

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member
Gloria Lawlah, Member
Linda H. Lamone, Administrator
Adam Snyder, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy, Election Policy
Shelly Holland, Director, Budget, Finance and Procurement
Keith Ross, Assistant Deputy, Project Management
Jared DeMarinis, Director, Candidacy and Campaign Finance
Erin Perrone, Director, Election Reform and Management
Mary Cramer Wagner, Director, Voter Registration

Also Present: Lynn Garland
Ralph Watkins, League of Women Voters
Mary Kiraly
Holly Joseph
Janice Ford, Ellicott City Huddle
Barbara Sanders, League of Women Voters of Montgomery County
Allison McCord, Harford County Board of Elections

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:01 pm and confirmed that a quorum was present. He stated that the meeting was being recorded and an audio file will be posted on SBE's website.

RATIFICATION OF MINUTES FROM MAY 18, 2017, MEETING

Mr. Hogan made a motion to ratify the minutes from the May 18, 2017, meeting, and Mr. Cogan seconded the motion. The motion passed unanimously.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

It is with great sadness that we share with you news of the death of Daniel O'Connell, an SBE employee. Dan died as a result of a car accident in Calvert County on July 11th. His son, who was with him in the car, was also injured but is recovering. Dan was one of the "behind the scenes" employees at SBE. He was part of our IT Division and helped keep our computers up-to-date, troubleshoot IT issues, prepare presentation equipment, etc. In other words, his work enabled us to do ours. Services were held, and the family is requesting, in lieu of flowers, donations to the Chesapeake Church Food Drive.

SBE's Biennial Meeting

Under State law, we are required to host every two years a meeting for all local election officials. This year's meeting will be held on Monday, October 23rd in Annapolis.

2. **Election Reform and Management**

Spanish Translation Committee

A committee to evaluate the Spanish translation of ballots has been formed. The committee consists of Erin Perrone and Natasha Walker from SBE, Gilberto Zelaya and Joice Hourihan, Montgomery County Board of Elections staff members, and Jaime Vasquez, member of the Prince George's County Board of Elections. To accommodate everyone's schedules, the first meeting will occur during the week of August 14th. The first meeting will be an opportunity to discuss the objectives and goals, other possible members, an effective time frame, and the work to be accomplished.

Election Judge Workgroup

As of yesterday, the Election Judge Workgroup began revising the *Election Judge Manual*. The goal is to have the manual completed by October so the local boards may begin customizing each chapter. The group revised and finalized all the election judge forms.

Equal Employment Opportunity (EEO) Retreat

Earlier this month, Erin Perrone attended the EEO Retreat at Saint Mary's College. Personnel and discriminations topics, such as the different types of leave, reasonable accommodations for persons with a disability, and recognizing unconscious biases were discussed. As the agency's EEO Officer, it is important for Erin to attend the retreat to receive the latest law changes and court decisions.

In response to a question from Mr. Cogan about the required language election judges provided to each voter in the 2016 General Election, Ms. Charlson explained that the use of ballot marking devices in the 2018 elections will likely be discussed at a future meeting. The required language would likely be included as part of that discussion.

3. **Voter Registration**

MDVOTERS

Release 6.5 was installed the weekend of July 22nd. It includes functionality to import and process the new Electronic Registration Information Center's National Change of Address (NCOA) report and minor changes and fixes in a variety of areas.

Electronic Registration Information Center

The most recent round of ERIC reports was distributed on July 24, 2017. The local boards have started processing these reports and are providing positive feedback on the new NCOA functionality in MDVOTERS.

Maryland Safe at Home Address Confidentiality Program

The Maryland Safe at Home Address Confidentiality Program (ACP) is administered by the Office of the Secretary of State (SOS) and provides an important service to victims of domestic violence and human trafficking. The ACP helps those individuals who have relocated or are about to relocate in an effort to keep their perpetrators from finding them. The Program has two components - it provides a substitute address for victims who have moved or are about to move to a new location unknown to their abuser and provides participants with a **free** confidential mail-forwarding service for first-class mail and legal papers.

Participants use the Secretary of State's office address in Annapolis for voter registration purposes, which means that their electronic and paper applications are forwarded to the Anne Arundel County Board of Elections for processing. Because the SOS office is prohibited

from providing a residential address for participants, these participants have not, until recently, been registered to vote in the proper district and precinct.

Working closely with ACP staff, Roger Stitt and Mary Wagner identified participants' districts and precincts and updated the voter registration records accordingly while keeping them confidential. The non-standard address will be 16 Francis St, Annapolis, MD 21401, with a mailing address of PO Box 2995, NAME OF CITY where the polling place is located. Roger and Mary will be processing the voter registration records and will be mailing voter notification cards from here. There are currently 31 participants in the ACP.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

As of July 18, 2017, 146 candidates have filed a certificate of candidacy at SBE for the 2018 General Election.

Campaign Finance

On July 13th, Jared DeMarinis appeared at Public Safety and Fiscal Management Committee of the Prince George's County Council regarding the county implementing a public financing program for the 2022 elections.

On July 18th, George Leventhal for Montgomery became the first committee to qualify for public matching funds under the Montgomery County program. He submitted 541 qualifying contributions with a monetary aggregate of \$43,211.00 on July 4, 2017. He is eligible to receive \$196,652.00 in public matching. Committees may file matching fund requests on the first and third Tuesday of every month. More candidates are expected to file on August 1st to qualify in the program.

In response to a question, Mr. DeMarinis explained that SBE receives requests for public financing for Montgomery County offices and campaign finance reports. SBE confirms the number of qualifying contributors and instructs Montgomery County Finance Department to disburse the appropriate amount of funds.

Enforcement

Committee to Elect Lavinia Alexander has been notified of two violations, disbursements by an unauthorized method and engaging in campaign finance activities prior to the filing of the Statement of Organization with the SBE. The committee must pay a fine of \$350.00.

5. Project Management Office (PMO)

Inventory: Excess Equipment Disposal

During this reporting period, we continued auctioning, selling, and releasing of the TS-R6 black cases. In addition, we received the TS-R6 recycling proposal from the State's contractor for recycling. The proposal is currently being reviewed by SBE and the Department of General Services in preparation for a meeting with the recycler in the next couple of weeks.

FY 2017 Annual Inventory

SBE's PMO and Regional Managers successfully completed the FY 2017 annual inventory audit visits at each of the local boards. We are now reconciling equipment and supply inventory as the result of the visits and other aspects of inventory management. In addition, scanning has continued for all of the legacy equipment at SBE's Central Warehouse in preparation for its disposal (sale, recycle, or trash).

New Inventory System

SBE continues to work with the inventory system vendor to resolve issues identified during the inventory audit visits and preparing for the full implementation of the system.

6. Voting Systems

Electronic Pollbooks

Testing of the latest alpha version of the pollbook software continues and should be complete by the end of this week. This version includes enhancements and bug fixes.

We expect that the local boards will receive collectively approximately 3,300 CMOS batteries by the end of the month. The local boards can begin installing the batteries right away or combine installation with their pollbook charging process or upcoming software upgrade. The balance of batteries is scheduled to be delivered in September.

DS200 Modem Removal

Approximately 1,400 of the DS200 scanners have non-functioning modems installed that have not been used since delivery. ES&S has started removing these modems, which they wish to put back into their own inventory. Once each modem is removed, acceptance testing will be performed on the unit under SBE and local board supervision prior to returning to service. This affects approximately nine counties.

ES&S Contract Modification - Personnel Resources

On July 5th, the Board of Public Works approved a modification to the ES&S voting system contract for additional hours for ES&S' Maryland project team. These three individuals will now be assigned full-time to Maryland through the 2018 elections.

During the procurement process, we asked each bidder to complete a Pricing Summary worksheet for services for the base period, Option 1, and Option 2. To enable us to compare proposals fairly, we asked for a quote based on 1,000 hours for Option 1. At the time, we knew that we would need more than 1,000 hours but did not realize that the 1,000 hours would become part of the contract and require modification to increase hours.

7. Information Technology

New Office Telecommunications System

We are in the process of implementing a new office telecommunications system, a solution by ShoreTel called Connect. Implementation kick-off call and a site survey have occurred, and the new telecommunications devices have been ordered. We plan on having the new system installed, configured and deployed in the next few weeks

APPROVAL OF 2018 ABSENTEE BALLOT APPLICATION

Ms. Perrone presented the absentee ballot application for the 2018 elections and explained that this redesign was developed and tested by usability experts at the University of Baltimore. The application includes instructions, the request form, and contact information for the local boards of elections.

Ms. Perrone explained that the language requested by the State Board members about electronically delivered ballots needing to be copied is found in the instructions and in the margin of Block 7 on the application. Mr. Cogan suggested adding "hand" before "copied" to clarify that this is a manual process.

In response to a question about other language about security and risks with using the online ballot marking wizard, Ms. Charlson explained that that language appeared and would continue to appear in the online ballot delivery system when the voter is deciding how he or she will be marking the ballot (by hand or via the wizard). Mr. McManus stated that both he and Ms. Howells want this language on the absentee ballot application. Ms. Perrone will revise the application and present at a future meeting a revised application.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Snyder provided a status update on various lawsuits.

1. *Shapiro v. McManus, et al.*, No. 1:13-cv-03233-JKB (D. Md.), re-captioned *Benisek v. Lamone*. The parties have completed discovery and, on July 14, argued both the merits of the case and whether the case should be stayed pending the Supreme Court's decision in *Gill v. Whitford*, a Wisconsin case involving similar claims of political gerrymandering.

2. *Judicial Watch v. Lamone, et al.*, No. 1:17-cv-02006-ELH (D. Md.). Judicial Watch is challenging SBE's denial of its request for a copy of Maryland's voter registration list. SBE denied the request on the grounds that Judicial Watch did not meet the preconditions for release of the list set forth in § 3-506 of the Election Law Article. Judicial Watch alleges that it is entitled to the list under the NVRA (National Voter Registration Act) and that the NVRA pre-empts the access restrictions imposed under Maryland law. A preliminary response is due in August.

3. *Johnson et al. v. Prince George's County Board of Elections, et al.*, No. CAL16-42799 (Cir. Ct. Prince George's Cnty.). On July 19, 2017, plaintiffs Melvin Johnson and Qaaree Palmer filed a complaint challenging the legality of Maryland's voter registration and absentee voting procedures as applied to pre-trial detainees and persons serving time for misdemeanor convictions. The complaint alleges that the State Board of Elections and the Prince George's County Board of Elections do not offer citizens who are incarcerated but otherwise eligible to vote an adequate opportunity to register to vote or to cast ballots during early voting or on election day. This lawsuit is similar to one filed in Baltimore City days before the 2016 general election that was dismissed by the Circuit Court and the dismissal upheld by the Court of Appeals. A response is due August 23, 2017.

4. *Claudia Barber v. Maryland Board of Elections*, No. C-02-CV-17-001691 (Cir. Ct. Anne Arundel Cnty.) Ms. Barber seeks judicial review of the State Board's declaratory ruling that she may not use campaign finance money to pay for litigation costs she incurred in her unsuccessful attempt to retain her position as an administrative law judge in the District of Columbia. Ms. Barber was ruled ineligible for that position due to her candidacy in 2016 for Judge of the Circuit Court for Anne Arundel County, Maryland.

5. *April Ademiluyi v. State Board*, No. C-2-CV-17-001383 (Cir. Ct. Anne Arundel Cnty.) Plaintiff unsuccessfully ran for election to the Circuit Court for Prince George's County in 2016 and now challenges the qualifications of the candidate—Ingrid Turner—who was elected and sworn in as Circuit Court judge. Plaintiff asks the court to order Governor Hogan to rescind his commission to Judge Turner and to order SBE to decertify Judge Turner's candidacy and the election results. In response to a question, Ms. Lamone explained that the plaintiff is disputing that Judge Turner has satisfied the practice of law requirement.

APPROVAL OF PROPOSED REGULATIONS: PROVISIONAL VOTING

Ms. Perrone stated that the Election Law Article requires that SBE and the local boards review before each primary election regulations governing provisional voting. Local board representatives and the Maryland Association of Election Officials reviewed the existing provisional voting regulations and proposed changes and deletions.

1. Provisional Voting Documents and Supplies (33.16.02.01C): This change allows the local boards the flexibility to add more provisional ballot applications than SBE recommends. Other sections of the regulations provide that materials be provided in an amount of at least equal to the quantities specified by the State Administrator. It is preferable for State and local personnel to confer and determine the number of applications to be printed through mutual agreement.
2. Pre-Canvass Procedures (33.16.04.02B) and Post-Election Procedures (33.16.07.03A): These changes will reflect the current process of collecting an individual's last four digits of a social security number instead of the full number.
3. Pre-Canvass Procedures (33.16.04.02A – B) and Canvass of Ballots – Procedures (33.16.05.03C): These changes will coincide with the provisional ballot application. The application uses Arabic rather than roman numerals and the voter signature has been moved to Part 3 of the application. These changes will reflect the current numbering system on the provisional ballot application.
4. Pre-Canvass Procedures (33.16.04.02A) and Canvass of Ballots – Procedures (33.16.05.03C): These deletions reflect the passage of HB1626 in the 2017 General Assembly. Voters who change their address during Early Voting are no longer required to show proof of residency.
5. Canvass of Ballots - Procedures (33.16.05.04A): This change will help conform to the business practice of many local boards that have the election director record the final disposition of a provisional ballot application.
6. Canvass of Ballots – Rejecting Ballots (33.16.06.04B): This change will clarify the timeframe when a local board must reject a provisional ballot application for voters who have also returned an absentee ballot. If a provisional ballot is counted on the Wednesday of the provisional canvass and an absentee ballot is received during the last two days by mail, it would be impossible to reject both since the provisional ballot would have already been counted.

Ms. Lawlah made a motion to approve the proposed regulations and publish them for public comment, and Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented requests from four committees to waive late fees incurred by the committees. The requesting committees are Friends of Joe M. Collins, Friends of Chuck Ferrar, Charles County Citizens for Karla Kornegay, and Friends of Braxton C. Street.

In response to a question from Mr. Hogan, Mr. DeMarinis explained that the Division's training includes information on how to close a campaign finance account.

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

Mr. DeMarinis explained that three requests for waivers of late fees required by entities required to file under Title 14 of the Election Law Article were denied, and board action is not required. Information about these denials were provided in the meeting folder.

APPROVAL OF REQUESTS FOR CONFIDENTIALITY

Mr. DeMarinis presented one new request from a sitting judge for confidentiality and presented two requests that were previously tabled pending advice from the Office of the Attorney General.

The Office of the Attorney General has advised that an individual who is the victim of identity theft does not meet the “person being threatened” qualification but an individual who is a victim of stalking and has a protective order would meet this qualification. The Office of the Attorney General continues to research whether a spouse of a law enforcement personnel can be considered “law enforcement personnel” for the purposes of making a request for confidentiality.

Ms. Lawlah made a motion to approve the confidentiality request submitted by a sitting judge, and Mr. Hogan seconded the motion. The motion passed unanimously.

Ms. Lawlah made a motion to reject the confidentiality request submitted by an individual who is a victim of identity theft, and Mr. Hogan seconded the motion. The motion passed unanimously.

Mr. Hogan made a motion to approve the confidentiality request submitted by an individual who is a victim of stalking and has a protective order, and Ms. Lawlah seconded the motion. The motion passed unanimously.

OLD BUSINESS

Ms. Charlson explained that Mr. McManus’ letter to ES&S and ES&S’ response were in the meeting folder. Mr. McManus recognized Kathy Rogers of ES&S and asked if she would like to address the board members.

Ms. Rogers, ES&S’ Vice President of Government Relations, stated that ES&S stands by its letter but is committed to addressing the navigation issues. She noted that representatives of ES&S, SBE, and the University of Baltimore are discussing these issues on July 28, 2017. In response to a question about why ES&S did not fix the navigation issues for the 2018 elections, Ms. Rogers explained that ES&S needed to dedicate all of its development efforts to meeting a July 6, 2017, deadline established by the U.S. Election Assistance Commission. As a result, the navigation issues could not be addressed before the July 6, 2017, deadline. According to Ms. Rogers, jurisdictions in Arkansas, Tennessee, Virginia, West Virginia and other states used the ExpressVote ballot marking device in the 2016 elections and received nice reviews.

Mr. McManus stated that it was the board members’ understanding that ES&S committed to resolving the navigation issues by the 2018 elections, to which Ms. Rogers responded that ES&S did not make that commitment and apologized for the misunderstanding. Ms. Rogers stated that ES&S was hopeful that allowing candidates’ names to be displayed in two columns would be acceptable in 2018 but understood why the decision not to upgrade to the new software was made. Ms. Rogers stated that ES&S is very confident that the navigation issues will be resolved with a more robust “image manager” for the 2020 elections.

Ms. Rogers explained that the navigation for the ExpressVote ballot marking device is based on the navigation logic used in the Automark device, an accessible ballot marking device used for many years across the country. Now that the ExpressVote ballot marking device is being

considered and used as a universal device (not just for voters with disabilities), Ms. Rogers stated that ES&S is making enhancements to the ExpressVote software to improve its usability.

In response to a question from Mr. McManus, Ms. Charlson stated that the State Board's 2016 policy will likely to be discussed at a future meeting as at least one local board of elections is expected to request expanded use of the ExpressVote ballot marking device during early voting and on election day. Because of the number of ballot styles in a gubernatorial election, ensuring that voters receive the correct ballot is of greater concern in 2018 than in 2016.

Mr. Cogan suggested one or more meetings to discuss and receive public comment on this issue. SBE does not plan to implement ES&S' software upgrade because the software addresses only the number of candidates' names that can be displayed on one screen and does not address the navigation logic within and between contests and the cost of the upgrade does not justify a partial solution to the navigation concerns. Mr. McManus requested an estimated cost and timeline to implement the voting system software with the two-column display for the ExpressVote ballot marking device and noted that the local boards of elections need to articulate their views on the issue.

NEW BUSINESS

Presidential Advisory Commission on Election Integrity

In response to Mr. McManus' request for an explanation of the timeline of the request and response, Ms. Lamone stated that the letter was originally sent to the Maryland Secretary of State, who forwarded to her it after several days. Upon receipt of the letter, Ms. Lamone requested advice from the Office of the Attorney General, and the response letter was based on that advice. Mr. Snyder explained that his advice was based on the request for voter registration data and since the request did not comply with State law, it could not be fulfilled. In response to a question from Mr. McManus, Mr. Snyder agreed to review the remaining questions in the letter and advise whether these questions could be answered. Ms. Lamone stated that these types of questions are typically not answered by elections administrators and are more appropriate for Secretaries of State.

In response to a question about the information shared with the Electronic Registration Information Center, Ms. Wagner explained that personal information is shared but it is authorized by statute and governed by a memorandum of understanding. Mr. McManus stated that the State Board is a nonpartisan entity but the response provided to the Presidential Commission looked like a partisan response and asked if there is another opportunity to respond. Mr. Snyder explained that states were asked to delay providing information but as a result of a recent court decision, the Presidential Commission has now requested the information again. Mr. Cogan requested that, in addition to providing advice on whether the other questions in the letter could be answered, advice on whether the work of the Presidential Commission is considered "electoral purposes."

Proposed Motion: Security Awareness

Mr. Cogan stated that this motion was to institutionalize the relationship between the agency and the Board on issues of security. He recognized that the agency had previously provided briefings on cybersecurity issues and this motion was not intended as a criticism. The motion stated:

Recognizing that security of the voting system is of paramount concern to the public, and that the Board must – in faithful discharge of their duties – be fully aware of security issues, the Board directs that the Administrator brief the Board on security issues in

January, April, July, September (only in an election year), and October of each year, and additionally as significant security issues arise, or as requested by an Board member. Security includes but is not limited to cyber, personnel, equipment and physical matters, and also includes security issues relating to voter systems or election processes of other states.

Mr. Hogan stated that, while he agreed with the concept, he stated his desire that this type of information be provided in closed session, and Ms. Lawlah concurred. Mr. Snyder explained the grounds on which open meetings can be closed. Mr. McManus stated that it was appropriate to share details in closed session but be able to provide public assurances. Mr. Hogan expressed his concern that the public may have expectations that there will a public briefing of security issues. Mr. McManus asked Mr. Cogan to amend the motion to reflect how sensitive information is shared and present a revised motion at a future meeting, to which Mr. Cogan agreed.

Proposed Motion: Hand transfer of Information on Absentee Ballots

This motion stated:

Recognizing that hand transfer of information due to current scanning limitations is time and resource intensive, as well as inherently prone to human error, the Board directs the Administrator to develop or acquire a means, system or device by which absentee ballots voted directly by the voter can be scanned into vote counting machines. This change must be presented to the Board in sufficient time for the means, system or device to be approved and in place for the 2018 Gubernatorial election. Progress updates are to be provided to the Board in December 2017 and March 2018, or as requested by any Board member.

Mr. Cogan acknowledged that the timing of the progress updates are not realistic and proposed striking the last two sentences. Ms. Charlson explained that SBE currently is awaiting bids on a procurement for an automated duplication of ballots that cannot be read by the scanning unit and asked whether this solution satisfies the intent of the motion. There was a discussion about whether there can be a step between the voted ballot and the scanner, to which Mr. Cogan agreed that there can be. Ms. Charlson explained that the goal is to offer the local boards of elections an automated solution for the 2018 elections but the plan was to make this solution optional for the local boards of elections, since it may not be cost effective for local boards of elections with a small number of ballots that need duplication. No action was taken on the motion.

Proposed Motion: Visual Privacy of Voted Ballots

This motion stated:

Recognizing that privacy of voted ballots is the absolute bedrock of a system of free elections, the Board directs the Administrator to develop or acquire a means, system or device by which voted ballots are not visually displayed to other voters or elections personnel. This development must be presented to the Board in sufficient time for the means, system or device to be in place for the 2018 Gubernatorial election. Progress updates are to be provided to the Board in December 2017 and March 2018, or as requested by any Board member.

Mr. Cogan shared his experience where pollworkers saw and used information on how people voted and it shaped his view that the secrecy of the ballot is paramount. While there may be circumstances (e.g., ballot jam) where a pollworker must see the ballot, Mr. McManus stated that we can do better protecting the privacy of the ballot. Mr. Hogan stated his concern with “develop

or acquire” and suggested “investigate” and asked if Ms. Rogers had any thoughts on solutions to this concern. Ms. Rogers stated that some jurisdictions place tape on the floor to keep people away from the scanner and pollworkers have a folder that they use to cover up a voter’s ballot when the pollworker approaches the scanner to assist a voter.

Ms. Charlson explained that to implement new processes to address this concern, the processes need to be in place by November 2017 to ensure that pollworker materials include the new processes. Mirroring the last year’s effort to reduce the likelihood of provisional ballots being scanned, Ms. Charlson proposed asking the Election Judges’ Workgroup to develop recommendations to address this concern, to which Ms. Perrone agreed to have the workgroup address this concern and provide updates at future meetings. No action was taken on the motion.

Janice Ford, Howard County voter and Co-Chair of Ellicott City Huddle’s Voting Rights Subcommittee
Ms. Ford stated that SBE should not provide to the Presidential Advisory Commission on Election Integrity on any information as it is a “sham commission.” She stated that SBE should not be complicit with the request and questioned how the Commission is storing the information. Ms. Ford explained that information on SBE’s website about voting system security was very helpful and summarized recommendations in Brennan Center for Justice’s recent report entitled “Security Elections from Foreign Interference.” Ms. Ford asked that SBE communicate more clearly with the public about how elections are protected.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Hogan reported that he contributed \$500 to John Astle for Mayor, and Ms. Lawlah reported that she contributed \$500 to Larry Hogan’s committee.

CONFIRM NEXT MEETING

The next meeting is scheduled for Thursday, August 24, 2017, at 2 pm.

ADJOURNMENT

Ms. Lawlah made a motion to adjourn the meeting, and Mr. Hogan seconded the motion. Mr. McManus adjourned the meeting at 4:07 pm.