


State of Maryland 

State Board of Elections' Meeting – January 21, 2016

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Attendees: David McManus, Chair  
Patrick J. Hogan, Vice Chair  
Michael R. Cogan, Member  
Kelley A. Howells, Member  
Bobbie Mack, Member  
Linda H. Lamone, State Administrator  
Jeff Darsie, Assistant Attorney General  
Nikki Charlson, Deputy Administrator  
Donna Duncan, Assistant Deputy for Election Policy  
Keith Ross, Assistant Deputy for Project Management  
Mary Cramer Wagner, Director, Voter Registration  
Jared DeMarinis, Director of Candidacy and Campaign Finance  
Erin Perrone, Director, Election Reform and Management  
Paul Aumayr, Director, Voting Systems  
Stacey Johnson, MDVOTERS Project Manager  
Tom Feehan, New Voting System Project Manager  
John Clark, New Voting System Functional Project Manager

Also Present: Luis Estrada, Deputy Secretary, Department of Information Technology  
Karen Poplewski, Project Management, Department of Information Technology  
Ralph Watkins, League of Women Voters  
Lynn Garland  
Brenda Yarema, Member, Anne Arundel County Board of Elections  
Joseph Torre, Director, Anne Arundel County Board of Elections  
David Garries, Deputy Director, Anne Arundel County Board of Elections  
Sabrina Graves, Anne Arundel County Board of Elections  
Joshua Ramos, Anne Arundel County Board of Elections  
Mary Ann Keefe, Member, Montgomery County Board of Elections  
Alysoun McLaughlin, Deputy Director, Montgomery County Board of Elections  
Alex Yarema, Anne Arundel County NCRC  
Raquelle Contreras, Common Cause MD  
Holly Joseph  
Mindy Lehman, Maryland Bankers' Association  
Rebecca Wilson, SAVE Our Votes  
Kathy Rogers, Senior Vice President of Government Relations, ES&S  
Linda Bennett, Director of Account Management, ES&S  
Jessie Blackman, Director of Pollbook Development, ES&S  
John Davenport, Senior Project Manager – Maryland, ES&S  
Rick Dixon, Project Manager – Maryland, ES&S  
Tim Perry, Perry, White, Ross, and Jacobson LLC

**DECLARATION OF QUORUM PRESENT**

Mr. McManus called the meeting to order at 2:01 pm and confirmed that there was a quorum. Mr. McManus stated that the meeting was being recorded.

## **RATIFICATION OF MINUTES FROM NOVEMBER 2015 MEETING**

Ms. Howells made a motion to ratify the approval of minutes from the November 2015 meeting, and Mr. Hogan seconded the motion. The motion passed unanimously.

## **ADMINISTRATOR'S REPORT**

### **1. Announcements & Important Meetings**

#### Personnel Changes

Ms. Lamone introduced Erin Perrone as the new Director of Election Reform and Management.

Rick Urps, Deputy Director of Election Reform and Management, retired from State service effective January 1, 2016. Rick was responsible for training programs for election officials and improving the voting process for voters with disabilities. SBE wishes Rick well in his retirement.

Kurt Snyder, a long-time member of SBE's IT team, has resigned from State service to pursue his education. While he finishes up his degree from the University of Maryland, Kurt will provide part-time support to SBE. SBE wishes Kurt well in his academic endeavors and are grateful for his willingness to continue to support SBE.

#### Election Directors' Meeting

On January 14, 2016, SBE hosted an election directors' meeting. Most of the meeting was focused on the new voting system implementation but other topics included information about the State's new personnel system, voter registration, pollbook software, and other election preparation activities. A summary of the meeting will be provided once it is complete.

#### Legislative Briefings

As expected, various legislative committees have asked SBE to brief committee members on recent election activities and the preparation for the 2016 Primary Election. The briefings have been scheduled for:

- House Ways & Means: Wednesday, January 27, 2016 at 11 am
- House Appropriations: Friday, January 29, 2016 at 1 pm
- Senate Education, Health and Environmental Affairs: Thursday, February 4, 2016 at 1 pm

### **2. Election Reform and Management**

#### Post-Election Audit - Verification of Election Results

As reported in last month's Administrator's Report, SBE released a Request for Information (RFI) for automated verification of election results. While an RFI is not binding on the issuing agency or responding vendor, it is a useful tool to identify what products exist in the marketplace and obtain cost models. Three companies responded to the RFI, and we are currently reviewing their proposed solutions and whether they could be implemented in Maryland.

SBE is currently reviewing options to validate the accuracy of the voting system's results. Because the voting system captures a digital image of each ballot, SBE has more audit options than with other systems. Because of the different options, SBE is exploring the feasibility of a pilot after the 2016 Primary Election to compare election results using various audit options.

#### Online Ballot Marking Tool – Security Review and Audit

The State Board previously approved a proposed State certification plan for the online ballot marking tool. This plan included security testing of the online ballot marking tool by a qualified security expert and a security audit of the online ballot marking tool from the 2014 Primary and General Elections.

Upon approval of this plan, SBE immediately issued procurement documents but did not receive any responses from eligible vendors. DoIT has identified an existing contract that SBE can use, and SBE is working with the vendor to develop a test plan. Since this vendor is also reviewing the new voting system, the security review and audit of the online ballot marking tool will not occur until after the 2016 Primary Election.

### Election Judges' Manuals

The election day manual is complete. As the local boards submit their customized chapters, Ms. Perrone reviews each chapter for approval. Instructions and forms for election judges working during early voting are being proofed and will be ready for modification by January 22nd. Instructions for same day registration and address changes are being reviewed and updated to reflect changes in the pollbook software.

### Absentee Voting – Printing and Mail House

SBE has a contract with Runbeck Election Services to print, insert, and mail absentee ballot packets to requesting voters. Runbeck has performed these services in Maryland since the 2012 elections. Planning for the 2016 Primary Election has begun, and the first mailing will be sent by March 12, 2016, the deadline to mail absentee ballots to requesting military and overseas voters.

## **3. Voter Registration**

### MDVOTERS

Release 6.0 successfully moved into production the weekend of January 2, 2016. User acceptance testing for 6.1 began January 19th. This will be the last release prior to the 2016 Primary Election. This is a small release and will concentrate on candidate reports and user privileges when deleting duplicate candidate records. This release will be moved into production the weekend of February 14th.

### National Voter Registration Act – List Maintenance Deadline

The federal National Voter Registration Act of 1993 (NVRA) sets forth deadlines for voter registration list maintenance. The deadline for election officials to mail confirmation mailings is 90 days prior to an election. The deadline for the upcoming primary election is January 27th. This deadline also includes the last day a voter can be made inactive for address reasons. Other list maintenance such as cancellations due to death and felony conviction will continue.

### Electronic Registration Information Center (ERIC)

Welcome aboard Illinois and Pennsylvania. ERIC membership now has 15 states – Alabama, Colorado, Connecticut, Delaware, Louisiana, Maryland, Minnesota, Nevada, Oregon, Rhode Island, Utah, Virginia, Washington – and Washington D.C.

ERIC reports have been provided to the local boards for processing. With the NVRA deadline approaching, local boards will first process the cross-state and in-state update reports so confirmation mailings can be done before the January 27th deadline. The number of records forwarded for processing are:

Cross-State: 11,819 records	Duplicate records: 416 records
In-State updates: 18,317 records	Social Security death records: 4,314 records

Reports are due back no later than February 3rd, and statistics will be provided at the next meeting.

In response to a question, Ms. Wagner explained the process when Maryland receives information that another state has more recent residential information about a voter registered in Maryland. The local board where the voter is registered sends to the new non-Maryland address a confirmation notice. If the voter confirms that he or she has moved, the local board will cancel the voter's registration in Maryland. If the voter does not respond to the mailing, the local board will follow the federal list maintenance requirements (e.g., move to the inactive list and cancel if the voter does not vote in two federal elections).

#### MVA – December statistics

The following is a breakdown of records received from MVA.

New Registrations: 10,724

Last Name Changes: 2,081

Address Changes: 23,596

Political Party Changes: 5,034

#### **4. Candidacy and Campaign Finance (CCF) Division**

##### Candidacy

As of January 19th, 180 candidates have filed at SBE for the 2016 Presidential Election. On January 25th, filing for candidates for delegate to the Democratic National Convention begins. The deadline to file for office is February 3, 2016 at 9 pm.

##### Campaign Finance

On January 20th, the 2016 Annual Report was due for all political committees. Currently, the CCF Division has over 1,700 active political committees. Failure to file timely will result in a fine of \$10 per day up to \$500. The late fee must be paid with campaign funds, and these funds are deposited in the Fair Campaign Finance Fund.

On January 13<sup>th</sup>, the fundraising prohibition for all current State office holders began. The prohibition on raising or depositing funds covers the Governor, Lieutenant Governor, Attorney General, Comptroller, and members of the General Assembly. Only office holders who are candidates for a federal or local election are exempt from the prohibition. A courtesy memo was sent to all the members of the General Assembly and to the Governor's legal counsel.

##### Enforcement

The CCF Division won a Judgment on the Affidavits against Friends of Michael Cassidy for \$1310 and Friends of Janice Talley for \$1500. The Division has issued a civil citation against the Friends of Jay Jalisi for failing to include an authority line on campaign material. The civil penalty was \$250.00.

#### **5. Project Management Office (PMO)**

Ms. Charlson deferred this section of the Administrator's Report until the briefing on the implementation of the new voting system.

SBE's PMO continues to coordinate and facilitate the weekly GoToWebinar meetings with the local boards and the monthly Election Director in-person meetings. During these meetings, we share information and discuss project tasks and issues as they relate to the New Voting System Replacement (NVSr) project.

##### NVSr Equipment and Supply Logistics

Voting system equipment is comprised of ExpressVote units (ballot marking devices), DS200 scanners, thumb drives, ballot boxes, ExpressPass printers (ballot activation card printers), and the DS850 high speed scanners. Delivery of all voting system equipment is complete for 22 of the 24 local boards. Wicomico County has taken a partial shipment equipment as they configure

their temporary warehouse storage area. They have scheduled the balance of their equipment deliveries for January 21, 2016. Anne Arundel County has experienced several delays in configuring the space in their new facility and has scheduled the receipt of all of their voting system equipment on January 29, 2016. These two shipments will complete the delivery of all voting system equipment to all local boards.

A second delivery effort is under way to deliver ancillary items added as part of the contract modifications. This includes hard cases (stands) for all ExpressVote units for early voting, soft cases for storing and transporting all ExpressVote units, accessible tables for the ExpressVote units on election day, and ballot transfer bins. The ballot transfer bins will be housed inside the ballot box for each DS 200 scanner and provide the secure storage for the voted ballots. The allotted quantities of all of these ancillary items, as of today, have been delivered to 18 local boards, and three more are scheduled this week. Deliveries to Anne Arundel and Wicomico Counties have been scheduled, and Prince George's County is awaiting the arrival of the final container of ballot transfer bins to complete its order. This container is expected this week.

SBE has a separate contract for the over 21,000 precinct voting booths, and the delivery of the booths is managed separately. In October 2015, each local board received an initial delivery of 35-65 booths. The remaining booths have either been shipped or are scheduled to ship to Maryland via ocean freight containers. Containers are being delivered directly to the larger local boards and deliveries to other locations are being made by truck. As of January 20, 2016, 20 local boards have complete shipments of voting booths. The target date for complete delivery of voting booths is February 19, 2016.

#### NVSR Equipment and Supplies Issues Tracking

Issues with equipment or supplies are documented and tracked. As of January 20, 2016, the project team is tracking six "low" hardware issues, no software issues, and one booth issue. The booth issue is expected to be resolved on January 21<sup>st</sup>, when a new carrying box for the voting booth is provided to the local board to replace the damaged box.

An issue receives additional attention if it:

- a. Occurs twice on the same piece of equipment
- b. Is "high" priority and has been open for more than seven days without resolution
- c. Has taken more than seven days to resolve
- d. Is not resolved with two repair visits
- e. Occurs in two or more local boards of election

#### NVSR Equipment and Supply Reconciliation

SBE and the NVSR project team are working on the detailed reconciliation of all new voting system equipment and supplies to ensure that SBE's and the Department of General Services' asset tracking requirements are being met. This includes the signoff by each Election Director acknowledging the receipt of their allocated equipment and supplies.

#### NVSR Training

Train-the-trainer sessions are now underway and are being led by the NVSR five-member training team. This team will training new trainers, and the new trainers will be responsible for training election judges and other temporary election support personnel in many counties.

### Central Warehouse

ES&S is using SBE's central warehouse to allocate and prepare for delivery the voting booths and ballot transfer bins for the local boards. These deliveries should be completed by the end of the January. Once the remaining deliveries of voting equipment are complete, the warehouse will only house the legacy voting system equipment and supplies and will be used for several months for training sessions for different groups.

SBE and the NVSR project team are working on the final floor plan to reduce the warehouse space since only the legacy voting system will be stored here. This reduction will reduce the cost of leasing the central warehouse and is expected to be completed by June 30, 2016.

### NVSR Voting System Network

The project team, ES&S, and the 24 local boards of elections have been installing a Statewide Election Management (SWEM) Network in preparation for the 2016 election cycle. The SWEM network is composed of three networks.

1. The certified network has the equipment and software certified by the U.S. Election Assistance Commission to tabulate and report the official election results. This network will be used the day after the election through the final canvass of absentee results.
2. The election night results network will be used to tabulate and report the unofficial election results on election night.
3. Three large local boards – Baltimore County, Montgomery County, and Prince George's County – will use regional collection networks (RCNs) to collect unofficial election night results on election night. There will be multiple sites in each of these counties to collect results from several polling places and transmit the unofficial results to their central local board office. Baltimore County will have 5 locations, Prince George's will have 6 locations, and Montgomery County will have 7 locations.

As of January 19<sup>th</sup>, the certified network and election night reporting network have been installed and tested in 22 local boards. Testing in Saint Mary's County is on hold until the local board reconnects its network, and installation and testing of Anne Arundel County's networks is on hold until the office has move to its new location (this week). SBE is working with ES&S and the three counties with the regional collection networks to install that network.

### User Acceptance Testing

User Acceptance Testing (UAT) has been completed for all voting equipment. Except for one local board's networks, UAT for the certified and election night networks is complete. The networks for Anne Arundel County were originally set up in the local board's warehouse facility but now need to be moved to their new facility. Upon completion of the move, the NVSR Quality Team will complete the UAT of both networks in Anne Arundel County.

Test plans are being developed for the three local boards using regional collection networks to receive unofficial election results election night. This testing will be performed in three phases by a team of ES&S, SBE, and NVSR project team representatives and will include simultaneous data transmissions from every collection site in the county to the local board. The first test of this network is scheduled for the first week of February.

### Transportation

On January 6<sup>th</sup>, the Board of Public Works approved a modification to the transportation contract. This contract provides for the transport of voting equipment to and from the almost

2,000 voting locations for the 2016 elections. A modification was needed because of the increased costs associated with transporting the new voting equipment. This voting equipment is larger and has more pieces to transport than the State's prior voting system.

### Other

Planning for SBE's call center for the 2106 Primary Election has started. As it has in the past, the call center will provide telephone and mailing support for SBE and four local boards (Anne Arundel County, Baltimore City, Baltimore County, and Prince George's County) from April 4, 2016, through the day after the election.

An auditor from the Department of Public Safety and Correctional Services conducted its annual Criminal Justice Information System audit of SBE. The report from the audit is expected to be delivered in the next few weeks.

## **6. Voting Systems**

### Electronic Pollbooks

Since the previous alpha build software testing that took place November 2015, the SBE and ES&S developers have worked to complete the update, correct issues from the initial alpha version, and test the latest build. The local boards are currently testing this build for both early voting and election day and the new updated bulk update process. The team has also been working on updates to the loading of the pollbook databases following the recent MDVOTERS changes.

On January 6, 2016, the Board of Public Works approved a contract to purchase an additional 150 electronic pollbooks and printers for the local boards of elections. These additional pollbooks are needed to implement same day registration and accommodate voter registration growth in a presidential election cycle. The local boards are responsible for paying the costs associated with these pollbooks and printers.

### New Voting System Documentation

The team has continued to refine the system documentation, in particular the *Conducting the Election Guide*, in preparation for the primary election. Additional content was incorporated following the mock election, some processes were updated, and the regional managers led the testing. The NVSR technical writer edited and formatting the document, and a draft version is being reviewed by the local boards. There may be minor changes as results from the pollbook testing.

## **7. Information Technology**

### New SBE Office URL

SBE IT recently registered a new Uniform Resource Locator (URL) ([marylandelections.us](http://marylandelections.us)) that will be used primarily for sending out mass emails to voters who have requested to receive their absentee ballots via our website. We are in the process of setting up the email service that will be mapped to this URL and should be completed soon.

## **ASSISTANT ATTORNEY GENERAL'S REPORT**

Mr. Darsie provided the following report.

1. The Supreme Court held in *Shapiro v McManus*, No. 14-990, 2015 WL 8074453 (slip op. Dec. 8, 2015) that a single district judge lacks authority to dismiss a redistricting complaint for failing to state a claim, but must instead refer such cases to a three-judge

district court. Under 28 U.S.C. § 2284, a single district judge may dismiss a complaint for lack of subject matter jurisdiction if the complaint fails to raise a “substantial federal question,” but this standard is met only when the complaint is “wholly insubstantial,” “obviously frivolous,” or “essentially fictitious.” Because the petitioner’s complaint in *Shapiro* was dismissed by a single district judge on the merits, rather than for lack of subject matter jurisdiction, the Court reversed the district judge and remanded the case for further proceedings.

As a consequence of the Court’s decision, *Shapiro* must be decided by a three-judge court. Also, the State has withdrawn its opposition to a three-judge court in two ongoing redistricting cases. *Parrott v. Lamone*, No. 1:15-cv-01849-GLR (D. Md. June 24, 2015); *Bouchat v. Maryland*, No. 1:15-cv-02417-ELH (D. Md. Aug. 31, 2015). The plaintiff in *Gorrell v. O’Malley*, No. WDQ-11-2975, 2012 WL 226919 (D. Md. Jan. 19, 2012), *appeal dismissed by* 474 Fed. App’x 150 (4th Cir. 2012) has also moved for relief based on *Shapiro*, but the State is opposing that motion.

2. John Hall has withdrawn his request for judicial review of the State Board’s decision not to issue him a declaratory ruling on the validity of the State Board’s minimum staffing policy, which was adopted by the State Board in 2000. *In the Matter of John Hall*, Civ. No. 20-C-15-009249 AA (filed Dec. 3, 2015). Instead, Mr. Hall is seeking a declaratory judgment from the Circuit Court for Talbot County on the validity of the State Board’s policy. *Hall v. Maryland State Board of Elections*, Civ. No. 20-C-15-009298 (filed Nov. 6, 2015). A hearing on whether Mr. Hall is entitled to such a declaration has been scheduled for April 15, 2016.
3. On February 11, a three-judge panel will review the circuit court’s decision granting the State Administrator’s motion to dismiss in *Newton v. Lamone*, No. 02-C-14-191218 (Cir. Ct., Anne Arundel Co., Md.), a lawsuit challenging the right of “Jay” Jalisi to appear on the ballot for District 10 in the House of Delegates due to his alleged lack of residency in that district. In May 2015, the Circuit Court for Anne Arundel County dismissed the lawsuit as moot.

### **BRIEFING – STATUS OF VOTING SYSTEM IMPLEMENTATION PROJECT**

Mr. McManus asked the representatives of State Department of Information Technology (DoIT), ES&S, and the Anne Arundel County Board of Elections to introduce themselves to the State Board and offer any introductory comments. Ms. Bennett from ES&S stated that ES&S does not see any hurdles or blocks to a successful election and is committed to the project.

Ms. Charlson explained the various components of the implementation project.

1. The system has three networks (collectively referred to as the Statewide Election Management or SWEM network). The “certified network” tabulates and reports official election results. The “election night results network” tabulates and reports unofficial election night results. The “regional collection networks” collect results from regional locations in Baltimore County, Montgomery County, and Prince George’s County and transmits unofficial election night results to the respective local board office.

The certified network and election night results networks are installed and have been tested in 22 counties. The networks in St. Mary’s County are awaiting testing once they



reconnect their network, and Anne Arundel County is waiting until they move to their new location.

SBE is working with a DoIT vendor to evaluate the security of the networks and relevant policies and procedures. SBE expects this work to be complete before the 2016 Primary Election.

2. Implementing this voting system in Maryland requires the management of thousands of pieces of equipment and ancillary supplies. It includes the ballot marking devices, scanners, thumb drives, ballot boxes, ballot activation card printers, precinct voting booths, hard cases and stands for the ballot marking devices, soft cases for storing and transporting the ballot marking devices, and ballot transfer bins.

Twenty-three local boards have all of the voting system equipment. Anne Arundel is configuring their new warehouse space and is scheduled for final delivery on January 29, 2016. All local boards have some quantity of precinct voting booths, and 20 local boards have full shipments. The remaining booths are in transit to Maryland, and final delivery will be complete by February 19, 2016. Eighteen local boards have all of their ancillary equipment, and three local boards are scheduled this week. Deliveries to the remaining three local boards are scheduled.

3. With the quantity of equipment, it is important to track equipment issues. If SBE or a local board identifies an equipment issue during testing, it is reported to the project team, which shares that information with ES&S. As of January 20, 2016, the project team is tracking six “low” hardware issues, no software issues, and one booth issue. The booth issue is expected to be resolved on January 21, 2016. An issue receives additional attention if it occurs twice on the same piece of equipment, is “high” priority and has been open for more than seven days without resolution, has taken more than seven days to resolve, is not resolved with two repair visits, or occurs in two or more local boards.
4. Implementing a new voting system requires a review and possible re-write of all election-related documentation. The *Conducting the Election Guide*, the manual for conducting an election in Maryland with the voting system, needed to be rewritten and processes needed to be developed before the document could be drafted. After the mock election, more content was added and processes were revised. SBE’s Regional Managers led the testing of the document, and the local boards are now reviewing and providing feedback on the draft. The election judges’ manuals were other key documents needing review and re-write. The manual for election day is complete, and the manual for early voting is being proofed and will be ready for the local boards by January 22, 2016. The local boards customize these manuals and submit the customized manuals for SBE review.
5. Implementation of this type of system requires extensive testing. The local boards performed volume tests to identify how many ballot images can fit on a thumb drive and how long it takes to load ballot images on a full thumb drive. This testing confirmed that there is enough space on the thumb drives for normal election usage (*e.g.*, 5,000+ ballots). The project team is currently testing the paper for the ballot marking devices to verify that the paper works with the devices and can be read by the scanners. Three local boards – Anne Arundel, Montgomery and Prince George’s Counties – will conduct end-to-end testing; this testing will include pollbook testing. Other local boards may be testing on

their own or may be waiting for their county technicians to begin. Testing of the regional networks in will take place in February 2016.

6. Training of election officials has been conducted and continues to be offered. SBE and local board staff have been trained on all aspects of the voting system, and refresher training will start next week. Additional training for the local boards with the high-speed scanners is available on request. Training for the State's election judges' trainers has begun, and training will start in February 2016. Baltimore County's and Montgomery County's trainers began training this month. Training for the county technicians will begin in mid-February, training for temporary support staff for the pre-election logic and accuracy testing will begin shortly thereafter, and training for election field support will be conducted the week before the election.

Mr. Estrada of DoIT explained the agency's oversight role as one of governance and support but not operational or making business decisions. DoIT's oversight managers are on the ground overseeing the schedule and ensuring that proper project management and IT concepts are followed. Mr. Estrada explained that DoIT has provided additional project resources, a full-time oversight manager and full-time scheduler. In response to a question about the current status of the project, Mr. Estrada stated that he was not aware of any issues today that threaten the election. It is a big project and there are risks and issues, but he has every reason to believe that the system will be ready for the 2016 Primary Election.

In response to a question about ES&S' risk associated with the electronic pollbook software, Ms. Rogers of ES&S explained that ES&S regularly works with SBE's pollbook team to test "beta releases" or early versions of the software and uses an iterative development and testing process with SBE's team. Ms. Blackman of ES&S reported that a software release candidate is being tested by SBE and the local boards. This release candidate resolves all identified issues and any issues identified during this week's test will be resolved for the final software version. In response to a question, Mr. Aumayr explained the pollbook software testing schedule. Ms. Rogers explained that ES&S considers the pollbook software a "high" risk because of the amount of changes in this software version and the corresponding level of support needed.

Ms. Rogers explained the challenges with using a federally certified system because every change must be certified. Mr. Aumayr explained that a plan has been developed to report unofficial election night results to SBE and will be tested before the election. In response to a question, Ms. Bennett explained that ES&S has designated the status of the project schedule as "yellow" because of the volume of activities, not because of any specific concerns.

Ms. Rogers provided the State Board with a copy of ES&S' report on the "invalid signature" error reported by the Howard County Board of Elections in the mock election. When a precinct scanner was turned on for "day 2" of early voting, the scanner issued the "invalid signature" error and would not allow any additional ballots to be scanned. According to Ms. Rogers, this error occurs when the scanner does not recognize the contents of the thumb drive and is a security feature to ensure that nothing has happened to the data on the thumb drive since it was last used. Since 2008, ES&S has reports of 30 "invalid signature" errors. Twenty-seven of the 30 errors were triggered by improper processes, and the remaining three instances cannot be explained. While no additional ballots could be scanned, the ballots that had already been scanned were not lost. The previously tabulated ballots were retrieved and re-scanned. In response to a question, Ms. Rogers stated that this has a very low probability of recurring and that she expects the system to perform adequately for the upcoming primary election. She explained that election officials need

to expect issues as pollworkers become adjusted to the new system, but the system will perform as expected and is easier to use than Maryland’s prior system. Ms. Rogers provided the State Board with a handout explaining ES&S’ Intelligent Mark Recognition (IMR™).

Mr. Torre of the Anne Arundel County Board of Elections explained that election officials understand that they have one day to perform and will deliver an election. He stated that the local boards have a good partnership with SBE, ES&S, and DoIT. Mr. Torre shared his background with implementing the prior voting system and stated the need to educate voters on the two different voting processes – one during early voting and the other for election day. Since SBE did not receive the support to design and publicize materials, Mr. Torre reported that the local boards are designing outreach materials.

Ms. Graves of the Anne Arundel County Board of Elections explained how the Anne Arundel County Board of Elections is conducting its voter education initiative. The local board initially reached out to community and government agencies that interact with the public (*e.g.*, libraries, senior centers) to introduce the new voting system. During these events, the local board also recruits for election judges and offers voter registration. Mr. McManus stated that he attended one of the Anne County events and recognized that the local board did a great job at the event. Mr. Torre stated that the Anne Arundel County Board of Elections has conducted 48 events and 784 individuals were educated about the new voting system. He noted that he would have expected more events with an organized media campaign. In response to a question, Mr. Torre explained that public service announcements are free, but the media outlets run those announcements at times when few voters are listening or watching. He stated that the announcements during drive times is needed. Mr. Torre also explained that the Anne Arundel Board of Elections’ budget does not include funding for voter education.

#### **APPROVAL OF FINAL REGULATIONS – CAMPAIGN FINANCE**

Mr. DeMarinis presented for final adoption proposed changes to the following regulations:

- |                |              |                       |
|----------------|--------------|-----------------------|
| 1. 33.13.01.01 | 8. 33.13.15  | 15. 33.20.01          |
| 2. 33.13.02.02 | 9. 33.13.18  | 16. 33.20.04          |
| 3. 33.13.06    | 10. 33.14.01 | 17. 33.20.05          |
| 4. 33.13.08    | 11. 33.14.02 | 18. 33.20.07.01 & .03 |
| 5. 33.13.09    | 12. 33.14.03 | 19. 33.20.08          |
| 6. 33.13.10    | 13. 33.18.01 |                       |
| 7. 33.13.12    | 14. 33.18.02 |                       |

These regulations were adopted as proposed regulations at the August 2015 meeting and were published in the October 16, 2015 edition of the *Maryland Register*. While public comments were received and a legislative hold was placed on some of the proposed regulations published in the October 16, 2015, edition, none of the regulations being presented for final adoption received public comment or were the subject of the legislative hold.

Mr. Hogan made a motion to adopt the above listed regulations as final, and Ms. Mack seconded the motion. The motion passed unanimously.

#### **APPROVAL OF PROPOSED REGULATIONS – CAMPAIGN FINANCE**

Mr. DeMarinis presented proposed regulations to 33.14.02.04 (Public Financing Act – Deadline for Notice and Certification), 33.20.01, .02, .04, and .06-.09 (Disclosure of Persons Doing Public Business), and 33.21.01 - .03 (Disclosure of Persons Employing a Lobbyist).

The proposed changes to 33.14.02.04 clarify the deadlines for submission of the notice of intent to seek public financing and seed money certification in a general election. These changes were based on the discussion at the last board meeting.

The proposed revisions to 33.20 are based on public comments received when these chapters were initially published in the October 16, 2015, edition of the *Maryland Register*. The proposed regulations:

1. Establish an automatic waiver for initial reports if the person has filed the required information in prior reports
2. Establishes deadlines for filing a registration and an initial report
3. Codifies the documents that must be retained by the person doing public business
4. Codify past practices and prior advice rendered by State Ethics Commission and the Office of the Attorney General regarding the determination of attributed contributions
5. Provide specific practical applications on actions by officers, directors and partners that may constitute suggesting a contribution or donation to a political committee

Mr. DeMarinis stated that he has correspondence stating that the legislative hold placed by Senator Manno and Delegate Rosenberg at the request of the Maryland Banker's Association has been withdrawn.

The proposed changes to 33.21 establish the deadline to a person to register with the State Board to file a Statement of Contributions, codify the required contents of the statement of contributions, when a final report is due, the penalties for late filings, and require an electronic signature on all submissions.

Ms. Howells stated that she had some edits that she would submit to Mr. DeMarinis, and Mr. Darsie and Mr. DeMarinis will clarify the language in proposed 33.20.06.01E.

Mr. Hogan made a motion to adopt as proposed the above regulations with the various edits, and Ms. Howells seconded the motion. The motion passed unanimously.

#### **APPROVAL OF FINAL REGULATIONS – SAME DAY REGISTRATION**

Ms. Charlson presented for final adoption new regulations and proposed changes to 33.01.01, 33.05.04.01, 33.16.02 – .05, and 33.19.01 – .03. These new and proposed regulations were published in the October 16, 2015, edition of the *Maryland Register*, and the Montgomery County Board of Elections submitted comment.

Ms. Charlson explained that the Montgomery County Board of Elections expressed concern with the Motor Vehicle Administration's policies and procedures related to voter registration. At Mr. McManus' request, Ms. Keeffe explained the board's concerns with data from the Motor Vehicle Administration and asked that the State Board be cautious with its use. In response to a question from Mr. Cogan, Ms. Keeffe stated that there is not a fatal flaw with MVA's data and SBE's analysis of the data should be able to resolve issues.

Mr. Hogan made a motion to adopt these regulations as final, and Mr. Cogan seconded the motion. The motion passed unanimously.

### **APPROVAL OF FINAL REGULATIONS – VARIOUS TITLE 33 SUBTITLES**

Ms. Charlson presented for final adoption proposed changes to the following regulations:

- |                                  |                                     |
|----------------------------------|-------------------------------------|
| 1. 33.02.03.04                   | 6. 33.09.01                         |
| 2. 33.03.01                      | 7. 33.11.03.07 and 33.11.05         |
| 3. 33.04.01                      | 8. 33.12.01, 33.12.03 – .05 and .07 |
| 4. 33.07.01, .04, .05, .09 – .10 | 9. 33.15.03.01 and .06              |
| 5. 33.08.01, .02, and .04 – .05  | 10. 33.17.07.04                     |

Ms. Charlson proposed four non-substantive changes to these proposed regulations. The non-substantive changes are in 33.04.01.09A(1), 33.07.01.02, 33.07.10.01B, 33.07.10.02A and correct wrong references, add missing adjectives, and improve readability. Because these are non-substantive changes, they do not require re-publication of the proposed regulations.

In response to questions, Ms. Charlson described SBE’s prior work with certified public accountants and a statistician to develop an election audit to explain how the sample size for the post-election verification and audit was determined. Ms. Charlson concurred that, if the State Administrator required a local board to conduct additional post-election analysis because of discrepancies or offered an additional recount option, this information would be presented to the State Board. In response to Ms. Howells’ question about whether there is a way to track unusual voting patterns on election day, Ms. Charlson explained the data that is collected and can be analyzed but the collected data may not identify the patterns she proposed.

Ms. Mack made a motion to adopt these regulations as final with the explained non-substantive changes, and Mr. Cogan seconded the motion. The motion passed unanimously.

### **APPROVAL OF ABSENTEE VOTING INSTRUCTIONS FOR 2016 ELECTIONS**

Ms. Charlson presented three sets of absentee voting instructions and stated that the only changes from the 2014 instructions were updated deadlines and the requirement to use a black ink pen. The instructions vary based on how the voter receives and marks his or her absentee ballot – by mail, via website and mark by hand, via website and mark using the online ballot marking tool. Ms. Howells proposed three edits to the instructions.

Ms. Mack made a motion to approve the instructions with Ms. Howells’ edits, and Ms. Howells seconded the motion. The motion passed unanimously.

### **APPROVAL OF PROVISIONAL BALLOT APPLICATION**

Ms. Charlson presented the content for the provisional ballot application for the 2016 election. She explained that the new text related to the same day registration and address change process and changes to make Part 1 of the application mirror the current voter registration application. Ms. Charlson noted that language in the oath in Part 3 of the application is dependent on the outcome of the legislature’s vote to override one of the Governor’s veto.

In response to a comment from Ms. Howells, there was a discussion about whether “Sex” or “Gender” should be used in Part 1 of the provisional ballot application. Ms. Lamone offered that “Gender” be approved for the 2016 Primary Election, but the label can be changed for the 2016 General Election.

Ms. Howells made a motion to accept the proposed provisional ballot application for the 2016 Primary Election and subject to the outcome of the legislature’s vote on overriding the Governor’s veto, and Mr. Hogan seconded the motion. The motion passed unanimously.

### **APPROVAL OF CAMPAIGN FINANCE WAIVER REQUESTS**

Mr. DeMarinis presented requests from seven campaign finance committees for waivers of late fees. The committees requesting a waiver of late fees are:

1. Collins, Cynthia Lee Friends of
2. Glenn, Cheryl Friends of
3. Halter, (Michael) 2014
4. McIver, Mark for Central Committee
5. Smith, Will for Delegate
6. Walsh Wingate-Pennacchia Gubernatorial Ticket
7. Ware-Newsome, Frederick Douglass Citizens for

Mr. Hogan made a motion to adopt the State Administrator's recommendations for the seven committees requesting waivers of late fees, and Ms. Mack seconded the motion. The motion passed unanimously.

### **APPROVAL OF TITLE 14 REQUESTS FOR WAIVERS OF LATE FEES**

Mr. DeMarinis presented requests from 21 businesses for waiver of late fees to the Title 14 filing requirements. The businesses requesting a waiver of late fees are:

1. Group Z, Inc
2. Kaiser Fdn. Health Plan of the Mid-Atlantic States
3. Joseph B. Fay Co.
4. Chesapeake Regional Information System for our Pat
5. McGuireWoods LLP
6. JRS Architects, Inc.
7. CALIBRE Systems, Inc.
8. Clean Venture, Inc.
9. Bricklayers and Allied Craftworkers Local 1 MD, VA
10. CONCENTRA
11. Maryland Automobile Dealers Association
12. Trident Merger, LLC
13. BlackRock Delaware Holdings Inc.
14. BlackRock HK Holdco Limited
15. BlackRock Holdco 2, Inc.
16. Holcim (US) Inc.
17. J4P Associates
18. Maryland League of Conservation Voters
19. AB Consultants, Inc.
20. Center Stage
21. Mentor Worldwide LLC

Ms. Mack made a motion to approve the requests from 21 entities to waive the assessed late fees, and Mr. Hogan seconded the motion. The motion passed unanimously.

### **REQUEST FOR CONFIDENTIALITY**

Mr. DeMarinis presented eight requests for designating sitting judges' residential addresses and phone numbers as confidential.

Mr. Hogan made a motion to designate this individual's residential address and phone number as confidential, and Mr. McManus seconded the motion. The motion passed unanimously.

### **ANNUAL REVIEW OF SBE BY-LAWS**

Mr. McManus tabled this review until the next meeting.

### **APPROVAL OF LBE BY-LAWS**

Mr. McManus tabled this review until the next meeting.

### **PUBLIC COMMENT – THE HONORABLE CATHY VITALE**

Judge Vitale stated that she was addressing the State Board as an individual candidate, not as a Circuit Court judge or as representing the Anne Arundel County Circuit Court bench. Judge Vitale

expressed her concern with how the ballot marking device displays a contest when there are more than seven candidates. In this type of contest, the candidates' names are displayed on two screens, and the voter moves between the screens by pressing the "More" button. Voters are required to review the names on the second or subsequent page the first time they visit the contest but are not required to do if they return to the contest a second or subsequent time. Judge Vitale alleges that displaying candidates in this manner means that the candidates on the second or subsequent page do not have the opportunity for their names to be seen the same number of times that candidates on the first screen. She stated that there will be at least five contests in the 2016 Primary Election with more than seven candidates.

Judge Vitale referenced various provisions of the Election Law Article that require equal treatment of all candidates and the requirement that ballots be easily understandable. She also referenced a Maryland court decision requiring columns of equal number of candidates. Judge Vitale requested that the ballot marking device be required to show all candidates' names at the same time, prevent voters from making all selections in a contest before seeing all of the candidates' names, and allow overvotes but require the voter to deselect a selection (instead of preventing overvotes).

Ms. Rogers explained that she will provide a document showing ES&S' response to Judge Vitale's concerns. She explained that ES&S follows the U.S. Election Assistance Commission's best practices in ballot design that includes avoiding scroll bars and presenting candidates in smaller bunches for voters to move through. She recommended customizing those instructions that can be customized but noted that many screens cannot be changed without being certified by the U.S. Election Assistance Commission. This concern could also be addressed with signs and election judges' training. Ms. Rogers explained that, in a "Vote for One" contest, the ballot marking device automatically deselects a contest when a voter selects another option, but in a "Vote for Two or More" contest, the device does not know which contest the voter wishes to deselect and therefore, all selections remain until the voter deselects the selection he or she no longer wants. Ms. Rogers stated that future releases will have more flexibility with displaying candidate names, including the use of multiple columns, and that ES&S will consider Judge Vitale's concerns in future software releases. Judge Vitale recommended that the software deselect all selections if a voter tries to overvote.

In response to a question as to whether all software changes require certification by the U.S. Election Assistance Commission, Mr. Darsie stated that federal certification is required for all software changes. Mr. McManus stated that SBE would continue to look at its options. In response to questions, SBE staff members stated that changing the font size of the candidates' names is not an option and there were contests with the prior voting system that required multiple screens.

## **OLD BUSINESS**

There was no old business.

## **NEW BUSINESS**

Chike Anyanwa explained why his committee had previously filed late campaign finance reports.

Mr. DeMarinis explained that all of the committee's 2014 reports were late from 1 day to 23 days late and the committee has been referred to the Office of the State Prosecutor for two of the late reports. The committee's July 2015 report was also late, and the request for a waiver was denied. Mr. Anyanwa has not requested a reconsideration of SBE's denial of his waiver request. Mr.

Anyanwa would like to file for office but has been prevented from doing so because of the late fees.

In response to questions, Mr. Anyanwa apologized for the delays in filing. Mr. DeMarinis explained the various notices that are provided to committee of upcoming filing deadlines and notices of late filings.

The Board agreed to consider Mr. Anyanwa's comments as a request for reconsideration of the denial of his waiver request. There was a motion and a second to waive the committee's late fee. The motion passed with a 4-1 vote with Mr. Hogan voted against the motion.

Lynn Garland, a voter from Montgomery County, submitted a handout summarizing her observations from an election judges' training session conducted in Montgomery County. She stated that the training was very good but suggested that the training include an explanation why there is a new voting system and line management strategies.

Rebecca Wilson of SAVE Our Votes stated that, under the current and revised post-election audit and reconciliation activities, 95% of election day precincts would not be audited and that there is no requirement to verify that the vote counts tallied in each precinct are included in the final count. According to Ms. Wilson, this ensures that all results are loaded and included in the final results.

#### **DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

Ms. Howells reported that she gave \$150 to the Prince George's County Republican Central Committee for its dinner and \$150 to Charles Faddis for Congress. Mr. Cogan reported that he gave \$45 to Hogan for Governor and \$100 to the Republican Senatorial Committee. Mr. Hogan reported that he gave \$100 to Barve for Congress, \$100 to Friends of Charles Barkely, and \$250 to Friends of Ed Kasemeyer. Ms. Mack reported that she gave \$125 to Plowman and Fisherman.

#### **SCHEDULING OF NEXT MEETING**

The next meeting was scheduled for February 25, 2016, at 2:00 pm.

#### **ADJOURNMENT**

Ms. Mack made a motion to adjourn the meeting, and Mr. McManus seconded the motion. The motion passed unanimously. The meeting adjourned at 5:58 pm.