch then added that the mailings were sent out close to the election.
224 Chairman Alcorn stated that if a violation occurred within the fourteen (14) days prior to
225 or on Election Day, penalties will be doubled. Mr. Hersch stated he could provide
226 additional information showing these mailings occurred within that timeframe. Ms.
227 Birkenheier noted that if there was additional information, that the additional information
228 would need to be sent to Friends of Team Manassas for due process. Chairman Alcorn
229 suggested tabling the discussion until Mr. Hersch provided the additional information and
230 Friends of Team Manassas received proper notice.

231 Mr. Hersch stated he could provide additional information in regards to
232 Awareness Manassas and the timing of their mailers, proving they were sent within the
233 fourteen (14) days prior to or on Election Day. Chairman Alcorn stated that would affect
234 the civil penalty, and that proper notice would need to be given to that committee as well.
235 Mr. Hersch provided a document showing Awareness Manassas’s mailing dates from the
236 United States Postal Service (USPS). Vice Chair Wheeler asked if Awareness Manassas
237 was provided with this information, and Deputy Commissioner Howard noted that while
238 they were sent a copy of the complaint, they were not sent that particular piece of
239 information. The Vice Chair then asked if Awareness Manassas aware of the complaint
240 against them and that it was to be heard during the May 1 SBE meeting. The Vice Chair
241 also asked if they responded. Deputy Commissioner Howard answered Awareness
242 Manassas did respond and was aware the complaint would be heard during the meeting.

243 Chairman Alcorn asked Ms. Birkenheier if the Board could use the USPS
244 information as evidence the ads were sent within fourteen (14) days of the election. Ms.
245 Birkenhier suggested Awareness Manassas be provided the information and given an
246 opportunity to respond, but if the Board wanted to make a decision on the other
247 complaints, considering Awareness Manassas was aware of the rest of them, that would

248 be appropriate as well. Vice Chair Wheeler stated this serves as an example of why the
249 Board should receive SBYA complaints when they are first received by ELECT, and
250 requested to receive those requests when first submitted.

251 Chairman Alcorn *moved to reconsider the earlier approved motion to assess a*
252 *civil penalty of \$50.* Secretary McAllister seconded the motion. The Chairman
253 suggested the Board amend the previously assessed penalty based on the fact the
254 violation was within the fourteen (14) days before or on Election Day. Violations that
255 occur within fourteen days result in doubled penalties, so the civil penalty was doubled,
256 resulting in a civil penalty of \$100. Chairman Alcorn *moved for the Board to assess a*
257 *\$100 civil penalty to Awareness Manassas.* Vice Chair Wheeler seconded the motion,
258 and the motion passed unanimously.

259 The next order of business was to assess the SBYA complaint against Brandon
260 Howard. The Board found that everyone listed on the advertisement, including local,
261 state, or federal candidates, would need to be included in the required disclaimer. As the
262 advertisement did not include all of the named candidates, the Board found it to be a first
263 time offense for print media, for a civil penalty of \$100. Ms. Birkenheier pointed out,
264 however, that the Board previously discussed Mr. Howard's case, and had dismissed it.

265 The next complaint discussed was against Joe Lindsey for Senate. The Board
266 found the advertisement did fit the definition of express advocacy, and that the
267 advertisement was missing the required disclaimer. ELECT staff recommended a \$100
268 civil penalty for a first time offense for print media. Chairman Alcorn found, however,
269 that the complaint was first received on June 16, 2016, which was over a year from this
270 meeting. The statute of limitations for SBYA violations is one year, so the Board could
271 assess no penalty for the violation. The Chairman checked with Ms. Birkenheier, who
272 agreed with the assessment. Chairman Alcorn *moved the Board find there is a violation*
273 *but assess no civil penalty due to the statute of limitations in the complaint against Joe*
274 *Lindsey for Senate.* Vice Chair Wheeler seconded the motion, and the motion passed
275 unanimously.

276 The next complaint before the Board was against the Daniels Campaign. ELECT
277 staff found the advertisement did not contain express advocacy, and therefore
278 recommended no penalty. Chairman Alcorn checked the assessment with Deputy

279 Commissioner Howard, who confirmed it. The Chairman agreed with the assessment,
280 and also noted that this complaint was close to exceeding the statute of limitation, as it
281 was submitted in July of 2016. Chairman Alcorn *moved the Board find no violation and*
282 *assess no penalty in the complaint against the Daniels Campaign.* Secretary McAllister
283 seconded the motion, and the motion passed unanimously.

284 The next complaint before the Board was against Councilwoman Ellen F.
285 Robertson. Chairman Alcorn began with a pamphlet, where the Board found there was
286 no express advocacy and therefore, no disclaimer was necessary. Deputy Commissioner
287 Howard noted ELECT staff received two possible violations – the pamphlet and three
288 letters, contained in a single envelope. Both were received in September of 2016.
289 Chairman Alcorn found the letters contained no express advocacy, but the envelope did.
290 Therefore, the Board found a disclaimer was necessary. Chairman Alcorn *moved the*
291 *Board assess a civil penalty of \$100 for a first time offense of the print media disclaimer*
292 *requirements against the Ellen Robertson campaign.* Vice Chair Wheeler seconded the
293 motion, and the motion passed unanimously.

294 The next complaint before the Board was against Friends of Candidate Coleman.
295 The Board found two separate violations, as the advertisements each contained express
296 advocacy but no disclaimers. The Board assessed a first time civil penalty of \$100, and a
297 second time civil penalty of \$250, making for a total civil penalty of \$350. Chairman
298 Alcorn *moved the Board assess a civil penalty in the amount of \$350 against Friends of*
299 *Candidate Coleman.* Vice Chair Wheeler seconded the motion, and the motion passed
300 unanimously.

301 The next complaint before the Board was against Hassan J. Fountain for 3rd
302 District. The Board found three advertisements included as part of the complaint against
303 Mr. Fountain, and that all three advertisements contained express advocacy, as defined in
304 the campaign finance summaries posted on ELECT's website. Mr. Fountain responded
305 to the complaint in a letter, sending pictures that allegedly showed that two of the items
306 did in fact have disclaimers. Chairman Alcorn noted the size of the disclaimers, and
307 stated the Code of Virginia states disclaimers must be conspicuous. The Chairman
308 argued one of the disclaimers Mr. Fountain provided was an appropriate size, while the
309 other was not. ELECT staff's recommendation stated neither disclaimer was

310 conspicuous. Chairman Alcorn suggested penalizing two of the items, with a \$100 civil
311 penalty for a first time violation and \$250 for a second, resulting in a total of a \$350 civil
312 penalty. Chairman Alcorn *moved the Board assess a civil penalty in the amount of \$350*
313 *against Hassan J. Fountain for the 3rd District Campaign.* Vice Chair Wheeler seconded
314 the motion, and the motion passed unanimously.

315 The next complaint before the Board was against Joe Morrissey for Mayor during
316 the November 8, 2016 General Election. The Board examined a sample ballot, submitted
317 as part of the complaint, and noted sample ballots are included under the Code of
318 Virginia under §24.2-622 as advertisements that can be penalized. Chairman Alcorn
319 noted Mr. Morrissey's campaign provided a letter, explaining there was an error during
320 the printing process. Chairman Alcorn stated previously the Board found campaigns
321 liable for any materials that went out, even if the error was a printer's error. Secretary
322 McAllister agreed the Chairman's assessment was consistent with past practices. The
323 Chairman asked Deputy Commissioner Howard if this was a first time SBYA offense
324 from Mr. Morrissey. The Deputy Commissioner noted there were no prior offenses in
325 Mr. Morrissey's mayoral or general election campaigns. Chairman Alcorn suggested a
326 \$100 penalty for a first time violation, but asked the Board if the letter provided by the
327 Morrissey campaign should count as an apology or explanation.

328 Georgina Cannan, Voter Protection & Policy Director for the Democratic Party of
329 Virginia, then spoke, noting the sample ballot was not a proper Richmond City
330 Democratic sample ballot. Ms. Cannan noted that on the letter and sample ballot Mr.
331 Morrissey claimed to be the Democratic Party's endorsed candidate, despite Levar
332 Stoney being the true endorsee. Ms. Cannan further noted the other candidates listed on
333 the sample ballot did not sign off for the use of their names, and though the ballot
334 claimed to be from the Democratic Party, it was not.

335 Chairman Alcorn readdressed the letter that Mr. Morrissey's campaign sent as a
336 possible explanation or apology. Vice Chair Wheeler noted if the complaint was
337 originally heard on the May 1, 2017 SBE meeting, as it was scheduled to be, the Board
338 would not have received the letter. Deputy Commissioner Howard added notice for the
339 May 1, 2017 meeting was not properly delivered to the Morrissey campaign due to an
340 incorrect address, but notice for the June 27, 2017 meeting was properly received.

341 The Chairman assessed the letter could count as an explanation, which would
342 result in the \$100 first time penalty being reduced to \$50, and Secretary McAllister
343 agreed. Chairman Alcorn then *moved the State Board of Elections assess a civil penalty*
344 *of \$50 against the Joe Morrissey for Mayor campaign.* Vice Chair Wheeler seconded the
345 motion, and the motion passed unanimously.

346 The next complaint to be heard by the Board was against Singh for Mayor. The
347 Board found the following in regards to the seven mailers included from several
348 complainants as alleged violations:

- 349 • The first and third mailers contained express advocacy, and did not have
350 the required disclaimer. As they were the same advertisement, they
351 collectively represented a first time offense, which carries a \$100 civil
352 penalty.
- 353 • The second mailer contained express advocacy, and did not have the
354 required disclaimer, making it a second violation for a \$250 civil penalty.
- 355 • The fourth and sixth mailers contained express advocacy, and did not have
356 the required disclaimer, making a third violation for a \$500 civil penalty.
- 357 • The fifth and seventh mailer each contained express advocacy, and did not
358 have the required disclaimers, making a fourth and fifth violation.
359 Penalties for four or more violations are \$1,000 each, making these
360 violations \$2,000.

361 The Board assessed a \$2,850 civil penalty for five violations. Deputy
362 Commissioner Howard noted Mr. Singh wrote a letter in response. Chairman Alcorn
363 reviewed the explanations Mr. Singh provided, but the Board did not find the
364 explanations to fit the Code definitions to reduce the fine. Ms. Birkenheier pointed out
365 the letter sent to Mr. Singh suggested that civil penalties could not exceed \$2,500.
366 Chairman Alcorn *moved the Board assess a civil penalty of \$2,500 for Singh for Mayor.*
367 Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

368 The next complaint before the board was against Friends of BJ Brown. Chairman
369 Alcorn summarized the complaints, including a complaint that was tabled as it related to
370 the timeliness of the SOO and a complaint that was to be forwarded to the
371 Commonwealth's Attorney. The Board found no express advocacy in the complaint

372 pertaining to SBYA, so, in accordance with ELECT staff's recommendation, suggested
373 no penalty. Chairman Alcorn *moved the Board find no violation and assess no civil*
374 *penalty against BJ Brown for the advertisement in question.* Secretary McAllister
375 seconded the motion, and the motion passed unanimously.

376 The next complaint heard by the Board was against Linwood Johnson, III. The
377 complaint concerned a business card and letter. The Board found the complaints fell
378 under the Board's definition of express advocacy, and that the advertisements did not
379 have the required disclaimers. Chairman Alcorn found the advertisements violated the
380 print media requirements, and assessed a civil penalty of \$100 for first time offense. The
381 Chairman noted, however, that the complaint was submitted in April of 2016, putting it
382 past the 1-year statute of limitation. Chairman Alcorn *moved the Board found a violation*
383 *exists, but assess no civil penalty because of the statute of limitations.* Secretary
384 McAllister seconded the motion, and the motion passed unanimously.

385 Chairman Alcorn *moved the Board recess for 15 minutes, to reconvene at*
386 *1:15PM.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

387 Chairman Alcorn *moved the Board reconvene.* Vice Chair seconded the motion,
388 and the motion passed unanimously. The SBE reconvened at 1:30PM. The next order of
389 business was the ballot order drawing, presented by Ellen Flory, Elections
390 Administrator/Project Manager for ELECT. The Board drew from the following possible
391 political parties for the ballot order for the November General Election: Democratic,
392 Republican, Constitution, Green, Independent Green, and Libertarian. State law requires
393 the two recognized political parties be drawn first, and then other political groups. After
394 randomly drawing from the party names, enclosed in film canisters and mixed in a crystal
395 bowl, the ballot order is as follows:

- 396 First: Democratic
- 397 Second: Republican
- 398 Third: Constitution
- 399 Fourth: Libertarian
- 400 Fifth: Green
- 401 Sixth: Independent Green

402 Chairman Alcorn *moved the Board certify the determinations by law of the ballot*
403 *order for the general and special elections being held on November 7, 2017 and all other*
404 *special elections being held between today and November 7, 2017.* Secretary McAllister
405 seconded the motion, and the motion passed unanimously.

406 The next order of business was to certify the results of the June 13, 2017 Dual
407 Primary Election, presented by Ellen Flory, Elections Administrator/Project Manager.
408 Ms. Flory presented the abstracts for certification, and the Board decided to physically
409 sign them after the meeting. Chairman Alcorn asked if there were any lessons learned,
410 and Deputy Commissioner Howard replied that the election ran smoothly.

411 John Findlay, Executive Director of the Republican Party of Virginia, then spoke.
412 Mr. Findlay attributed part of the success to the proper number of ballots being printed.
413 Deputy Commissioner Howard agreed, and thanked the parties, local Electoral Boards,
414 and local General Registrars throughout the elections community who helped during the
415 election; the Deputy Commissioner also mentioned that the turnouts for the primary
416 elections were higher than originally predicted. After analyzing absentee ballot rates and
417 comparing predictions to the number of ballots each locality ordered, ELECT encouraged
418 localities to order more ballots, and the localities did so.

419 Vice Chair Wheeler then invited Gary Fox, Customer Service Manager for
420 PrintElect's Virginia office, to speak. Mr. Fox recounted working with Cameron Sasnett,
421 Fairfax County General Registrar, to provide enough ballots for Fairfax County's primary
422 elections. Mr. Fox detailed other efforts Printelect took to ensure all additional ballots
423 ordered were delivered to multiple localities within 24 hours. Mr. Fox noted Printelect
424 printed a total of 36,377 ballots for those localities. Mr. Sasnett then commented, and
425 reiterated Mr. Fox's comments. Mr. Sasnett recalled Fairfax County's efforts to monitor
426 their ballot number and anticipate ballot needs, and noted Mr. Fox's significant help.

427 Chairman Alcorn then *moved the Board certify the results of the June 13, 2017*
428 *primaries as presented and declare the winners of each primary to be that party's*
429 *nominee.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

430 Chairman Alcorn notified the Board of legislation related to exemptions from the
431 Administrative Procedure Act (APA), a federal law that, among other functions, requires
432 executive agencies to submit changes to regulations for public comment. The State Board

433 of Elections has an exemption from the APA public comment period under law; as part of
434 a planned periodic review, the General Assembly asked the Board to explain why it
435 would like to continue to have this exemption from the typical APA public comment
436 period. Chairman Alcorn noted that the deadline is later in the summer (August 1), and
437 planned to draft something to have at the next Board meeting for approval. The
438 Chairman explained the Board is exempt from public comment because, as a nonpartisan
439 board, there could be potential for political influence through public comment. The
440 Chairman noted, however, the importance of public comment for transparency; as the
441 Board is a public board, the public should have the ability to comment. Secretary
442 McAllister requested a copy of the rationale before the next Board meeting, and
443 Chairman Alcorn agreed. Vice Chair Wheeler also voiced support for public comment.

444 Chairman Alcorn next discussed the definition of “express advocacy”, and
445 suggested that the best way to define the topic was through regulation; he suggested that
446 the Board hold a future meeting to discuss regulation that would broaden the definition of
447 express advocacy beyond the “magic words” definition. The Chairman also discussed
448 the need to clarify the Board’s authority on campaign finance violations. The Chairman
449 stated the Board should have authority, and also reiterated the Board’s request to receive
450 campaign finance complaints sooner so that the statute of limitations would not come into
451 play. Vice Chair Wheeler agreed, and the Chairman further requested the Board receive
452 a copy of the notice that goes to the candidate or committee with the complaint against
453 them, as well as any related complaint materials as soon as the materials are received by
454 ELECT. Secretary McAllister commented on the need for an ELECT staff member
455 responsible for campaign finance or SBYA violations to be present at future Board
456 meetings to assist the Board in that regard. Chairman Alcorn *moved the Commissioner*
457 *instruct his staff to send copies of any complaints related to campaign finance or political*
458 *advertisements to the Board within one (1) week of receipt at the agency, and similarly*
459 *send copies to all three Board members whenever notifications regarding campaign*
460 *finance or Stand by Your Ad violations are sent to alleged defendants.* Vice Chair
461 Wheeler seconded the motion, and the motion passed unanimously.

462 The meeting then opened to public comment. John Findlay, Executive Director of
463 the Republican Party of Virginia, spoke again to discuss a letter sent to the Commissioner

464 of ELECT, on which Vice Chair Wheeler was copied, which was then forwarded to the
465 Deputy Commissioner. Mr. Findlay noted that the Party Chairman in Spotsylvania
466 County did not file the required documents to certify Chris “Yak” Yakabouski, the
467 prospective Republican candidate for the Battlefield Board of Supervisors, by the
468 statutory deadline. Mr. Findlay requested the Board move, as permitted by section 2 of
469 §24.2-511, that Chris Yakabouski be named the Republican candidate for the Battlefield
470 Board of Supervisors election in November 2017. Chairman Alcorn *moved under §24.2-*
471 *511, sub-paragraph B, to certify Chris Yakabouski as the Republican nominee for the*
472 *Spotsylvania County Battlefield District Board of Supervisors.* Vice Chair Wheeler
473 seconded the motion. Ms. Birkenheier then asked if the nominating event happened
474 before the deadline. Mr. Findlay said yes, the nominating event did happen before the
475 deadline. Mr. Findlay explained that Mr. Yakabouski was the only candidate to file,
476 which should have made him the nominee, but the nominating party at the mass meeting
477 decided to remove him from the nomination in violation of the party’s by-laws. The
478 matter was appealed through the party’s internal appeals process, and arrived to the State
479 Central Committee on June 24, 2017, where the Committee decided Mr. Yakabouski’s
480 name should be put in as the certified nominee. Chairman Alcorn noted there was both a
481 motion and a second, and the motion passed unanimously.

482 Robin Lind, Electoral Board member from Goochland County and Secretary of
483 the General Registrar and Electoral Board (GREB) Workgroup, then spoke. Mr. Lind
484 discussed a 2016 report from the GREB Workgroup that was submitted to the Board in
485 January, and noted the group received no reply from either the Board or ELECT. Mr.
486 Lind stated that he had also appeared before the Board on this topic during the May 1,
487 2017 meeting; Mr. Lind noted the Workgroup includes three former presidents of the
488 Virginia Registrars Association, three former presidents of the Electoral Board
489 Association, and two current presidents of VRAV and VEBA. Mr. Lind pointed out that
490 in 2015, the State Board acted on and adopted the recommendations from the GREB
491 Workgroup’s report, so is seeking an answer as to why neither the Board nor ELECT has
492 responded to the 2016 Report. Mr. Lind also stated that if the Board does not want to
493 answer, the Workgroup can take the report to the legislature.

494 Chairman Alcorn apologized, and asked the report go to the Board rather than the
495 legislature. Mr. Lind asked for a response to the report, and the Chairman stated the
496 report should be on the next Board agenda for discussion. Mr. Lind asked for
497 reassurance to be on the agenda, and the Chairman gave reassurance. Secretary
498 McAllister suggested sending the report to ELECT staff for feedback to provide the
499 Board before the next Board meeting, and Deputy Commissioner Howard agreed to bring
500 the suggestion to the Commissioner.

501 Cameron Sasnett, Fairfax County General Registrar, then spoke, to discuss the
502 letter sent to the Board in April regarding non-citizens that identified through the
503 Department of Motor Vehicles (DMV) in 2016 and subsequently loaded into the Virginia
504 Election and Registration System (VERIS) in the spring of 2017. Mr. Sasnett asked the
505 Board if the letter was received, and if the letter would be answered. Chairman Alcorn
506 deferred to ELECT to respond to the letter, and will respond if there is a specific question
507 to answer.

508 Vice Chair Wheeler noted the DMV submitted the names of people DMV flagged
509 as non-citizens before the November 2016 election. The Vice Chair further noted the
510 Board asked the Commissioner, after being notified in February, for information
511 regarding this. Vice Chair Wheeler requested clarification on how the DMV comes up
512 with these names, how those names are loaded into VERIS, and why local registrars were
513 not given those names until after the November election. Mr. Sasnett noted without an
514 explanation, voters may be disenfranchised, and described situations where Fairfax
515 County provided provisional ballots to voters who were caught up in this delayed
516 information transmittance. Chairman Alcorn stated the Board would follow up with the
517 Commissioner and ELECT.

518 William Bell, Electoral Board member from Isle of Wight County, spoke and
519 recalled issues in Isle of Wight County with the DMV. Mr. Bell noted their registrar's
520 office gets at an average of twenty (20) DMV related issues with voter registration and
521 non-citizen statuses a month. Chairman Alcorn encouraged Mr. Bell to send the issues
522 detailed to Matthew Davis, CIO at ELECT.

523 Vice Chair Wheeler reiterated the seriousness of the issue, and Chairman Alcorn
524 acknowledged the problems brought up by all present, but stated ELECT was responsible

525 for working with DMV to fix it. Vice Chair Wheeler asked again for the list of
526 information on the DMV process from ELECT, and Deputy Commissioner Howard
527 agreed to remind the Commissioner to provide it.

528 Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler
529 seconded the motion. Chairman Alcorn then adjourned the meeting. The meeting was
530 adjourned at approximately 1:55PM. The Board did not set the date and time of its next
531 meeting.

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Secretary

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Chair

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Vice Chair

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