

State of Maryland 

State Board of Elections – February 23, 2017 Meeting

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Gloria Lawlah, Member
Linda H. Lamone, Administrator
Nikki Charlson, Deputy Administrator
Paul Aumayr, Director, Voting Systems
Erin Perrone, Director, Election Reform and Management
Vicki Smith, Candidacy and Campaign Finance

Also Present: Rachel Rachfel, Voter Outreach Coordinator, New Voting System Replacement
Jaime Vazquez, Member, Prince George's County Board of Elections
Mary Ann Keeffe, Member, Montgomery County Board of Elections
Jackie Phillips, Member, Montgomery County Board of Elections
Alisha Alexander, Election Director, Prince George's County Board of Elections
Margaret Jurgensen, Election Director, Montgomery County Board of Elections
Lynn Garland
Ralph Watkins, League of Women Voters

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 4:03 pm and confirmed that a quorum was present. He stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM JANUARY 25, 2017, MEETING

Ms. Charlson stated that a version of Ms. Howell's edits were in the meeting folder. The minutes are posted on SBE's website, as the by-laws allow for the Chair to approve the minutes after each board member has two business days to review and provide feedback. Mr. McManus proposed to table the review of Ms. Howell's edits until the March meeting.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

U.S. Election Assistance Commission's Technical Guidelines Development Committee

Created by the federal Help America Vote Act, the Technical Guidelines Development Committee (TGDC) is tasked with developing new voting system standards (Voluntary Voting System Guidelines or VVSG). The TGDC is chaired by the Director of the National Institute of Standards and Technology (NIST) and includes State and local election officials, academics, vendors, and individuals with expertise with usability, accessibility, and security. I serve on the TGDC as a representative of the U.S. Election Assistance Commission's (EAC) Board of Advisors.

On February 13th and 14th, the TGDC met in Washington, D.C. During this meeting, there were presentations connecting lessons learned from the 2016 General Election to the development of the new VVSG and updates from NIST, the EAC, and the various working group and committees since the September 2016 meeting and discussions concerning general principles and the scope of the next version of the VVSG. Natasha Walker presented Maryland's experience with the post-election ballot tabulation audit we performed after the 2016 General Election. Her presentation was very well received, and many attendees were very interested in the automated audit process

and the resulting benefits to election administration. Ms. Lamone reported that the TGDC adopted its final scope for the new voting system standards. While the current standards are focused on equipment, the new standards will be focused on functionality and will be more usable and flexible for future voting systems.

National Association of State Election Directors' Winter Meeting

The winter meeting of the National Association of State Election Directors' meeting was held in Washington, D.C. from February 15th – 18th. During this meeting, state election directors from across the country received updates from the U.S. Election Assistance Commission, the Department of Defense's Federal Voting Assistance Program, the Center for Election Innovation and Research, and Congressional representatives. Other topics included accessibility of voting locations and websites, security review and resources, and voter registration.

FY 2018 Budget Analysis and Hearings

For each agency's proposed budget, the appropriate subcommittee of the Senate's Budget and Taxation Committee and House of Delegates' Appropriations Committee holds a hearing to review and discuss the following fiscal year's budget. On February 1st, the House Budget subcommittee held a hearing on SBE's proposed FY 18 budget. The Senate's subcommittee held its hearing on February 2nd.

During these hearings, the Department of Legislative Services' budget analyst reviewed SBE's proposed FY 2018 budget and topics requiring further clarification and made recommendations for budget reductions. After the analyst's presentation, I provided a brief overview of the 2016 General Election and the requested information and disagreed with the analyst's recommendation to reduce SBE's budget for the 2017 biennial meeting. A copy of the budget analysis and SBE's written response was previously distributed. Later in the legislative session, the subcommittees will have "decision meetings," where we will learn whether the subcommittee members accepted the analyst's recommendations and made other budget reductions.

House Ways and Means Briefing

On February 7th, the House Ways and Means Committee held an elections briefing for committee members. At this briefing, I provided a summary of the 2016 General Election and Larry Moore, President and CEO of The Clear Ballot Group, gave an overview of the ClearAudit product and how the post-election ballot tabulation audit was performed. A copy of my talking points and Mr. Moore's presentation were provided at the January meeting.

Mr. Hogan reported that he received from legislators all positive feedback on the House and Senate briefings.

2. Election Reform and Management

Electionmail.org Discussion

Ms. Perrone attended a meeting at the Bipartisan Policy Center in Washington, D.C. to discuss the electionmail.org reporting website. The website was used during the 2016 General Election by jurisdictions across the country to report any issues with the United States Postal Service (USPS). The site was monitored by the USPS and others to address and solve any mailing issues timely and effectively. Because of its success, the USPS is looking forward to continuing this service for future elections.

Post-Election Comprehensive Audit

Data from the 2016 General Election is being evaluated for the post-election comprehensive audit. Final evaluations will be submitted to Erin Perrone by the end of February for inclusion in a comprehensive audit report for each local board of elections. Each local board will receive its audit report by the end of March.

2016 General Election Follow-Up

EAC's 2016 Election Administration & Voting Survey: On February 1st, we submitted the comprehensive data report on the 2016 General Election. Each state is required to submit this survey after each general election, and the data sets include voter registration, absentee voting by domestic, civilian and military and overseas voters, provisional voting, voting equipment information, poll workers, and voting locations. The EAC's contractor reviewed the data we submitted and returned it for further review and corrections. The revised data set was submitted on February 23rd. Janet Smith and Cortnee Bryant assisted compiling and reviewing this data. When the final data has been submitted, we will post on SBE's website the data report.

Voting Lines Analysis: We completed the analysis of the cause of lines at the 50 precincts with reports of lines. Last week, the Baltimore County Senate Delegation submitted a list of twelve precincts with reports of lines. Since our initial list included only four of these precincts, we are collecting and analyzing information on the other eight precincts. That analysis should be complete in the next couple of weeks and at the next State Board meeting, a full analysis will be provided.

3. Voter Registration

Statewide voter registration database (MDVOTERS)

Software release 6.4 is currently going through user acceptance testing. The mock election for this release will begin February 27th, and the release will be installed on March 20th. The release includes miscellaneous clean-up issues identified by the local boards of elections.

Electronic Registration Information Center (ERIC)

MDVOTERS now has an ERIC interface. This interface allows ERIC data to be loaded into MDVOTERS and provides electronic matching reports for the local boards to process. Prior to this interface, all matching was done manually using a spreadsheet. A fifth report using National Change of Address (NCOA) information from the United States Postal Service is currently in development. Training on this new interface is completed, and the local boards will be getting ERIC data next week.

Ms. Howells asked whether election officials receive notice of voters who live at a property that has been condemned or razed. Ms. Lamone responded that we have asked the Attorney General's Office for advice on the process when notice is provided.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

Starting on February 28, 2017, candidates may file a certificate of candidacy for the 2018 General Election.

From February 7th through 16th, the CCF Division, led by Ebony Parran, conducted four, in-person candidate filings trainings for the local boards. The training covered all types of candidates and updates on law changes. Every local board attended one of the trainings.

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

Inventory

Excess Property Disposal: We continue to work with the Department of General Services (DGS) on the disposal of the legacy voting system equipment and other equipment. The first disposal will be the auction of almost 19,000 touchscreen voting units and the blue carts in which they are stored. It is estimated that the first auction should take place in March. The response from this first auction will determine whether another approach will be needed for the remaining equipment. In preparation for the auction, the warehouse team is clearing the memory of each unit and each memory cards. In response to a question from Mr. Hogan, Ms. Charlson explained that some of the revenue is considered income if the equipment was initially purchased with federal funds. Ms. Charlson was unsure where the funds would go if they are received.

New Inventory System Preparation: The PMO and project team are working on the requirements to convert the legacy and new voting system equipment and supplies to the new inventory system. All equipment and supplies must be loaded into the new inventory system prior to the actual start of the 2017 Annual Inventory.

2017 Annual Inventory: The PMO and the project team are planning for the 2017 Annual Inventory. This involves setting up new or updating workflows as the result of the new inventory system implementation.

2018 Project and Task Tracking

The PMO is setting up the 2018 project and task tracking Smartsheet. This Smartsheet will track the preparation and planning tasks for the 2018 election cycle and several other projects that have started or are about to start.

Election Support Request for Proposal Solicitation (RFP)

Keith Ross continues to develop the Scope of Work content for the election support RFP. Mr. Ross expects to finish the updates by the end of February and provide to SBE's procurement team the updated document.

6. **Voting Systems**

ES&S Contract - Option 1

The base period for the voting system contract with ES&S will end on March 31, 2017. On February 8th, the Board of Public Works approved Option Period 1, which is for two years and covers the 2018 elections. We are working on some contract modifications that will also require Board of Public Works' approval.

Post-Election Maintenance

The local boards continue the post-election maintenance on the voting equipment and pollbooks. ES&S has performed the contractually required maintenance on the high-speed scanners. Any equipment requiring repair is tracked, and ES&S will perform the repair. The local board will perform acceptance testing on the repaired unit prior to signing off on the repair. All post-election maintenance should be complete by mid-April.

Electronic Pollbooks

We continue to have with ES&S regular conference calls concerning hardware and software updates to the electronic pollbooks. ES&S is currently working on bug fixes, our enhancement requests, and hardware updates to meet our requirements. We are looking at conducting, with these updates, a pilot during the 2018 elections.

High-Speed Scanners

On January 31st, we met with ES&S to discuss lessons learned on the high-speed ballot scanners used in the 2016 General Election. ES&S gathered input from the local boards earlier in January, as they recounted their experiences. The following day, ES&S met with representatives of those local boards with the high speed scanners to share those lessons learned.

In response to a question, Mr. Aumayr explained that ES&S has software awaiting certification by the EAC that allows for the display of candidate names in two columns.

7. Information Technology

New SBE HQ Network Switches

New Gigabit Local Area Network (LAN) network switches were successfully installed at SBE. These new switches have improved SBE's computer LAN speed and performance and offers the capability to power up future office staff desk VoIP telephones.

Secure Disposal of Hard Disk Drives and Media Tapes

A company called "SECURIS" recently securely retrieved and destroyed 140 hard drives and 215 media tapes. The company has since provided a Certificate of Destruction with serialized reporting listing the destroyed hard disk drives and media. This is a requirement of the State Department of Information Technology, the Office of Legislative Audits, and DGS' guidelines for disposal of such sensitive items.

2017 LEGISLATIVE SESSION – UPDATE

Ms. Lamone referred to the table in the meeting folder showing all of the legislation being tracked in the 2017 Legislative Session. Ms. Lamone noted that House Bill 143, SBE's department bill, passed 3rd reader this morning.

ASSISTANT ATTORNEY GENERAL'S REPORT

Ms. Lamone summarized the written report submitted by SBE's Assistant Attorney General.

Court Decisions

1. The Court of Appeals issued its decision in *Lamone v. Schlakman, et al.*, No. 50, September Term 2016 (Feb. 1, 2017), providing the reasoning for its earlier *per curiam* order vacating the restraining order that the circuit court had issued and remanding with instructions to dismiss the complaint as untimely filed. *Lamone v. Schlakman, et al.*, Maryland Court of Appeals, No. 50, September Term 2016 (Oct. 18, 2016) (*per curiam* order). The Court held that (a) plaintiffs' challenge Mr. Sparaco's candidacy must be brought under § 12-202 of the Election Law Article, not § 6-209, and was untimely under that provision's 10-day filing deadline; and (b) the filing deadline for candidates who seek nomination by petition is the first Monday in August, as provided by § 5-703(d)(1).
2. The Circuit Court for Baltimore City dismissed the complaint filed in *Voters Organized for the Integrity of City Elections, et al. ("V.O.I.C.E.") v. Baltimore City Board of Elections, et al.*, Balt. City Cir. Ct., Case No. 24-C-16-006082 (Feb. 12, 2017). The Court ruled that the plaintiffs had failed to plead compliance with the notice provision of the Maryland Tort Claims Act.
3. The Circuit Court for Anne Arundel County dismissed the petition for mandamus filed by William T. Newton, a candidate in the Republican Party primary for the 7th Congressional District

who sought to compel a new election based on reported voting irregularities in Baltimore City. *Newton v. Lamone*, Case No. C-02-CV-16-001792 (Feb. 6, 2017).

4. *Parrott v. Lamone*, No. 16-588 (U.S. Supreme Court). On January 9, 2017, the U.S. Supreme Court dismissed plaintiffs' appeal for want of jurisdiction, which leaves in place the three-judge court order granting our motion to dismiss for lack of standing. *Parrott v. Lamone*, No. 1:15-cv-01849-GLR (D. Md. Aug. 24, 2016).

Litigation Status Updates

5. *Shapiro v. McManus, et al.*, No. 1:13-cv-03233-JKB (D. Md.), re-captioned *Benisek v. Lamone*. The parties continue to engage in discovery. A single judge of the three-court federal district court ordered Sen. President Miller and House Speaker Busch to appear for depositions into the 2010 redistricting process. Those non-parties have sought review of that order by the three-judge court and the depositions have been stayed pending the decision of the three-judge court. The single judge also quashed plaintiff's demand, under Rule 30(b)(6), that defendants identify a designee to testify on behalf of the State in a deposition, concluding that the topics sought to be covered by the deposition were unduly burdensome and overly broad. The plaintiffs will have an opportunity to seek review of that decision by the three-judge court, but have not yet done so.

6. *Dorsey v. Lamone*, No. 1:15-cv-02170-GLR (D. Md.). The Attorney General's Office, with the assistance and support of SBE staff, offered amendments to H.B. 529 to implement the settlement reached in *Dorsey v. Lamone*. In that case, the plaintiff challenged the constitutionality of the requirement that independent candidates obtain approximately 40,000 signatures to appear on the general election ballot when minor party candidates are only required to obtain 10,000. After the court denied the State Board's motion to dismiss, the parties agreed to settle the case on terms that required SBE to (a) accept fewer signatures for the 2016 general election and (b) recommend appropriate legislative action to remove the disparity in ballot access requirements. The committee hearing on the proposed amendments was held at 1:00 p.m. on February 23, 2017.

7. *Bouchat v. Maryland*, No. 1:15-cv-02417-ELH (D. Md.). After the three-judge panel dismissed his amended complaint, Mr. Bouchat filed a notice of appeal with the Fourth Circuit Court of Appeals, which rejected it on the grounds that appeals from the decisions of three-judge panels go directly to the Supreme Court. On January 24, 2017, the Supreme Court returned Mr. Bouchat's notice of appeal for failure to comply with its filing requirements.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Ms. Smith presented requests from 23 committees to waive late fees incurred by the committees. The requesting committees are:

1. Ali, Saqib Friends of
2. Anderson, Mark Friends of
3. Bishop, John Committee to Elect
4. Bowser, Alan Friends of
5. Carabetta, Joe Citizens for
6. FCYR (Frederick Co. Young Republicans) PAC
7. Friends of the Anne Arundel Co. Judges Slate
8. Hamilton, (Anthony) For City Council
9. Insurance and Financial Advisors PAC-MD
10. James, Michael Committee to Elect
11. Leach, Rodney Committee to Elect
12. Legaluppi, Francesco Friends of
13. Magee, Peggy 2014 Friends of
14. Phillips, Mike Citizens for
15. Reclaim DC
16. Rose, Cindy Friends of

17. Shelton-Martin, Wanda
18. Staton, Rashad Friends of
19. Ward, Latasha Friends of
20. White, Michael Citizens for
21. Whitney, David Citizens for
22. Widmyer, Mark Citizens to Elect
23. Woolford, Deborah E. Friends of

The request to waive late fees for Friends to Elect Norman Gifford, Jr. was withdrawn. Action on this committee will be presented as a request for administrative closure.

Mr. Hogan made a motion to grant the requests for waivers of late fees, and Ms. Howells seconded the motion. The motion passed unanimously.

APPROVAL OF REQUESTS FOR WAIVERS OF LATE FEES FOR TITLE 14 REQUIREMENTS

Ms. Smith presented a request from Opportunity Builders to waive late fees. No action is required for denied requests.

Mr. Hogan made a motion to grant the request to waive late fees, and Ms. Howells seconded the motion. The motion passed unanimously.

APPROVAL OF REQUEST FOR ADMINISTRATIVE CLOSURES

Ms. Smith presented requests for administrative closure of six committees. The six committees are:

1. Friends of Alfred V. Griffin
2. Friends of Guled Kassim
3. Bonnie Lane for Baltimore 2016
4. Friends of Joann Wilkerson
5. Friends of Micah Mitchell
6. Friends of Vernon Holmes

Mr. Hogan made a motion to close administratively this committee, and Mr. Cogan seconded the motion. The motion passed unanimously.

OLD BUSINESS

2016 General Election – Baltimore City Precincts

Ms. Charlson referenced a letter in the meeting folder from Armstead Jones, Election Director for the Baltimore City Board of Elections. Mr. Jones submitted this letter in response to Mr. McManus' request for an explanation of the issues he reported on election day. Mr. McManus stated that he would follow up with the Chair of the Baltimore City Board of Elections.

Review of SBE's Translation Policy

Ms. Charlson referred to two documents in the meeting folder relating to the questions Ms. Howell's presented at the January meeting. The first document included responses from the representative of the company under contract with the State to translate information and a resume of the individual who did the translation work.

Ms. Howells asked why the translator's response was delayed, to which Ms. Charlson explained that the office's internal process to pay for translations had changed, and she did not know about the new process. In response to a question about why the translator did not provide a source document to support the translation of "at large," Ms. Charlson responded that she only sent Ms. Howells' enumerated questions to the translation company and apologized for failing to include this request.

Mr. Vasquez, a member of the Prince George's County Board of Elections, expressed his concern with the quality of the translations, including those provided by the State's translation company. He stated that SBE may be in legal jeopardy with the translations and suggested allowing more individuals to review translations.

There was a discussion about the process of reviewing the 2016 General Election ballots in Prince George's County and how comments on the 2016 General Election ballot were provided. Alisha Alexander, Election Director for the Prince George's County Board of Elections, explained that the comments were provided late and were on language that had been used for 15 years. Ms. Lawlah suggested using Senator Ramirez to help with translations, to which Mr. Vasquez responded that the members of the county's legislative delegation were not part of the process.

Mr. Cogan suggested creating a panel of individuals, including a representative of the State's translation company and representatives of Montgomery and Prince George's County with diverse dialects to review ballot language and advise the State Administrator. Margaret Jurgensen, Election Director for the Montgomery County Board of Elections, explained that there is not enough time to convene a panel to proof all of the ballot styles. Ms. Jurgensen, however, suggested that a panel could convene to review and update the current glossary of terms. In response to a question from Mr. McManus, the time frame for building and proofing ballots is set by statute and cannot be changed.

Mr. McManus proposed updating and expanding the glossary of terms before the 2018 elections and consider comments during the ballot proofing process. In response to a question, Mr. Vasquez stated that he agrees with 95% of the translations in the current glossary.

Review of Links on SBE's Website

Ms. Charlson reported that she is awaiting instructions from the U.S. Department of Defense's Federal Voting Assistance Program on how to terminate the federal grant that funded the web portal with information on candidates and other election-related information.

Absentee Ballot – Explanatory Language

Ms. Charlson explained that she understood from the January 2016 meeting that staff members would follow the usual process of reviewing and presenting a proposed absentee ballot application for the 2018 elections. The paper version of the application would be presented for board approval, and the language from the approved paper version would be applied to the absentee request portion of the online voter registration system. The proposed paper version that will be presented will include edits based on concerns previously expressed by the board members, language Ms. Howells presented at the January 2016 meeting, and feedback from the local boards of elections. Ms. Charlson explained that staff typically waits until after legislative session since the General Assembly could pass legislation that impacts the form.

Ms. Howells explained that she understood that the language about absentee voting would be discussed at this meeting, and there was a discussion about language that the State Board approves. This language includes the voter registration application and absentee ballot application but not general information posted on SBE's webpages, including the voter look-up website or web portal with information on candidates and other election-related information.

The consensus of the board members was to wait until the conclusion of the 2017 Legislative Session to consider the proposed paper version of the absentee ballot application for the 2018

elections. Text changes to the online ballot delivery system are scheduled for the November 2017 software release.

NEW BUSINESS

Mr. Watkins, Vice President of the League of Women Voters, stated his desire to respond to the characterization at the January 2017 meeting that the League of Women Voters is a “left leaning” and “liberal” organization. Mr. Watkins explained that organization’s voter education work is done in a non-partisan way, the League’s voter guides do not endorse or rate candidates and all candidates’ statements are printed without editing or rating. He stated that no other organization provides a more comprehensive guide or is more fair for candidates.

Ms. Howells stated that, while there are differences between educational and political groups, an organization’s political reputation is assigned to its educational activities. She stated that the League of Women Voters is known to support left-leaning candidates, and SBE should avoid organizations with known politics. In response to a question from Mr. McManus, Mr. Watkins stated that the League of Women Voters could fulfill its mission without a link on SBE’s website. Ms. Howells stated that she wants the links on the voter look-up website to be removed because she does not want to monitor links and content.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Hogan explained that all of his contributions reported at this meeting were made on or before January 5, 2017. These contributions were not previously reported because this agenda item was tabled at the December 2016 meeting, and Mr. Hogan did not attend the January meeting. Mr. Hogan reported the following contributions: (1) \$125 to Friends of Andrew Serafini; (2) \$500 to Friends of Mike Busch; (3) \$100 to Friends of Johnny Mautz; (4) \$100 to Citizens for Paul Pinsky; (5) \$150 to Friends of Bob Flanagan; and (6) \$125 to Friends of Kathy Klausmeier.

APPROVAL OF FINAL ADOPTION OF PROPOSED REGULATIONS

Ms. Charlson presented for final adoption proposed regulations previously approved at the September 29, 2016, meeting. The proposed regulations were published in the November 28, 2016, edition of the *Maryland Register*, and no public comments were received.

Ms. Lawlah made a motion to adopt as final the proposed regulations approved at the September 29, 2016, meeting and described in Jared DeMarinis’ memoranda dated February 17, 2017, and September 27, 2016, and Mr. Cogan seconded the motion. The motion passed unanimously.

CONFIRM NEXT MEETING

The next meeting is scheduled for Thursday, March 23, 2017, at 2 pm.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the meeting, and Ms. Howells seconded the motion. Mr. McManus adjourned the meeting at 5:45 pm.