

State of Maryland 

State Board of Elections – October 29, 2016 Meeting

Attendees: David McManus, Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Gloria Lawlah, Member
Linda H. Lamone, Administrator
Jeff Darsie, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Jared DeMarinis, Director, Candidacy and Campaign Finance

Also Present: Ralph Watkins, League of Women Voters
Mary Kiraly, Montgomery County citizen
Lynn Garland
Poorvi Vora, George Washington University

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:06 pm and confirmed that a quorum was present. He stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM SEPTEMBER 14TH AND SEPTEMBER 29TH MEETINGS

Mr. Cogan made a motion to ratify the minutes of the September 14, 2016, and September 29, 2016, meetings, and Ms. Howells seconded the motion. The motion passed unanimously.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

LBE Counsel Pre-Election Conference Calls

Before each election, we host a series of conference calls with counsel to the local boards of elections. We have held two conference calls and discussed the State Board's policy related to the ballot marking devices, information about the security of various election systems, new changes to the Open Meetings Act, canvassing of write-in votes with the new voting system, and general electioneering information. The final conference call is scheduled for next week.

Candidate & Political Party Pre-Election Conference Call

Before each election, we also host a conference call with representatives of candidates and political parties involved in the election. Our 2016 General Election call was held on October 7th. During this call, we discussed electioneering, campaign signs, public observation of various election activities, and the venue for any election related litigation and shared contact information. A summary of the call was included in the meeting folder.

Baltimore City Council's Judiciary and Legislative Investigations Committee Hearing

On October 19th, Baltimore City's Judiciary and Legislative Investigations Committee held a televised hearing on the City's 2016 Primary Election and preparations for the 2016 General Election. Because of the numerous election preparation activities, I was unable to attend but was asked to submit a letter explaining the new provisional voting requirements and how we are supporting the Baltimore City Board of Elections' warehouse operations. A copy of my letter was in the board meeting folder. Mr. McManus was also invited and addressed the committee.

Mr. McManus referenced a handout provided during the hearing and explained that it was generated by a third party based on information received under the Public Information Act. Mr. McManus noted that Armstead Jones, Election Director for the Baltimore City Board of Elections, and Ellie Wang, Chair of the Baltimore City Board of Elections, also attended the hearing, and that three of the Baltimore City Council members present appreciated Ms. Lamone's comments.

Briefing for Maryland's US Senate Delegation

Senators Mikulski and Cardin requested a briefing on the security of Maryland's election systems. On October 25th, we briefed the two Senators' chiefs of staffs, Senator Cardin's Chief Counsel, and legislative aides on how various elections systems work and the security practices and procedures used to protect them and provided them with a demonstration of the online ballot delivery system. They appreciated the work we are doing to protect these systems. A copy of the Senators' request was provided in the board meeting folder.

International Observers and Delegation Meetings

On October 12th, Jared DeMarinis met with three representatives, Brenda Santamaria, Stella Yeruti Mendez, and Gerardo De Icaza, from the Organization of American States (OAS) to discuss electoral process in Maryland. Topics ranged from the campaign finance to redistricting and the Electoral College. OAS also requests being designated by the State Board as an international observer. This would be the first time that OAS will be observing a U.S. election.

On October 17th, Mr. DeMarinis and Paul Aumayr met with two Organization for Security and Cooperation in Europe (OSCE)/ODHIR Long Term Observers, Gianluca Rigolio and Zuzana Dudek, to discuss the election preparations and the electoral process in Maryland. OSCE requests that the State Board of Elections authorize OSCE representatives to observe the November 8th election.

On October 17th, Mr. DeMarinis met with a Spanish delegation of six prominent political figures in Spain, including four high ranking government officials, one political science professor, and founder of "Public Affairs Experts." The World Trade Center Institute's Professional Exchanges Department organized the visit. The delegation focused on the voting process at the state level, current status of the Presidential election, voting registration and campaign finance.

On October 27th, Mr. DeMarinis met with an official from the Belarus Embassy. Representatives from the Belarus Embassy seeks to observe for the November 8th election.

2. Election Reform and Management

Election Judge Training Evaluations

Evaluations of election judges' training were conducted at six different local boards. The six local boards that were evaluated were Baltimore City and Baltimore, Frederick, Kent, Montgomery and Prince George's Counties. The reports were included in the meeting folder.

Voting Location Changes for 2016 General Election

This month, we distributed a table showing voting location changes since the primary election. The table was distributed via MDCRIS, the online campaign finance filing system, to all candidates. A copy of the table was included in the meeting folder.

Absentee Voting

To date, over 190,000 voters have requested an absentee ballot. Over 125,000 ballots have been mailed, and over 64,000 ballots will be accessed via SBE's website. Over 37,000 voters have

accessed their online accounts, with about two-third of the voters using blank ballot download and one-third of the voters using the online ballot delivery system. To date, the local boards and SBE have received over 61,000 voted absentee ballots. Absentee statistics are updated daily and posted on SBE's website in the "Press Room."

Ms. Howells stated that she used the online ballot delivery system to access her ballot and noticed that the disclaimer language did not mirror the language to which the board agreed. Ms. Charlson explained that the disclaimer language mirrors the board members' discussion and motion certifying the use of the online ballot delivery system at the September 14, 2016, meeting. The disclaimer language addresses the inherent risks associated with using the Internet and outdated operating systems and software.

Ms. Charlson noted that the board members did not discuss at the September 14th meeting or include in the motion any language to give notice to voters that ballots delivered via the online ballot delivery system must be duplicated. She stated that this issue was raised during the public comment on the online ballot delivery system, but the board members did not discuss it.

Ms. Charlson explained that the proposal to add the additional language occurred via email. Ms. Charlson explained that she was concerned that discussion or deliberation by email could violate the Open Meetings Act. In response to a question, Mr. Darsie explained that the Open Meetings Compliance Board has taken a broad view as to the meaning of a quorum and could regard an exchange of views through "Reply All" email communications as a "meeting." There was a discussion about what business can be conducted by email, to which Mr. Darsie explained that prior practice of voting by email has been related to clarifying an action that had been discussed at a public meeting and should be done using individual emails (not group email) to each board member to avoid the risk of violating the Open Meetings Act.

Mr. McManus asked whether the language could be changed now. Ms. Charlson stated that it could be after the additional language is translated. Translation typically takes one to two days, and the online ballot delivery system would have to be brought down to load the changes.

Ms. Charlson explained that the appropriate place to provide to voters notice that the electronically delivered ballot must be duplicated is when the voter requests electronic delivery, not after the voter has made the decision to receive a ballot electronically. She stated that the board members approve the absentee ballot application, which is typically presented four to six months before a primary election, and this language can be added to the absentee ballot application form for the 2018 elections.

Post-Election Ballot Tabulation Audit

As we previously reported, we conducted a post-election ballot tabulation audit pilot after the 2016 Primary Election to test various ways to audit the accuracy of the voting system. As part of this pilot, we worked with the Carroll County Board of Elections and the Montgomery County Board of Elections to retabulate manually randomly selected ballot images and used audit software by Clear Ballot to retabulate all of the ballot images from these two counties from the primary election. The final report of this pilot project was included in the meeting folder for the board members and is posted on the website.

Based on what we learned in the primary election, we decided to use an independent audit software to tabulate ballot images statewide for the general election. On October 19th, the Board of Public Works approved the contract with Clear Ballot. We immediately began work.

The audit of ballot images from early voting and election day will be complete before the local boards of canvassers certify the election (ten days after election day). This means that, when the local boards of canvassers certify the election, the majority of votes cast in the election will have been audited. The results of the absentee and provisional canvasses will be audited the week after the local boards of canvassers certify the election and before the State Board of Canvassers meet to certify the results for state offices.

3. Voter Registration

Voter Registration totals

The deadline to register or make changes was Tuesday, October 18th. As of October 23, 2016, there are 3,900,090 registered voters. Since the deadline to register to vote is a “postmark” deadline, timely applications are still being processed.

Call Center

The call center began October 17th. Along with SBE, Baltimore City and Anne Arundel, Baltimore, and Prince George’s Counties are using the call center’s services. As of October 26th, the call center has handled over 16,000 calls. The call center will run through November 9th.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

The deadline to file as a write-in candidate for the 2016 General Election was October 20th at 5 pm. The State Board received 52 write-in candidates for President.

Campaign Finance

On October 13th, Jared and Wil Colquhoun of the State Ethics Commission spoke at the Maryland Government Relations Association Policy Conference. The presentation focused on the triggers and reporting requirements for lobbyists and entities employing lobbyists. Jared also discussed the requirements for Title 14 (persons doing public business) filers.

On October 14th, a campaign finance report was due for ballot issue committees only. All the ballot issue committees filed the report.

On October 28th, the Pre-General 2 Report is due for all political committees participating in the Presidential/Baltimore City election. Over 540 committees owe this report. Failure to file timely may result in fine up to \$500. The next report is due on November 22nd.

5. Project Management Office (PMO)

Inventory

The FY16 annual inventory reports for equipment and supplies were submitted to the Department of General Services on October 19th. SBE and the local boards’ management and staff continue to work on the reconciliation of the legacy equipment and supplies.

Baltimore City Warehouse Support

We continue to support and make recommendations to improve the Baltimore City Board of Elections’ warehouse. We have assigned three of SBE’s warehouse contractors to work full-time

at the Baltimore City warehouse. Some of the recommendations have been or are being implemented, and others are being considered.

Field Support

The recruitment and onboarding of the field support resources for the general election continues. To date, SBE and the staffing contractor have onboarded trainers, voter outreach resources, county technicians, logic and accuracy (L&A) testers, Early Voting and Election Day technicians, and Greeters. This represents approximately 500 election support resources.

NVSR Project Support

The training team continues to lead the training efforts for all the field support resources and in some local boards, participate in the election judges' training.

The voter outreach team continues to conduct numerous voter outreach events each week throughout the State.

The NVSR team continues to work with ES&S and the local boards of elections on the logistics needed for the Statewide Election Management Network.

AEMS Modernization Project Support

The newly hired Project Manager for the AEMS Modernization project resigned this reporting period. We are in the process of recruiting a replacement Project Manager.

6. Voting Systems

Logic and Accuracy (L&A) Testing

L&A testing for the voting equipment – DS200 precinct scanners, DS850 high speed scanners, and the ExpressVote ballot marking devices – is complete. For each voting location, the local board of elections tested one or more scanners and a ballot marking device. Scanner testing involved scanning and tabulating a test deck, printing results, and comparing these results against the expected results. After confirming that the results matched, the local board cleared the test results and sealed the unit for the election.

L&A testing for the electronic pollbooks has also begun. Before testing, we have to generate the precinct register, which occurred on October 23rd. Testing of the electronic pollbooks used in early voting is obviously complete, and most of the testing of election day pollbooks is complete.

Ballots

All ballots were printed and delivered to the local boards, with the final delivery occurring on October 12th. Additional ballots were ordered and delivered to Charles County. SBE has also ordered and received ballot activation cards for use with ExpressVote ballot marking device and blank ballot paper for duplicating ballots printed from the online ballot delivery system.

Transportation

Deliveries to all 69 Early Voting centers took place on October 25th and 26th, and all equipment will be picked up on November 3rd. The transportation carrier for Baltimore City and Baltimore County, Advanced, is new. All of their employees have had a background check and training. All route plans are in place for deliveries for election day polling places.

7. Information Technology

Emergency Generator

An emergency standby generator has been delivered and tested in case SBE loses power. 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 is scheduled to be returned on November 21, 2016.

Disaster Recovery Site Setup at Maryland State Archives

We will be setting up at the Maryland State Archives a workstation which will be imaged by the IT staff to four other client workstations. A server has been setup to host the Ballot and Electrack databases in case there are any emergencies on or during the general election

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Darsie presented his report.

1. The Court of Appeals heard argument on October 18, 2016, in the State Board's interlocutory appeal of the temporary restraining order entered against it in *Schlakman et al. v. Lamone, et al.*, No. C-02-cv-002906 (Cir. Ct. for Anne Arundel County, Sept. 22, 2016). The State Board won the appeal, resulting in an immediate order vacating the restraining order and remanding the case to the circuit court 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's ruling left Dan Sparaco on the ballot as an independent candidate for the 12th Councilmanic District seat in Baltimore City. Assistant Attorney General Julia Bernhardt argued on behalf of the State Board before the Court of Appeals.

In response to question about how to resolve the date issue, Mr. Darsie explained that legislation would resolve this. Mr. DeMarinis explained that a proposed fix is included in departmental legislation for the 2017 session. The legislation proposes the 1st Monday in July as the filing deadline.

2. On October 14, 2016, U.S. District Judge James K. Bredar dismissed the plaintiffs' federal complaint against the State Board and the Baltimore City Board of Elections in *Voters Organized for the Integrity of City Elections ("VOICE"), et al. v. Baltimore City Bd. of Elections, et al.*, No. 1:16-CV-01788-JKB (U.S.D.C., D. Md, October 14, 2016). The plaintiffs in that lawsuit had sought injunctive relief for various alleged irregularities with respect to the primary elections in Baltimore City. The district court concluded that none of the plaintiffs' federal claims had merit and also that the complaint was barred by the doctrine of laches in light of the plaintiffs' unreasonable delay in pressing their claims. Assistant Attorney General Ann MacNeille, representing the City Board, did the great majority of the work in defending that case.

DESIGNATE INTERNATIONAL OBSERVERS AS CHALLENGERS AND WATCHERS

Mr. DeMarinis requested that three organizations be designated as challengers and watchers to enable representatives of the organizations to observe polling places during the 2016 General Election. The three organizations are Organization for Security and Cooperation in Europe, Organization of American States, and the Embassy of the Republic of Belarus. Mr. DeMarinis stated that he has met with individuals from each of these organizations and confirmed their status with the U.S. Department of State. Mr. DeMarinis also requested that the board consider

delegating to the State Administrator the authority to designate challenger and watchers for future requests.

In response to a question, Mr. DeMarinis explained that these individuals must follow the rules of all other challengers and watchers, including those appointed by political parties. Mr. Cogan asked whether these individual could be designated as a “watcher” (instead of as a “challenger and watcher”), to which Mr. Darsie explained that there is no separate designation.

Mr. Cogan made a motion to approve the three pending requests, and Ms. Howells seconded the motion. The motion passed unanimously.

Mr. Cogan made a motion to delegate to the State Administrator the authority to designate challengers and watchers, contingent on: (1) the approval of the U.S. Department of State, any governmental agency to which the State Administrator is referred by the U.S. Department of State, and any other appropriate U.S. governmental entity; and (2) providing to the members of the State Board of Elections notice by email of the designation. Ms. Howells seconded the motion. The motion passed unanimously.

APPROVAL OF CAMPAIGN FINANCE WAIVER REQUESTS

Mr. DeMarinis presented requests from two committees to waive late fees incurred by the committees. The requesting committees are (1) Ballinger, Robert Friends to Elect; and (2) Brown, Devon Vote Campaign. Mr. DeMarinis noted that the State Administrator denied waiver requests from two committees.

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

APPROVAL OF TITLE 14 WAIVER REQUESTS – LATE FEES

Mr. DeMarinis referenced the meeting materials related to requests from entities required to file under Title 14 to waive late fees. The State Administrator denied the five requests. No action was required.

REQUEST FOR ADMINISTRATIVE CLOSURE

Mr. DeMarinis presented one committee – Morgan, David Committee to Elect – for administrative closure. The Office of State Prosecutor recommends that the committee be closed administratively as neither the candidate nor treasurer reside at any known address in Maryland.

Ms. Lawlah made a motion to close administratively this committee, and Ms. Howells seconded the motion. The motion passed unanimously.

OLD BUSINESS

Mr. Cogan requested an update on election judges’ recruitment and training data for the Baltimore City Board of Elections. Ms. Charlson explained that she has not received any updated data. Mr. McManus noted that Mr. Jones explained the October 19th City Council hearing that recruiting was on-going, and Ms. Lamone reported that the Anne Arundel County Board of Elections had forwarded the names of 100+ individuals who expressed interest in serving as an election judge and live near Baltimore City.

NEW BUSINESS

Poorvi Vora distributed a handout representing the views of twelve individuals, all of whom are listed in the handout. Dr. Vora expressed her concern that the paper ballots will not be used in the post-election ballot tabulation audit for the 2016 General Election. She stated that the proposed audit method will not detect mismatches between ballots and ballot images and that ballots do not need to be “ordered” for a risk limiting audit. She recommended that an election audit be performed with the ballots. In response to a question, Dr. Vora explained that the number of ballots to include in a risk limiting audit depends on the margin of victory and the risk level.

In response to questions, Ms. Charlson explained that ballot images, instead of voted paper ballots, were selected for the post-election audit to preserve the integrity of the paper ballots in case of a recount or contested election and eliminate issues of chain of custody issues with the ballots. Ms. Lamone explained the administrative challenges with the risk limiting audit, the greatest of which is the inability to plan for it, since it cannot be planned until after the election when the margin of victory is known. Ms. Charlson explained that, before the election, the integrity and quality of the ballot images would be compared against the paper ballots, Clear Ballot will provide the results of their tabulation before they are given the election results, and Clear Ballot’s online portal will be available for public access after the audit is complete.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan reported a \$551 contribution to National Republican Senatorial Committee and a \$100 contribution to Trump for President.

Ms. Lawlah reported a \$220 contribution to the Democratic Congressional Campaign Committee.

CONFIRM NEXT MEETING

The next meeting is scheduled tentatively for Wednesday, November 30, 2016, at 2 pm.

ADJOURNMENT

Ms. Lawlah made a motion to adjourn the open meeting, and Ms. Howells seconded the motion. The motion passed unanimously. Mr. McManus adjourned the open meeting at 3:27 pm.

CLOSED MEETING

Mr. McManus requested a motion to close the board meeting under General Provisions Article, §3-305(b)(13), which permits closing a meeting to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public discussions about a particular proceeding or matter. This exemption would apply to any discussions between the Board, its counsel, and staff to prevent disclosure of information about the security of an information system under General Provisions Article, §4-338 and enable the members of the State Board of Elections to discuss, ask questions, and receive information about the security of the online ballot marking tool and security reports.

Mr. Cogan made a motion to convene in closed session, and Ms. Howells seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(13) of Section 3-305 of the Open Meetings Act to prevent the disclosure of information about the security of the online ballot marking tool. The closed session began at 3:30 pm.

In addition to the board members present at the open meeting, Ms. Lamone, Mr. Darsie, Ms. Charlson, and Vince Omenka, SBE's Director of Information Technology. During the closed session, Mr. Omenka presented the findings from recent internal and external security scans.

No action was taken. The closed meeting adjourned at 3:45 pm.