



State of Maryland
State Board of Elections Meeting – December 14, 2010

Attendees: Robert Walker, Chair
Bobbie Mack, Vice Chair
David McManus, Member
Charles Thomann, Member
Linda Lamone, Administrator
Ross Goldstein, Deputy Administrator
Jeff Darsie, Assistant Attorney General
Donna Duncan, Election Management Director
Nikki Trella, Election Reform Director
Jared DeMarinis, Candidacy and Campaign Finance Director
Paul Aumayr, Voting System Project Manager
Valerie O'Connor, Budget and Finance Director
Michael Kortum, Chief Information Officer
Janet Smith, Voter Registration Division

Also Present: Barbara Sanders, League of Women Voters
Abigail Goldman, Baltimore City Board of Elections
Jerrold Garson, Montgomery County Board of Elections
Fred Silverman
Holly Joseph
Stan Boyd, Save Our Votes
Anthony Gutierrez, Wicomico County Board of Elections
Alisha Alexander, Prince George's County Board of Elections

DECLARATION OF QUORUM PRESENT

Chairman Walker called the meeting to order at 2:07 pm and declared that a quorum was present.

APPROVAL OF THE PRIOR BOARD MEETING MINUTES

The minutes of the September 27, 2010, board meeting were presented for approval. Ms. Mack made a motion to approve the minutes, and Mr. McManus seconded the motion. The motion was approved unanimously.

ADMINISTRATOR'S REPORT

On behalf of the State Administrator, Ross Goldstein thanked Keith Ross of HP for his 5 years of service to SBE. For funding reasons, SBE is not continuing the contract for project management support. Mr. Goldstein recognized Mr. Ross' support of the voting system project and other project management efforts and the value that he added to the election process. Mr. Walker and the members of the State Board thanked Mr. Ross for his service.

1. Meetings and Important Dates

State Board of Canvassers

The Board of State Canvassers met on December 1st at 4:00 pm. The Board of State Canvassers – comprised of the Secretary of State, the Comptroller, the State Treasurer, the Clerk of the Court of Appeals, and the Attorney General, who was unable to attend the meeting – certified the election results for State offices. The act of certifying the election made election results "official" and triggered the ability of qualified individuals to submit a petition for a recount or file a judicial challenge to the election. A copy of the certified results was provided to the board members.

Lessons Learned Session

A post-election lessons learned and best practices session was held in Annapolis on Wednesday, December 8th at 10 am. Over one-half of the local boards attended the meeting, and Mr. Goldstein reported that it was a productive meeting. Much of the discussion focused on early voting centers, including where they were located, how they were set up and the physical size of the rooms used.

Citizens' Forum

Staff will hold a citizens' forum on December 14, 2010 at 6:00 pm at SBE's office. For this meeting, three voting system vendors – Hart InterCivic and its partner Unisys, Election Systems and Software, and Dominion – were invited to provide a short briefing on their voting system products, how they meet the needs of voters, including

voters with disabilities, and any future products or innovations that may be of interest. Additionally, a post election wrap-up and open discussion is planned.

Attorney General Commission on Campaign Finance Reform

Mr. Goldstein reported that he, Jared DeMarinis, and Jeff Darsie attend the recent regulatory group meeting and full committee meeting for the Attorney General's Commission on Campaign Finance Reform. Robert Ostrum, Counsel to the Maryland Republican Party, and Larry Norton, former Maryland Assistant Attorney General and Counsel to the Federal Elections Commission, have been added as members. The Committee requested public comments on campaign finance issues, and the deadline to submit comments was December 6th. The Committee expects to have a draft report on December 17th, and the final report will be submitted to the Attorney General on January 4th. Mr. Walker requested that a copy of the final report be provided to the Board members.

2. Election Reform & Management

Online Absentee Ballot Delivery System

Nikki Trella reported that the online absentee ballot delivery system continued to work well in the general election. Between the primary and general elections, SBE decided to use its internal email system (Outlook) to deliver email messages to voters explaining how to access the online absentee ballots. Ms. Trella reported that distributing emails via Outlook seemed to decrease the number of voters who claimed not to have received the email and greatly simplified administrative processes. SBE and University of Maryland had a post-election lessons learned session on Tuesday, November 30th and identified ways to improve the delivery system for future elections.

Voting Location Evaluation Forms

Mr. Goldstein reported that after each election, SBE collects from the local boards of elections voting location evaluation reports (previously called polling place evaluation reports), reviews the forms, and provides the local boards with summaries of the forms and where improvements can be made. Rick Urps has received and reviewed voting location evaluation reports from both the primary and general elections and has provided the local boards with feedback. In the primary election, the most common findings were that the evaluators did not complete all questions on the form, accessible entrances to polling places were not marked, voting units were not positioned to maximize voter privacy, and the use of cell phones by voters (which was discussed at the lessons learned session with the local boards). Ms. Lamone noted that the review of the evaluations indicated that some of the questions on the evaluation form need to be revised. In response to a question from Mr. Walker, Ms. Lamone responded that the police can assist the election judges with enforcing the no electioneering zone.

Primary Election – Absentee & Provisional Voting Statistics

Mr. Goldstein noted that absentee and provisional voting statistics from the primary election have been posted to the website and are included in the board meeting folder. As expected in a primary election, the most common rejection reasons for provisional ballots are voters who are not eligible to vote a primary election ballot and voters who vote the wrong primary election ballot. The former represents voters who are not affiliated with the Democratic or Republican parties, reside in a county that does not have any nonpartisan contests, and show up to vote, and the latter represents voters who are eligible to vote in a primary election but requested and voted a ballot for a political party with which they are not affiliated.

3. Voter Registration

Final MDVOTERS Release for 2011

User acceptance testing on version 2.30, the last MDVOTERS software release under the current Saber/HP contract, has been completed. The release will be placed in production the weekend of December 24th. To train the local boards of elections on the new software, on-line "Go To" meetings will be held December 27th – 29th. The current MDVOTERS contract with Saber/HP expires on December 31, 2010, and covers the data center and software maintenance.

MDVOTERS Software Maintenance Task Order Awarded

Mr. Goldstein reported that the MDVOTERS II Evaluation Committee has awarded the CATS II Task Order for MDVOTERS software maintenance to The Canton Group, LLC. The Canton Group, located in Baltimore, Maryland, has partnered with ES&S and Bay-Tek (a Maryland MBE) to provide MDVOTERS software development, database management and help desk services. As SBE's application services provider, The Canton Group will work closely with The Sidus Group, SBE's new contractor for data center, network and desktop support. Mr. Goldstein noted that the Voter Registration Division reports that the transition from Saber/HP to the two new vendors is going smoothly.

4. **Candidacy and Campaign Finance**

Report Filing

On November 23, 2010, the 2010 Gubernatorial Post-General campaign finance report was due. The transaction period covered from October 18th to November 16th. Mr. DeMarinis reported that 82% of the committees filed timely.

Pursuant to Election Law Article § 13-333 of the *Annotated Code of Maryland*, an official of the State may not issue a commission or administer an oath of office to an individual until that official receives certification from SBE that all campaign finance reports due from candidate have been filed. Mr. Goldstein reported that the Candidacy and Campaign Finance Division is working to identify candidates from whom outstanding reports are due, and the reports are being filed and the late fees are being paid.

Enforcement

On election day, Mr. Goldstein noted that voters received automated telephone calls instructing them “to relax and stay home because O’Malley has won.” Numerous voters called SBE to complain about these calls, and the Candidacy and Campaign Finance Division referred these complaints to the Office of the State Prosecutor and the U.S. Department of Justice. The Attorney General’s Office has filed a lawsuit on consumer protection grounds.

The Candidacy and Campaign Finance Division has received complaints on the following political committees for lack of authority lines on campaign material: (1) Steven E. Morris and Friends; (2) Friends of Melvin C. High; (3) Friends of Mark K. Spencer; (4) Citizens for Mark Fisher; (5) Coalition for Change PAC; (6) Friends of Michael Jackson; (7) Friends of Archie O’Neil; and (8) Friends of Ollie Anderson.

Notifications

Mr. Goldstein reported that prior to the due date for each campaign finance report, the Candidacy and Campaign Finance Division emailed a reminder to every treasurer, chairman and candidate. This is in addition to the reminder postcard that is mailed.

Opinion of the Attorney General

The Office of Attorney General has not provided written advice on the questions about which the Board inquired at the April 29, 2010 meeting. As this meeting, Ms. McGuckian requested that two questions be submitted to the Attorney General for a formal opinion. The first question was when a person is a candidate and second question was whether volunteer professional services constitute an in-kind contribution. Additionally, the Candidacy and Campaign Finance Division has been informed that the outstanding opinion request on expenditures will not be answered. Mr. Darsie reported that the board members should expect an opinion on the issue of volunteer professional services but noted that it remains unclear whether specific advice can be provided about when a person becomes a candidate. In response to a question from Ms. Mack, Mr. Goldstein explained that SBE makes a distinction between a “candidate” for campaign finance purposes and a “candidate” for filing and ballot access requirements.

5. **Voting Systems**

2010 Election Review

Mr. Goldstein noted that the voting system was successfully used again in the recent general election. Nearly 600 voting units were used for early voting, and over 15,000 were used on election day. SBE received relatively few phone calls regarding reported issues with the voting system but are following up with the local boards of elections on the reported issues. Mr. Goldstein reported that comprehensive post-election maintenance will begin soon.

Election Night Results Reporting

The reporting of election results during the primary election was met with numerous technical issues and delays. Mr. Goldstein reported that numerous corrective actions were taken to make the reporting process during the general election very successful. One corrective action was to create regulations requiring the local boards to begin canvassing early voting results on election day so that they were completed and sent to SBE by 6 pm. However, these regulations did not receive approval by the General Assembly’s Administrative, Executive and Legislative Review Committee. Nonetheless, existing regulations permitted the local boards to start canvassing at 2 pm. All local boards opted to start canvassing by 2 pm so that they would be done by 8 pm when the polls closed, and early voting results were posted on SBE’s website by 8:40 pm. Other measures taken to ensure efficient results reporting included online training sessions hosted by Paul Aumayr to ensure that the local boards were prepared to accurately and timely upload their data and opting not to use the enhanced reporting options attempted for the primary election.

SBE also leased 100 TSX voting units from ES&S for the six largest local boards to use in their upload process on election night. The TSX is uses the same software as the Accuvote-TS units used in Maryland but it is significantly faster. This meant that the final local board reported its election results at approximately 1:20 am on election night, as opposed to 6:00 am for the primary election. The use of these units was well received by these local boards, and Mr. Goldstein reported that he hopes that all local boards will be able to use the TSX voting units for election night reporting for the 2012 elections.

Electronic Pollbooks

A total of 200 electronic pollbooks were deployed for early voting and 4,800 on election day, processing a total nearly 1.9 million voter ballots. There were only isolated instances of hardware and software issues, comparable to the issue rates experienced in the 2008 elections. Mr. Goldstein reported that a comprehensive analysis of the pollbook log files is now underway and should be completed within the next few weeks.

Once again, the local boards did an excellent job of preparing the pollbooks with data updates for election day, despite the short time between close of early voting and delivery of pollbooks to election day precincts.

The pollbook log file import routine was fully automated for November 2nd, with the result that 100% of voter history from electronic pollbooks was posted to MDVOTERS in time for the November 4th absentee canvass. Mr. Thomann commented that the election judges at the polling places he visited loved the pollbooks.

Mr. Goldstein reported that the local boards have provided a number of good suggestions for enhancements to the electronic pollbook software. These suggestions, together with fixes for any software bugs identified from the log analysis, will be submitted to ES&S to be addressed in the next software release.

6. Information Technology

Call Center

Mr. Goldstein stated that CR Dynamic provided call center support for SBE and the Prince George's County, Anne Arundel County, Baltimore City and Baltimore County Boards of Elections during the primary and general elections. They performed extremely well and answered a significant volume of calls. Using this service means that staff at SBE and the local boards can continue to focus on their work and address more complicated questions and issues that the call center cannot resolve.

	Primary Election	General Election	Total
Prince George's	3,028	7,080	10,108
Baltimore County	5,775	7,538	13,313
Baltimore City	2,189	3,791	5,980
Anne Arundel	3,595	3,725	7,320
SBE's local number	1,273	3,225	4,498
SBE's 800 number	4,035	9,424	13,459
Total	19,895	34,783	54,678

Technical Updates and Activities

Mr. Goldstein referred the board members to the list of activities performed by the Information Technology Division. These activities include the following:

- Renewed numerous SBE hardware/software licenses and support agreements
- Completed several third-party software upgrades/patches
- Set-up and installed two new desktop computers
- Set-up and installed one new laptop
- Conducted Microsoft 7 operations testing
- Conducted various peripheral compatibility tests with Windows 7
- Completed upgrades to two network servers
- Completed several upgrades to the website
- Completed numerous postings and enhancements to on-line library
- Completed additional modifications to SBE Help Desk
- Assisted a total of 24 local boards in the last month
- Provided support to 39 campaign finance filers
- Processed two employee background clearances
- Processed credentialing for six contractors

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie updated the Board on the status of *Doe v. Robert, L. Walker, et al*, the lawsuit challenging the State's compliance with the Military and Overseas Voter Empowerment Act. For relief, the court ordered extending the date by which absentee ballots from military and overseas voters must be received from November 12th to November 22nd. Mr. Darsie reported that the current relief is not yet entered as a final judgment, and in response to a question from Mr. McManus, Mr. Darsie responded that there are plans to appeal if the relief is entered as final judgment. In response to questions from Mr. McManus, Ms. Trella reported that she will provide statistics about the number of absentee ballots received during the extended deadline. Mr. Darsie responded that he was not aware of any judicial orders from other states but was aware that the Department of Justice had consent decrees from states that were not in compliance with the act. At issue in the *Doe* case is a challenge to the State's election calendar, not the actions of SBE.

Mr. Darsie also reported that, until the Court of Appeals issues its opinion in *Montgomery County Fire-Rescue Ass'n v. Montgomery County Board of Elections*, current petition verification procedures will remain in place. He noted that this decision was made without briefing about the circuit court level.

Mr. Darsie reported that the Attorney General's Office filed a complaint in federal court alleging violations of the federal Telephone Consumer Protection Act for the election day 'robo-calls.' The case is in early stages, and the penalty for each violation is up to \$500.

The Attorney General's Office received an opinion request from the Governor's Office on whether the State Constitution permits the Governor to issue a commission to a candidate for Orphan's Court in Baltimore City who is not a member of the Maryland State Bar. While the candidate was qualified when she filed for office, the qualifications for office were altered (by a constitutional amendment on the 2010 General Election ballot) before swearing in. Mr. Darsie reported that the formal opinion will be issued very soon.

APPROVAL OF WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented to the Board for approval 62 waiver requests from the following committees:

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| 1. Feldman, Jack T. Citizens for, A7365 | 31. Barnes, Earl W. Committee To Elect, A7939 |
| 2. Johnson, Michele Citizens For, A7154 | 32. Dodd, Anne For Orphans Court, A7241 |
| 3. Russek, (Joseph) For Montgomery Council District 5, A8564 | 33. White, Kathleen Citizens For, A7139 |
| 4. Purrell, Dell Citizens for, a7673 | 34. Tarjamo, Monifa Citizens for, A8306 |
| 5. Cardin, (Jon) Elect, A1905 | 35. Nixon, Diane People For, A961 |
| 6. Raskin, Jamie Friends Of, A4630 | 36. Levi, Gerron Committee For, A4520 |
| 7. Butler, Diane Citizens for, A7650 | 37. Wright, Stephen Friends Of, A5170 |
| 8. Haythe, Keasha for County Council, A7819 | 38. Foster, Jerome Friends For, A8207 |
| 9. Hart, Linda W. Friends Of, A5422 | 39. Ali, Vanessa District 14 for, A7471 |
| 10. Blickman, Lawrence M. Friends of, A8791 | 40. Conway, Joan Carter Committee To Elect, A730 |
| 11. Day, Michael Sr. Friends of, a7562 | 41. Smero, Kathleen Citizens for, A8035 |
| 12. Gallion, Jason Friends of, A4308 | 42. Gilchrist, Jim Friends of, A2602 |
| 13. Andrews, Phil Friends Of, A558 | 43. Swanson, Matt Citizens for, A6710 |
| 14. Pivec, Barb Friends Of, A8509 | 44. MacFarlane, Kathy Friends of, A8865 |
| 15. Dernoga, Tom Citizens For, A1907 | 45. Elfenbein, Ron Friends Of, A4300 |
| 16. Gideon's Task Force PAC, A6434 | 46. Kelly, James M. Committee To Elect, A563 |
| 17. Austin, (John) Maryland Committee To Elect, A4609 | 47. Sklar, Lynn For Maryland Citizens, A6321 |
| 18. Harris, Andy for Maryland, A973 | 48. Wise, Susan (Janie) Citizens for, A8907 |
| 19. McNeal, Sherae Friends of, A8790 | 49. Spector, Rikki Friends Of, A72 |
| 20. Unger, Ray Friends of, A7188 | 50. Andrichyn, Allen Friends Of, A7908 |
| 21. Jacobs, Nancy The Committee To Elect, A501 | 51. Merkel, Victor F. Friends Of, A8809 |
| 22. DeRan, Craig Friends Of, A4488 | 52. Green, Mike Committee To Elect, A8267 |
| 23. Currie, Ulysses Friends Of, A378 | 53. Lloyd, (Lisa) Citizens For, A8415 |
| 24. Collins, Reuben Friends Of, a4470 | 54. Patterson, Scott For State's Attorney, A8200 |
| 25. Optometric Association PAC MD, A272 | 55. Queen Anne's County Republican Central Committee, A159 |
| 26. Farrington, Dan Friends Of, A4971 | 56. Ciliberti, Barrie for B.O.E., A7780 |
| 27. Perez, Tom Friends Of, A1998 | 57. Martin, Tom Citizens for, A8856 |
| 28. Boyer, (Elroy) ReElect for Judge of Orphans Ct, A7330 | 58. Durst, Rodney Friends of, A7776 |
| 29. Ivey, Jolene Friends of, A4629 | 59. Raley, (Donald) For Sheriff, A7022 |
| 30. Future Vision Slate A6619 | 60. Democratic State Central Committee of Maryland, A113 |

61. Amato, Bob Friends Of, A7901

62. National Association Industrial & Office Parks PAC, A241

In response to a question from Mr. Walker, Mr. DeMarinis explained that a filed candidate that was subsequently determined not to be qualified was informed of her responsibility to file campaign finance reports and was sent the standard reminders and notices about upcoming filing requirements.

Mr. Thomann made a motion to approve the State Administrator's recommendations on the 62 waiver requests, and Mr. McManus seconded the motion. The motion was approved unanimously.

Mr. DeMarinis presented to the Board for approval additional waiver requests. The Board reviewed the waiver requests for the following committees:

1. Maryland Association of Mortgage Brokers PAC, A902
2. Property Owners Assoc. of Greater Baltimore, Inc. PAC, A221
3. Property Owners Association of MD PAC, A6565
4. Rider, Tom Citizens for, A8495
5. Ladies In Leadership Slate, A6820
6. Stringer, Pat Committee To Elect Judge, A6514
7. Reisinger, Edward L. Friends Of, A422
8. Brown, Videtta Committee to Elect Judge, A7206
9. Fletcher-Hill Lawrence P. Committee to Elect Judge, A7209
10. Sfekas, Stephen J. Committee to Elect Judge, A7207
11. Shar, Marcus Z. Committee to Elect Judge, A7212
12. Welch, Martin Committee to Elect Judge, A7214
13. Lehrer, Charles J. Jr. Citizens for, A7540
14. Sztajer, Regina Citizens for, A7272
15. Taylor, Herman For Montgomery County, A2011
16. Harris, Mykel Citizens for, A8239
17. Berry, Lorraine Friends of, A7292
18. Central Baltimore County Democratic PAC, A4576
19. Miller, Juanita Friends Of, A6817
20. Peters, Douglas J.J. Citizens For, A2151
21. Dembrow, Crystal for Commissioner, A8123
22. Democratic State Central Committee of Maryland, A113
23. Senate GOP Slate, MD A6831
24. Barnes, Jerry Committee To Re-Elect, A1071
25. Caroline County Democratic Central Committee, A121
26. Johnson, Owen Jr. Friends Of, A6296
27. Murray, Gareth E. Friends Of, A3859
28. Carter, Joan Committee to Elect, A730

In response to a question from Mr. Walker, Mr. DeMarinis explained that a committee can ask the Board to reconsider its action and can file a lawsuit. Ms. Lamone noted that these additional waiver requests were presented today because the corresponding commissions are on hold until the reporting issues have been resolved.

Mr. Thomann made a motion to approve the State Administrator's recommendations on the 28 waiver requests, and Ms. Mack seconded the motion. The motion was approved unanimously.

REQUEST FOR A DECLARATORY RULING

Mr. DeMarinis presented a petition for a declaratory ruling from John Thompson. Mr. Thompson requested a declaratory ruling as to whether expenditures made by the Americans for Prosperity required registration with SBE as a political committee. A declaratory ruling is available to clarify the rights or obligations of the petitioner and can only bind the petitioner, SBE, and the local boards of elections. Since the petition for declaratory ruling does not seek to clarify Mr. Thompson's rights or obligations and cannot bind the Americans for Prosperity (a third party), Mr. DeMarinis recommended that the petition for declaratory ruling be denied. In response to a question from Mr. McManus, Mr. DeMarinis explained that if Mr. Thompson filed a complaint with SBE about the activities of Americans for Prosperity, SBE would refer the complaint to the State Prosecutor for further investigation.

Ms. Mack made a motion to deny the petition for declaratory ruling, and Mr. Thomann seconded the motion. The motion passed unanimously.

OLD BUSINESS

In response to a question from Mr. Walker, Mr. Goldstein responded that he would provide the board with updated status on the audit findings.

NEW BUSINESS

There was no new business.

SCHEDULING OF NEXT MEETING

The next meeting was scheduled for February 10, 2011, at 2:00 pm.

ADJOURNMENT

Mr. Walker adjourned the public meeting at 3:04 pm.