

State of Maryland 

State Board of Elections Meeting – October 30, 2014

Attendees: Bobbie Mack, Chair
David McManus, Vice Chair
Patrick J. Hogan, Member
Janet Owens, Member
Charles Thomann, Member
Linda H. Lamone, State Administrator
Jeff Darsie, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan Assistant Deputy for Election Management
Keith Ross, Assistant Deputy for Project Management
Shelly Holland, Director of Budget and Finance
Sarah Hilton, Director, Election Reform and Management
Jared DeMarinis, Director, Candidacy and Campaign Finance
Paul Aumayr, Director Voting Systems
Rick Urps, Deputy Director, Election Reform and Management

Also Present: Ralph Watkins, League of Women Voters
Barbara Sanders, League of Women Voters
Lynn Garland
Rebecca Wilson, SAVE Our Votes
Blanche Frame, Anne Arundel County
Rene Powell, Anne Arundel County
William DuSold
Angel Lavin, Venable
Doug Carrey-Beaver, Office of the Attorney General
Tyler Bennett, Alexander & Cleaver
Lorenzo Bellamy, Alexander & Cleaver
Lewis Porter, Maryland 20-20 Watch
Robin Sachs, Election Integrity Maryland

DECLARATION OF QUORUM PRESENT

Ms. Mack called the meeting to order at 2:02 pm and declared that there was a quorum.

RATIFICATION OF THE PRIOR BOARD MEETING MINUTES

In advance of the meeting, the minutes from the September meeting were reviewed by the board members and approved by the Chair. No changes to the minutes were presented. Mr. Hogan made a motion to ratify the approval of the minutes, and Mr. McManus seconded the motion. The motion passed unanimously.

ADMINISTRATOR'S REPORT

1. Election Reform and Management

U.S. Election Assistance Commission - Nominee

On October 9, 2014, a letter urging Senators Mikulski and Cardin to support the nominations to the Election Assistance Commission was sent. No action is expected until after the election.

Absentee Ballot Mailing - Reply Envelope Mix-Up

A small number of voters from Baltimore and Carroll Counties received incorrect reply envelopes

in their general election absentee ballot packets. As soon as we learned about the incorrect reply envelopes, we contacted our mail house, Runbeck Election Services. Runbeck immediately began looking into the cause and scale of the problem. It appears that the envelope mix-ups were due to human error because there are voters in the same data file that received the correct envelope. Last week in social media, a rumor circulated that voters received incorrect ballots, but this is not correct. While some voters received incorrect reply envelopes, they received the correct ballots.

Longstanding procedures are in place to handle any misdirected ballots. Any voted ballot received by the wrong local board of elections is immediately forwarded to the correct local board. SBE and the local boards are assisting voters who report that they received an incorrect reply envelope and the mail house has instituted new procedures for handling Maryland's absentee packet assembly.

Post-Election Survey of Military and Overseas Voters

As part of the grant SBE received from the Federal Voting Assistance Program, the Overseas Vote Foundation will be conducting a post-election survey of Maryland's military and overseas voters. The survey includes questions about how these voters registered to vote, requested a ballot, and received a ballot, their understanding and comments about SBE's online services and the Federal Voting Assistance Program's Federal Write-In Absentee Ballot. In past elections, we had an excellent response rate, and the information helps us know how to better serve our military and overseas voters.

Pre-Election Conference Calls with Local Board Counsel

As we do before each election, we hosted a series of conference calls for counsel to the local boards. During these meetings, we brief the attorneys on various topics, including electioneering, canvassing, and relevant changes to the Election Law Article and COMAR.

2. Voter Registration

MDVOTERS 5.6

User acceptance testing begins November 3rd for the ongoing development of the candidacy module. Approximately 55 new scenarios will be tested. This ongoing project is on schedule for a full mock election the week of November 24th with the release moving into production the weekend of December 20th.

Electronic Registration Information Center (ERIC) Mailing

The ERIC mailing was very successful and since October 1st, generated more than 2,000 new registrants via the online voter registration system. ERIC's bylaws require this mailing before each general election, and the mailing was sent to individuals identified as eligible but not registered to vote.

General Voter Registration

The Voter Registration Division continues to monitor early voting activities such as posting of voting credit back into MDVOTERS, cancelling of voters from notifications from other states, and answering general questions from the local boards of elections.

Voting by Military and Overseas Voters

As of October 24th, 351 voted ballots have been returned by military and overseas voters. The number of ballots sent, as of that date, is 2,056. SBE receives these ballots as part of its effort to create a "single point of contact" for military and overseas voters.

3. Candidacy and Campaign Finance (CCF) Division

Campaign Finance

On October 10th, the 2014 Ballot Issue Report was due for ballot issue committees participating in this election. The transaction period ended on October 5, 2014.

On October 24th, the 2014 Pre-General 2 Report was due for all political committees participating in the 2014 Gubernatorial Election. The transaction period ended on October 19th. Any late filings are subject to late fee penalties up to \$250.

The next campaign finance report is due November 18, 2014, not November 25th. The General Assembly passed legislation this year that moved up the reporting deadline by one week.

Enforcement

Under its new enforcement authority, CCF Division issued its first civil citations for the failure to retain campaign material to: (1) Gordon P. Smith 2014 Campaign; (2) Robert Taylor for Charles County; and (3) (Emmanuel) Ogungbesan for Charles County. The civil penalty for the violation is \$250. The civil penalty may be paid with campaign funds.

On October 6th, a candidate for the House of Delegates, Hasan “Jay” Jalisi, was charged with a civil violation of a candidate making disbursements from his campaign finance entity. This matter was handled jointly with the Office of the State Prosecutor. Although Maryland law prohibits candidates from making disbursements on behalf of a campaign finance entity, Mr. Jalisi signed 28 checks authorizing expenditures on the campaign account. Mr. Jalisi paid a \$2,500 civil penalty.

On October 17th, Ralikh Rasheed Hayes, Treasurer for Friends and Family of Curtis Jones, failed to appear in Anne Arundel County District Court regarding the failure to file the 2012 Annual Report. SBE received a Judgment on the Affidavit, and Mr. Hayes was fined \$250 plus a \$250 civil penalty. The committee is inactive pending the resolution of the payment and filing of the missing report.

CCF referred to the Office of the State Prosecutor Marcel Solomon for an overcontribution to the Progress 2010 committee. He forgave a \$10,000 loan which converted into a contribution, exceeding the \$4,000 limit. He paid the maximum civil penalty of \$5,000.

CCF has not issued commissions to take office to two individuals because they failed to file a campaign finance report. The two individuals - Janice Marie Talley (Charles County) and Christopher Boardman (Harford County) - were elected to their counties' Democratic Central Committees.

The elected candidates to the Republican Party Central Committees are sworn in on November 14, 2014. There are 29 individuals who have failed to file and will have their commission withheld if it is not resolved prior to the November 14th. CCF is working with the political parties to resolve the matters.

Meetings

On October 28th, Mr. DeMarinis attended the FBI workgroup on public corruption. It was attended by various federal, State, and local agencies and law enforcement officials.

Electronic Filing System

CCF is on schedule with the new electronic filing system developed by PCC Technology Group for Persons Doing Public Business (Title 14). The scheduled “go live” date is scheduled for December 2, and CCF Division will offer trainings in January 2015 for the filers. The first filing in the system will be February 5, 2015.

4. Project Management Office

New Voting System Replacement (NVSR) Project

The evaluation of the Voting System Solution RFP responses is now complete. The evaluation team and the advisors that supported them completed several tasks associated with conducting an evaluation. They reviewed and ranked the technical proposals, attended the four oral presentations, reviewed and ranked financial proposals deemed eligible for an award, and made to SBE’s Procurement Officer an award recommendation.

SBE would like to thank publicly those individuals that volunteered their time to serve as evaluators and advisors. There was a significant preparation and time commitment that each of them agreed to that was on top of their already busy schedules and the priorities of their individual jobs. Now that the evaluation process is over and the 2014 General Election is almost here, there are now several significant parallel efforts for the NVSR project. One effort is the review, development, and discussion of the proposed contract agreement and other documents that are required before the Board of Public Works can approve the award. In addition, now that we have a recommendation for a vendor and its proposed solution, SBE can continue its work to detail out the requirements for the several sub-projects that will require their own product or service preparation and procurements (e.g. carts, booths, transportation).

Finally, as we come to the close of the 2014 Gubernatorial General Election, SBE and the local boards will be able to take a more active part in what we are designating as the “Increase the Participation” phase of the NVSR project. During the month of November, we will be meeting, reaching out, and making arrangements to formally engage SBE and local board management and staff in the several sub-projects.

Inventory System

The Request for Proposal for SBE’s new inventory system was released on October 27th and the closing date for bids is Wednesday, November 19th. After the evaluation and selection process, SBE expects to implement the new inventory system in time for the start of the new voting system being delivered to the State.

Central Warehouse

SBE continues to work with the Department of General Services to procure SBE’s central warehouse. The scheduled date for Board of Public Works’ approval is either December 3th or 17th. The central warehouse will be used to receive and test the new voting system and store the existing voting system equipment.

Project Resources

The NVSR project team continues its work in the several areas of the project. The team is enhancing their understanding of what happens during an election by observing various election preparation activities. Just recently, the team visited Anne Arundel County, Baltimore County, and Calvert County to observe their Logic and Accuracy testing. It was a most beneficial learning experience that helped the team better understand what happens in the current system, so that

they can better address what needs to happen with the new system. The team was also fortunate to observe an election judges' optical scanner training sessions conducted by the District of Columbia (DC) Board of Elections. SBE thanks the DC Board of Elections for allowing the project team a chance to visit.

The NVSR team brought onboard one new team member. Jim Gross is the Quality Manager for the project. There are a couple of additional Work Orders that are nearing completion for a new Project Administrator and a Warehouse Manager.

Ballot Results and Reporting System Project

SBE's PMO continues to work with Ms. Wagner and the BARRS project team. During this reporting period, Mr. Ross continued to have weekly project management status meetings, worked with the project team on the FY15 and FY16 budgets, and provided documentation reviews.

Other

Call center support for the 2014 General Election started on October 13th, and to date, the call center has handled approximately 10,000 calls. Call center support is provided for SBE and four local boards of elections (Baltimore City and Anne Arundel, Baltimore, and Prince George's Counties).

5. Voting Systems

Logic and Accuracy Testing.

After starting last month, logic and accuracy testing for the 2014 General Election is complete. The local boards have tested approximately 17,100 voting units and have loaded data, tested, and prepared over 6,000 electronic pollbooks for the election. Of these, approximately 850 voting units and 320 pollbooks are being used for early voting. The regional managers have been auditing and documenting the testing as part of the comprehensive audit process.

Ballot Printing

Ballot printing is also complete for ballots used for provisional voting and visits to nursing homes and assisted living places, as well as test deck ballots to test the optical scanners used for counting provisional and absentee ballots.

Election Results

The election results web page has been built and is being testing in preparation for election night. Data from the logic and accuracy testing is used to test the results loading process.

An updated election results document has been distributed to the local boards. This document is updated prior to every election and details the reports and export files required throughout the canvass.

Electronic Pollbook Software

The team continues to work with ES&S' development group for the changes required to implement same day registration for 2016. We remain on track to have a testable version of the software in January.

6. Information Technology

Emergency Generator

An emergency standby generator has been rented for the upcoming election in the rare occurrence of a power outage at SBE. The emergency standby generator was delivered, installed and tested on October 21, 2014. Within seconds of a power outage, an automatic transfer switch senses the power loss and commands the standby generator to start and then transfers the electrical load to the generator. The emergency standby generator will be returned on November 18, 2014.

Office Phones Setup

In preparation for the 2014 General Election, a phone group was setup to efficiently and dynamically handle the incoming calls from transferred from the call center. Staff members in the group are instructed to sign in on their phones when they are present at their desks to receive calls and sign-out from the group when they plan to be away from their desks or departing for the day.

Disposal of Equipment at the Warehouse

Twenty-seven old flat screen monitors at SBE's warehouse were auctioned off and sold on the State's auction site. The winner retrieved all 27 monitors on October 23, 2014. This equipment was disposed according to DGS' guidelines for disposal of such items.

ASSISTANT ATTORNEY GENERAL'S REPORT

Assistant Attorney General Jeff Darsie presented his report.

1. The United States Court of Appeals for the Fourth Circuit has set a briefing schedule for the State's appeal of the decision in *National Federation of the Blind v. Lamone*, 1:14-cv-01631-RDB (D. Md., Sept. __, 2014). At present, appellant's opening brief is due November 19, 2014, and appellees' response brief is due December 22, 2014. However, the parties have agreed to a revised briefing schedule and are hopeful that it will be approved by the Court. According to the revised schedule, appellant's brief would be due on December 22, 2014, the response brief on February 19, 2015, and any reply within 14 days of service of the response brief, which would be March 5, 2015. A mediation is scheduled for November 6, 2014.

2. A lawsuit was filed October 24, 2014 in federal district court in Baltimore by four Frederick County voters alleging that the State Board of Elections and Frederick County Board of Elections failed to remove non-citizens from the voter registration list based on information supplied to the State Board by the jury commissioner in Frederick County. *Miller v. Frederick County Board of Elections*, Civil No. ELH-14-3346 (D. Md.). The plaintiffs argue that the presence of non-citizens on the voter registration list violates plaintiffs' rights to equal protection and due process, as guaranteed by the Fourteenth Amendment. The plaintiffs have sued under 42 U.S.C. § 1983 seeking declaratory and injunctive relief requiring removal of anyone from the voter list who has been excused from jury duty as a non-citizen. On October 30, plaintiffs withdrew their motion for expedited discovery and stated that they would not renew their request for preliminary relief in advance of the November 4 elections. Assistant Attorney General Brad Neitzel of the Civil Division is representing the State Board.

3. On October 7, 2014, William Newton, a Republican Party candidate for House of Delegates in District 10, together with two other registered voters, filed a lawsuit in the Circuit Court for Anne Arundel County alleging that "Jay" Jalisi, a Democratic Party candidate for the same office, does not live in District 10. *Newton v. Lamone*, No. 02-C-14-191218 (Cir. Ct., Anne Arundel Co.,

Md.). On behalf of the State Administrator, a motion was filed October 23 contending that the residency challenge was filed too late and should be dismissed.

APPROVAL OF CAMPAIGN FINANCE WAIVER REQUESTS

Mr. DeMarinis presented 35 requests for waivers of campaign finance reporting late fees.

1. (Anderson) Campbell, Cleopatra for Orphan's Court
2. Aragona, Xavier Friends of
3. Becker, Julie Glass Committee to Elect Judge
4. Bell, Clarence Sheriff, Citizens To Elect
5. Boardman, Chris Friends of
6. Brennan, Madonna For Maryland
7. Carroll County Republican Central Committee
8. Chase, Shari Friends and Citizens for
9. Citizens for Common Sense Leadership Slate
10. Cole, (William) Judge for Orphans Court
11. Davis, Duane Friends to Elect (Shorty) Lt. Governor
12. ElskoeDrayton, Jaime Students for
13. Evans, Merl Ciitizens to Elect
14. Evans, Pete Friends of
15. Gatto, Robert Friends To Elect
16. Guy, James (Randy), Citizens for
17. Hanley, Paul J. Committee to Elect Judge
18. Joseph, Denise District 9 Citizens For
19. Kidd, Scott Patriots for
20. Kurland, Bob Friends of
21. Lancaster, Frank Friends For
22. Marshall, Margaret Campaign to Elect
23. Miller, Paul Citizens to Elect
24. Mooring, Kevin Rex Friends of
25. Paulshock, Bill Friends Of
26. Pettrey (Hill), Blair Friends of
27. Phelps, Josh Friends of
28. Pritzker, (Jeffrey) For Attorney General
29. Rutherford, Anne Friends of
30. Sampson, Otis, for School Board District 1
31. Schlauch, Tim Citizens For
32. Sessa, Joe Friends for
33. Showalter, Paul M. Citizens for
34. Stallings, Demetria Sugar Friends of
35. Ward, Larry Friends of

Mr. DeMarinis noted that, since the last board meeting, SBE has received almost \$10,000 in payments for late fees.

Mr. Thomann made a motion to accept staff's recommendations on the waiver requests, and. Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF FINAL AND PROPOSED REGULATIONS

Proposed Regulations

Mr. DeMarinis presented proposed changes to and new regulations for COMAR 33.13.10 (Campaign Financing – Prohibitions). The proposed regulations codify SBE's past practices and policies. They provide clarity regarding prohibited and permissible activities during a regular legislative session for covered officials, prohibit promoting a fundraising event during session but permit the necessary preparatory work, and expand prohibited expenditures to address recent inquiries, such as travel overseas. These prohibitions were requested by the Office of State Prosecutor to provide clarity and provide notice to all covered officials. The proposed regulations would permit the use of campaign funds for attending inauguration events.

There was a discussion about "Save the Date" notices, which would be prohibited under the new regulations if the event being advertised is a fundraising event. Mr. DeMarinis stated that "Save the Date" notices would be permitted if the future event is not a fundraising event. Expenses incurred in planning the event could be paid during the legislative session.

In response to a question about whether the new regulations are more expansive than what the General Assembly intended when it passed the prohibition against fundraising during session, Mr. DeMarinis stated that legislators have recently “pushed the envelope” on what can and cannot be done during the legislative session. With respect to prior SBE advice, these regulations would supercede that guidance to the extent that that guidance addresses fundraising during session.

Mr. McManus expressed his concern with these regulations taking effect during the 2015 Legislative Session and his desire for the new Attorney General to provide legal advice on coordination activities. Mr. DeMarinis noted that the proposed changes come before the board for final approval after the public comment period.

Mr. Hogan made a motion to approve the publications of the proposed changes to COMAR 33.13.10.01 - .03, and Ms. Owens seconded the motion. The motion passed unanimously.

Final Regulations

Ms. Charlson presented for final approval proposed changes to 33.14.01 and new regulations to 33.13.15, 33.13.16, 33.14.05, and 33.20.03. These changes were published in the August 22, 2014, edition of the *Maryland Register*, and no public comments were received. A summary of the proposed changes and new regulations were provided in the board meeting folder.

Mr. Hogan made a motion to adopt as final the proposed changes to 33.14.01 and new regulations to 33.13.15, 33.13.16, 33.14.05, and 33.20.03, and Ms. Owens seconded the motion. The motion passed unanimously.

CLOSED MEETING

Ms. Mack made a motion to close the board meeting under General Provisions Article, §3-305(b)(8) and (14), which exceptions permit closing a meeting to consult with staff, consultants, or other individuals about pending or potential litigation; consult with staff regarding a matter that may result in litigation in the form of a civil enforcement action; and discuss matters directly related to a negotiation strategy or the contents of a bid or proposal. The closed session was proposed to prevent disclosure involving litigation strategy, discuss an ongoing investigation by SBE staff into pending complaints regarding alleged campaign finance violations, and to consider information regarding the ongoing procurement process to acquire a new voting system. Mr. Hogan seconded the motion, and the motion passed unanimously.

During the closed session, the board members discussed strategy for pending litigation concerning non-citizens allegedly registered in Frederick County, received an update on the investigation of complaints regarding campaign finance violations and the timeframe to complete the investigation, and received an overview of the evaluation process of the proposals for a new voting system solution and the criteria for the evaluation committee’s selection.

In addition to the board members present at the open meeting, Ms. Lamone, Mr. Darsie, Mr. Carrey-Beaver, Ms. Charlson, Mr. DeMarinis, Mr. Ross, Mr. Aumayr, and Whitney Faust, SBE’s Procurement Officer, were present. The closed meeting adjourned at 3:38 pm.

The public meeting reconvened at 3:45 pm.

VOTING SYSTEM – STATE CERTIFICATION

Mr. Aumayr presented Election Systems & Software (ES&S) EVS 5.2.0.0 for certification. ES&S submitted this solution for certification in March 2014, and SBE staff and the University of Baltimore tested its technical and usability requirements. There was also a public demonstration of this system in September 2014. ES&S' solution received favorable reports from the University of Baltimore and from attendees of the public demonstration.

Ms. Mack made a motion to certify ES&S' EVS 5.2.0.0, and Mr. McManus seconded the motion. The motion passed unanimously.

VOTING SYSTEM – CONTRACT AWARD

Ms. Lamone presented her recommendation that the State Board of Elections select ES&S' EVS 5.2.0.0. Mr. McManus made a motion to accept Ms. Lamone's recommendation, and Ms. Owens seconded the motion. The motion passed unanimously.

Ms. Lamone thanked the members of and advisors to the evaluation committee, Ms. Faust, and Mr. Carrey-Beaver for their work on this important project. Ms. Mack also thanked them for their service.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Robin Sachs, President of Election Integrity Maryland, stated her concerns about non-citizens voting, voting units working improperly in the current election, and deceased voters receiving sample ballots. She noted that Election Integrity Maryland received, in response to a public information request to the jury commissioner of Frederick County, a list of individuals who reported that they were not U.S. citizens and compared the list to the list of registered voters. Ms. Sachs requested that SBE participate in Cross Check, a program of the Kansas Secretary of State and used by 30 states. Ms. Sachs provided to the board members a handout.

William DuSold expressed his support for voter identification and Election Integrity Maryland's efforts.

Lewis Porter of Maryland 20-20 Watch stated his desire for accurate voter registration lists and verification of voters who voted in multiple states.

Rebecca Wilson of SAVE Our Votes congratulated the board members on selecting a new voting system and asked questions about the procurement and equipment quantities. Mr. Carrey-Beaver stated that this information cannot yet be disclosed. Ms. Charlson suggested that Ms. Wilson submit her questions in writing, and they will be answered as information becomes public.

Ms. Lamone provided a summary of the voting unit reports during early voting. There were 31 units taken out of service for a variety of reasons, including screen freezes, issues with voter access card readers, and calibration issues. SBE also received reports of votes displaying differently than what the voter intended. The reports were from 14 counties on 21 identified units, but all voters reported that they were able to correct their selection either on the contest page or from the summary page. Of these 21 units, reports for four units were confirmed as voter

error; the voter either acknowledged it was his or her error or the judges observed the voter voting in a way that would cause this to occur.

Ms. Lamone noted that over 29,000 people voted as of 3 pm today and more than 270,000 voted during the early voting period.

Ms. Mack noted that there would be a new section of the website with information about the new voting system.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

No campaign contributions were disclosed.

SCHEDULING OF NEXT MEETING

The next meeting was scheduled for December 11, 2014, at 2:00 pm.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the open meeting, and Mr. McManus seconded the motion. Ms. Mack adjourned the meeting at 4:22 pm.