

# State of Maryland

## State Administrator's Report – October 2009

---

### 1. Meetings and Important Dates

#### Election Directors' Meeting

An election directors' meeting was held on Tuesday, October 20<sup>th</sup>. A summary of the meeting will be provided at the board meeting.

### 2. Election Reform & Management

#### Regulations Update

In addition to the regulations on the meeting agenda, previously adopted regulations are at various stages of the adoption process. The regulations adopted as final at the September board meeting were published in the October 9, 2009, edition of the *Maryland Register* and were effective as of October 19, 2009. The regulations made changes to Subtitles 13 (Campaign Financing), 15 (Precincts, Polling Places, and Directories), and 16 (Provisional Voting). Notice to the local boards was provided in the October 10<sup>th</sup> edition of the County Bulletin.

The public comment period for the new regulations relating to the site selection process for early voting closed on October 13, 2009, and no public comments were received. Since this new regulation cannot be adopted as final until after October 27, 2009, it will be presented for final adoption at the next board meeting. The anticipated effective date for this regulation is December 28, 2009.

The agency's review of regulations under the Regulatory Review and Evaluation Act is nearing completion. Evaluation reports for 33.05 (Voter Registration) and 33.11 (Absentee Voting) – the final two subtitles – were submitted to the General Assembly's Administrative, Executive, and Legislative Review Committee, and a notice of public inspection of the evaluation reports will be published in the October 23, 2009, edition of the *Maryland Register*. Proposed changes to these subtitles will be presented at the January board meeting.

#### Federal Legislation

Congress continues to hold hearings and consider election-related legislation. S. 1415 – Military and Overseas Voter Empowerment Act introduced by Senator Schumer has been amended into S. 1390 – National Defense Authorization Act for FY2010. Since the Senate and House of Representatives passed two different versions of S. 1390, the legislation was sent to conference committee. The conference committee in the House of Representatives passed the legislation with a few minor changes, and the Senate conference committee is expected to meet shortly.

The Subcommittee on Elections of the House Administration Committee is holding a hearing on October 23<sup>rd</sup> on H.R. 1719 – Voter Registration Modernization Act of 2009 introduced by Congresswomen Lofgren. This legislation would require election officials to provide on-line voter registration and change of information, use of electronic mail to communicate certain information to certain voters, and authorize the use of Help America Vote Act funds to implement the requirements. While the general intent and timeframe of the legislation is reasonable, some of the provisions are problematic for election officials. I provided a summary of the most critical issues to counsel of the House Administration Committee (see meeting materials for a copy of the letter).

#### Election Official Preparedness and Professional Development Program

As I mentioned at the July meeting, Rick Urps has been developing a certification program for election directors, deputy directors, and staff of the local boards. The program includes courses that will assist local board employees with preparing for an election as well as enhancing their professional development with courses such as project management and managing an election office. On September 29<sup>th</sup>, Keith Ross of the Project Management Office conducted a trial course of Project Management. I, along with several SBE staff members and several representatives of the local boards, attended this trial course. The course was very well received and will be the first course offered in the program. We expect to present this and other courses at the combined SBE biennial/MAEO meeting in May 2010.

#### Election Judges' Manual Committee

The committee continues to work through the 2008 election judges' manual and update and improve it for the 2010 elections and has started identifying and working through issues related to early voting. Work will continue through the winter with some of the material awaiting the selection of a voting system.

### 3. **Voter Registration**

#### Data Center Refresh

The refresh of the data center is ongoing. Currently, the new components (servers, firewalls, database and system software) are being prepared and tested by the Voter Registration Division team at the VROC data center in Annapolis. Once the testing is complete and the VROC is operational, new equipment will be transported and installed at the COOP data center in Cumberland. The expected date for the full operation of the new data centers is December 31<sup>st</sup>.

#### Software Release

The mock election for MDVOTERS release 2.26 is currently being conducted. The expected completion of the mock election and the release being moved into production is October 25, 2009. Development of early voting software is ongoing.

#### MVA Mailings

Roughly 15,000 letters have been mailed from MVA to voters and applicants whose registration records either need to be updated or who believe they are currently registered but do not appear in MDVOTERS. The response has been overwhelming.

### 4. **Candidacy and Campaign Finance**

#### Candidate Filing

As of October 19, 2009, 47 candidates have officially filed for the 2010 Gubernatorial Election.

#### Audit of Campaign Finance Reports

The Candidacy and Campaign Finance Division has finished its audit of the 2008 election related campaign finance reports. 105 committees have received deficiency notices. During our review, the most common deficiencies were missing or incomplete address, incorrect entries for reimbursements, and a lack of explanation for expenditures. The committees have until November 13, 2009 to amend their campaign finance reports otherwise they will be charged late fees.

#### Training/Classes

On October 8, 2009, Jared DeMarinis spoke at the Farm Bureau candidate training forum on candidate filing and campaign finance requirements for the 2010 elections. It was attended by 30 people.

Currently, 30 people have signed up for the Friday, October 23<sup>rd</sup> seminar at the SBE office on campaign finance regulations.

#### Enforcement Actions

On September 29, 2009, SBE referred 40 committees for failure to file 2008 Pre-General and Post General Campaign Finance Reports. Additionally, SBE referred over 90 committees for failure to file the 2009 Annual Report. Prior to the referral every officer has received at least 3 notices from SBE as a reminder to file the report.

### 5. **Voting Systems**

#### Procurement

Evaluations have started on the responses to the voting system equipment contract and the voting system support services contract.

#### Municipal Elections

Several LBEs have been preparing voting units and conducting Logic and Accuracy for Municipal Elections to be held on November 3<sup>rd</sup>, 2009. These municipalities include Annapolis, Frederick, Bel Air, Aberdeen and Chestertown. Since pollbooks will be used at these elections, databases, L&A test scripts and control count reports were prepared.

#### Electronic Pollbooks

The functional requirements document for pollbook ballot-on-demand printing and client/server capability has been completed. Required changes are currently being programmed under the direction of ES&S's Electronic Pollbook service group in Roseville, California. A pre-release version of the software for testing by SBE is scheduled for delivery in mid-November.

### Touchscreen Maintenance

Most LBEs – all of Phase II and Baltimore City – have received new touchscreen batteries for the TS units that are to be retained for the 2010 election. The LBEs have begun the process of installing these batteries for approximately 3300 voting units.

## **6. Information Technology**

### Technical Updates and Activities

- Updated several SBE hardware/software licenses and support
- Completed Oracle priority patch
- Completed several third party software upgrades/patches
- Posted updated candidate lists to the web
- Provided comparison tables for MVA voter look-ups
- Rebuilt 2 desktop computers and 2 laptops
- Provided expanded memory for and reimaged eight old PCs to maintain operability
- Completed several Web site updates
- Completed numerous updates to the on-line library
- Completed monthly updates to PBX
- Facilitated VPN demonstration for future EV Poll Book networking
- Completed material inventory updates to 6 LBEs

### Training

- Completed updated Accessibility Training – Natasha W.
- Completed update FMIS training – Thomas Q.
- Completed Basic Virtual Ware – Vincent O.

### Security

- Processed 1 employee background check and 1 contractor clearance
- Conducted LBE Security audits at Allegany, Howard and Wicomico LBE (for Legislative Audit)
- Updated 34 MDVOTERS user access accounts
- Conducted several MDVOTERS user access analysis for the legislative audit (system audit and LBE audits)
- Conducted a firewall configuration analysis for legislative audit team.

## **7. Update from Prior Meeting**

### Legacy Leadership

Staff has asked five of the ten legacy leaders who attended last month's meeting to fulfill specific internship roles at SBE. The five interns we are working with are:

1. Tim Lawrence – He has not begun working yet, but we plan to utilize his skills with tracking legislation during session.
2. Robert Bruce – He is working with the voting system team on the planning and execution of mock election testing.
3. LaVera Burnim – She is working with the Candidacy and Campaign Finance Division on reviewing referrals to the Central Collection Unit.
4. Edward Post – He has not begun working yet, but we plan to utilize his skills with a variety of projects including Candidacy and Campaign Finance and voting system project management.
5. Sandra Rayford – She is working on revising SBE's employee manual and other procedures.

### Republican State Central Committee

Pursuant to the agreement, the Maryland GOP made its first monthly payment to the Michael Steele committee. The payment and accounts were verified by SBE via its monthly meeting with Maryland GOP. Additionally, the Maryland GOP has been working on amending all of its campaign finance reports to accurately reflect the debt to the law firm and its subsequent payment by the Michael Steele committee. The amended report issue should be resolved soon.

### LBE By-laws status

In the meeting materials is a status of all of the LBEs in adopting bylaws. There are only three counties that have not adopted bylaws – Baltimore County, Frederick County, and Montgomery County. All have indicated that they plan to take this issue up in the near future.

This meeting was held by conference call. All local boards of elections, except for Dorchester, Montgomery, and St. Mary's Counties Boards of Elections, were represented during the conference call.

### **Voting System**

Update on Premier Election Solutions' Maryland team: Tom Feehan, who is now Senior Customer Service Manager, is still based in Annapolis and Maryland is still one of his primary clients. Rick Dixon replaces Randy Deabenderfer as Maryland's project manager, and the six regional representatives remain and report to Rick Dixon. Tom stated that Maryland election officials will receive the same level of support to which we have been accustomed. Tom also introduced Kathy Rogers, Vice President of Government Relations, and Matt Nelson, Senior Vice President of Sales.

In response to a question about the level of concern about the anti-trust lawsuit, Kathy responded that there is concern about the Department of Justice inquiry and the lawsuit filed by Hart InterCivic, but ES&S is working with the Department's officials and are confident that "all will be ok." In responding to a question, Kathy stated that Premier is now a wholly-owned subsidiary of ES&S but will eventually disappear. Contact information for Rick Dixon will be provided in the County Bulletin issued on October 23<sup>rd</sup>, and Matt confirmed that the Annapolis office will remain open.

RFP Status – The evaluation process is on schedule. The review and selection is expected to be completed by December, with the contract before the Board of Public Works in January or February of 2010.

Allocation of Touchscreen Units – The ratio of touchscreen voting units for election day will be as follows:

- Polling places with less than 400 active registered voters shall have one touchscreen voting unit, and this unit must be set-up as a VIBS unit.
- Polling places with 400 or more active registered voters shall have the *greater* of: (1) One touchscreen voting unit per 400 registered voters aged 65 or over (or fraction thereof); or (2) two touchscreen voting units. At least two of these voting units must be set-up as a VIBS unit.

To address anticipated concerns from voters about the voting system change, Ross explained that SBE can provide information about the change and intends to include this information in the upcoming voter education program.

Ballot on Demand Printers – Regulations will be proposed at this month's State Board meeting that establish the deployment of ballot on demand printers. The proposed regulations will state the following:

- If a county has at least five different ballot styles for an election, the local board shall provide each early voting center with one ballot printer for every 1,100 voters of the

estimated daily turnout (*i.e.*, one ballot on demand printer for every two electronic pollbooks).

- A county with five or less different ballot styles for an election may not deploy ballot on demand printers for early voting.

In response to questions, Ross stated that the deployment of ballot on demand printers is not optional and that the printers can be used in the office to print ballots before early voting. Ross stated that he would need to look at the budget to see if it included procuring a ballot on demand printer exclusively for local board office use.

Ballot Printing – SBE will be responsible for the printing of ballots. Ross acknowledged that it will be a challenge to print and deliver ballots quickly, especially for the gubernatorial general election and that SBE is moving forward with its project to use the website to deliver absentee ballots. In response to questions, Nikki provided the following information:

- UOCAVA voters are currently asked on the FPCA to select how they would like to receive their absentee ballot (by mail, by fax, or by email). A similar question will be added to the State absentee ballot application. A voter who selects “email” on the FPCA or “web delivery” on the State form will receive his or her absentee ballot via the website.
- For a voter who has requested to receive his or her absentee ballot via the website, s/he will receive an email when the ballot and other materials are available. The email will contain a link to SBE’s voter look-up site and the voter’s ballot tracking number. To access the voter look-up site, the voter will enter his or her first name, last name, date of birth, and zipcode. On the page that displays the voter’s information, there will be a button for the voter to click to obtain his or her absentee ballot. Once the voter clicks the button, the voter will be asked to enter his or her ballot tracking number (provided in the email).
- The enhancements are being developed by the University of Maryland – College Park, and SBE is researching vendors who provide email notification services.
- An absentee ballot application will still be required. The process of receiving and processing an absentee ballot application will not change. The only difference is how the voter receives the ballot. When an absentee ballot application is “accepted” in MDVOTERS and the ballots are ready, the voter’s information will be exported to College Park and the voter’s ballot and other information will be posted to the website and available to the voter.

Keypads and Headsets – In response to a survey conducted earlier this year, some local boards have excess inventory of keypads and headsets, while other local boards need more. Paul informed the local boards that some local boards will be asked to ship or facilitate getting keypads and headsets to another local board, while other local boards will receive new inventory.

Other Voting System Questions: In response to other questions about the voting system, the following information was provided:

- Extra touchscreen voting units will be removed from the local boards when SBE has found appropriate warehouse space.
- If a precinct only has one touchscreen voting unit, the local board can send a second unit to serve as a spare unit.
- A local board does not need to send a spare (*i.e.*, 3<sup>rd</sup>) set of headsets and keypads to each polling place.

### **Electronic Pollbooks**

SBE charges municipalities for using the electronic pollbooks, and the charges are based on the number of eligible registered voters. (Information about the charges is in Appendix E of the Municipal Election Information document posted on the Online Library. It is posted under "Voting System" and "Election Processes.")

### **Voter Registration**

Mary provided the following information:

- The next round of MVA letters has been sent, and there is a good response rate. SBE is forwarding to the local boards the signed letters it receives.
- On October 19<sup>th</sup>, the merge function in MDVOTERS was turned on. Mary stated that the local boards should start merging only 100% duplicates. Cheré is working on ad hoc reports to identify other potential duplicates. In response to a question, Mary stated that the date to turn off the merge function has not yet been set.

### **Miscellaneous Issues**

Certification Courses – Rick reported that the Election Preparedness and Professional Development Program is off to a good start with Keith Ross presenting a trial project management class. Rick stated that a proposed schedule will likely be forthcoming after next week's internal SBE meeting to discuss the program.

Biennial Meeting – Ross stated that the biennial meeting will be held in conjunction with MAEO's annual meeting in May 2010. For budget reasons, MAEO has proposed a one-day meeting with MAEO business being conducted in the first hour of the meeting, with the remainder of the meeting serving as the biennial meeting. In response to a question, there will be no separate board member meeting.

Translation Services - SBE does not have a contract to offer translation services to the local boards. As a result, local boards are encouraged to use any services available through the county.

Furloughs – In response to a question whether local board employees will be exempt from any furlough requirements, Ross responded that it was unlikely. For the furlough days selected by employees, supervisors should ensure that employees schedule furlough days on dates that will not affect election preparation activities.

### **Responses to Other Questions**

- The number of touchscreen voting units to be kept by the local boards includes spare units, training and demonstration units, and units used for uploading and downloading.
- Do not replace the batteries in the voting units that will be warehoused by SBE.
- New carts will be provided under the new contract. Since the new carts will be designed to transport both an optical scan voting unit and touchscreen voting units, the old carts will be sent to the warehouse. If a local board purchased extra carts, the local board can keep those carts.
- The early voting centers proposed by Allegany and Carroll Counties were approved by the State Board. Approval letters will be forthcoming.

Attendees: Robert L. Walker, Chairman  
Bobbie S. Mack, Vice Chairman  
David McManus, Member  
Rachel T. McGuckian, Member  
Charles E. Thomann, Member  
Linda Lamone, Administrator  
Ross Goldstein, Deputy Administrator  
Jeff Darsie, Assistant Attorney General  
Mary Wagner, Voter Registration Director  
Donna Duncan, Election Management Director  
Paul Aumayr, Voting System Director  
Nikki Trella, Election Reform Director  
Jared DeMarinis, Candidacy and Campaign Finance Director  
John Clark, Voter Registration System Project Manager  
Stacey Johnson, Voter Registration System Deputy Project Manager  
Keith Ross, Project Management Office  
Matt Libber, Project Management Office  
Kathy McClellan, Project Management Office

Also Present: Alisha Alexander, Election Director, Prince George's County  
Abigail Goldman, Baltimore City  
Anthony Gutierrez, Election Director, Wicomico County  
Stuart Harvey, Election Director, Frederick County  
Jerrold Garson, Board Chairman, Montgomery County  
Holly Joseph, Save Our Votes  
Stan Boyd, Save Our Votes  
Barbara Sanders, League of Women Voters Maryland  
Daneen Banks, Prince George's County

**DECLARATION OF QUORUM PRESENT**

Chairman Walker called the meeting to order at 2:35 p.m.

**APPROVAL OF THE July 30<sup>th</sup> BOARD MEETING MINUTES**

The minutes of the July 30, 2009, board meeting were presented for approval. Ms. Mack made a motion to approve the minutes, and Mr. McManus seconded the motion. The motion to approve the minutes was approved unanimously.

**ADDITIONS TO THE AGENDA**

Chairman Walker asked if there were additions to the agenda. Mr. DeMarinis stated that there was a request for a declaratory ruling for the Board's consideration. Mr. Walker stated that since all Board members were present, the bylaws would be considered under Old Business.

**ADMINISTRATOR'S REPORT**

1. **Announcements**

FY2010 Reductions in Personnel-Related Expenditures

Ms. Lamone reported that at the end of August, Governor O'Malley announced the temporary salary reductions and furloughs for State employees. The temporary salary reductions will be applied as follows: State employees making \$40,000 or more will have their salaries reduced in an amount equal to 5 days. State employees making \$39,999 or less will have their salaries reduced in an amount equal to 3 days. In compensation for the salary reduction, there will be five Service Reduction Days – all of which correspond to a State Holiday weekend. The mandatory furloughs will be applied as follows: Employees making \$40,000 to \$49,999 will be required to take 3 furlough days; employees making \$50,000 to \$99,999 will be required to take 4 furlough days; and those making \$100,000 and above will be required to take 5 furlough days. By way of example, Ms. Lamone explained that an employee whose annual salary is \$41,000 would see a \$1,731 overall reduction in his or her annual salary.

## 2. Meetings and Important Dates

### Election Directors' Conference Call

Ms. Lamone reported that staff hosted an election directors' conference call on Tuesday, September 15<sup>th</sup>.

The meeting covered the following topics:

- The status of the voting system procurement;
- Clarification on specific costs related to the voting system procurement;
- Discussion on the number of voting units (both touchscreen and optical scan) to be deployed to the polling places;
- Replacement of batteries, headsets, and keypads for touchscreen units and the fact that these items will be paid for with federal disability grant funds;
- Update from election directors on their progress in securing early voting centers; and
- Notification that a new MVA mailing would be sent out within the next month.

Ms. Mack asked about the progress the local boards are making in selecting their sites. Ms. Lamone responded that two local boards had submitted proposed sites for review and approval by the State Board and the other counties were well on their way towards finalizing their plans. Mr. McManus asked what the return rate is on MVA mailings. Ms. Wagner responded that the return rate is approximately 15-18.5 percent.

### Legacy in Leadership

Ms. Lamone reported that she and the staff have held a series of meeting with Wesley Queen who is the director of the University of Maryland's Legacy Leadership Institute. The Institute seeks to engage civic minded retirees by providing them educational programs as well as placement in different government related internship opportunities. After learning about the program from Mr. Queen, we sent him a list of possible internships at SBE. Mr. Queen had ten legacy leader interns who were interested in working here on different projects that we proposed. A meeting was held on September 8<sup>th</sup> with the potential interns. All but two of the interns were interested in interning here, and staff members are reviewing their backgrounds and qualifications to determine which intern would be a good match for working on different projects at SBE.

## 3. Voter Registration

### MDVOTERS Update

Ms. Lamone reported that Mary Jo Waite of the Field Support Program has organized the Voter Registration Division's user acceptance testing for the latest release of MDVOTERS software. User testing began on September 21<sup>st</sup> and will be followed by a full mock election test. The software is scheduled to be put into production on September 24<sup>th</sup>. The new release improves the formatting of our correspondence to registrants regarding such topics as the death of a family member, incomplete applications, and potential removal from the registration list due to a felony conviction.

### MDVOTERS Field Support

Ms. Lamone reported that Rex Brown of the Field Support Program and Janet Smith, Manager for Data Quality, have been making assist visits to our local boards. In September, they provided assistance with MDVOTERS business processes at Prince George's and Harford Counties.

### Data Center Upgrade

Ms. Lamone reported that the Voter Registration Division has been working with Saber's network administrator and SBE's procurement officer Donna Wiltshire on ordering the equipment needed to update the Annapolis and Cumberland data centers. These data centers have been operating since 2005, and updating their equipment before the 2010 elections is a high priority. According to plan, all equipment is to be received by September 29<sup>th</sup>. Saber then will test and assemble the new equipment and complete the installation by the end of December. The installation will require at least two business days during which the MDVOTERS system will not be able to be used by all users across the State.

### MVA Interface

Ms. Lamone reported that SBE had initiated a contract modification with Saber to create changes to allow a better and more robust interface with MVA. The interface would have automated the identification and notification of voters whose MVA data and voter registration information are not the same. This project was put on hold due to budgetary concerns and the determination that the funds would be better applied to data center upgrades. The processes will continue manually. The money saved from this project will be used to support the data center upgrade.

## 4. Candidacy and Campaign Finance

### Candidate Filings



Ms. Lamone reported that as of September 21, 2009, 41 candidates have officially filed for the 2010 Gubernatorial Election, including Comptroller Peter Franchot who filed for office on Friday, September 18<sup>th</sup>.

#### Republican State Central Committee

Jared DeMarinis reported that on September 18<sup>th</sup>, SBE, Michael Steele for Maryland, and the Republican State Central Committee signed a memorandum of understanding outlining the repayment of an impermissible administrative contribution by Steele for Maryland to the Republican State Central Committee. The impermissible administrative contributions totaling \$77,500 was discovered by staff during the course of routine audits of political committees. The administrative contributions consisted of a \$75,000 payment to Baker Hostetter, LLP for legal fees for the Maryland redistricting in 2002 and a \$2,500 direct administrative contribution. Commencing October 8, 2009, and for every month thereafter, repayment of the \$75,000 by the Republican State Central Committee to Michael Steele for Maryland will be as follows:

- a. The first \$15,000 of any and all revenue received by Republican State Central Committee will be exempt from any payment and will be used for administrative purposes only.
- b. 15% of any and all contributions, transfers, loans and other income received by the Republican State Central Committee will be paid to Steele for Maryland, excluding certain direct cost expenditures.
- c. At no time during the MOU will a payment due to Steele for Maryland be lower than \$2,000 per month.

Additionally, the \$2,500 administrative contribution by Steele to Republican State Central Committee will be reclassified as a transfer within the allowable limits of such transfers for the current election cycle. And finally, the entire debt to Steele for Maryland shall be paid off completely no later than December 31, 2012.

Ms. Mack asked whether this had the effect of creating a loophole in the law. Mr. DeMarinis responded that this was an extraordinary situation, but felt confident that it was being dealt with in a manner that was fair and still strictly ensuring compliance through required verification by SBE of the committee's transactions.

#### Audit

Ms. Lamone reported that on Friday, September 18, 2009, the amended reports for the 2008 Annual campaign finance report were due. On August 14, 2009, 351 committees received deficiency notices. During our review, the most common deficiencies were missing or incomplete addresses, incorrect entries for reimbursements, and a lack of explanation for expenditures. Currently, nearly 70% of the committees have filed a timely amendment. The remaining committees are being charged late fees.

#### Classes

Ms. Lamone reported that throughout this and next year, the Candidacy and Campaign Finance staff will conduct seminars on the reporting requirements and responsibilities for Chairman and Treasurers. These seminars teach the basics of campaign finance compliance, electronic filing as well as a general overview of election law. The next scheduled class will be Friday, October 23<sup>rd</sup> from 6-8pm. Mr. Thomann noted that he has attended the class and that it was well done and very informative.

### **5. Voting Systems**

#### Municipal Elections

Ms. Lamone reported that the voting units were successfully used in two key municipal elections on September 15<sup>th</sup>: the City of Annapolis' Primary Election and the City of Frederick's Primary Election, with approximately 23% and 18% turnout, respectively. Both cities will be using the system for their November general elections, which will be held on November 3<sup>rd</sup>.

A total of 63 electronic pollbooks were also used in the Annapolis and Frederick primaries. More than 8,400 voters were checked in with a total of only 2 hardware errors.

Ms. Lamone informed the Board that there was some controversy surrounding the Annapolis Primary Election. After the election, there were allegations that the candidate who received the Democratic nomination did not meet the City's residency requirements. Ultimately, the issue was resolved by the candidate voluntarily declining the nomination, which will allow the Democratic Party to appoint a nominee.

#### New System

Ms. Lamone reported that the voting system team has continued to move forward with the planning for the new voting system. This includes necessary proactive maintenance on approximately 25% of the DRE voting units that will remain at the LBEs and be used for the 2010 Gubernatorial Election. This will include replacement batteries for some 70% of those units. In addition, SBE has used disability grant money to

procure needed supplies for the DREs including the batteries, extra keypads, and headsets for the visually impaired.

**6. Early Voting**

Ms. Lamone reported that MAEO has established a *2010 Elections Task Force*. In addition to developing local board procedures and recommendations for managing the new voting system implementation and early voting, the task force is intended to be the liaison to this office in the development of policies and guidelines for early voting and issues surrounding the new voting system. The first meeting between the Task Force and SBE covered issues including the allocation of equipment and the selection of early voting sites. The next meeting is scheduled for September 24<sup>th</sup>. Ms. Lamone introduced the Task Force members who were in attendance at the Board meeting.

**7. Information Technology**

Ms. Lamone referred the Board to the provided list of activities of the IT Division, noting how busy they continue to be supporting all of the ongoing activities and projects.

**ASSISTANT ATTORNEY GENERAL'S REPORT**

Jeffrey Darsie reported that he has been reviewing a variety of issues regarding the acquisition of Premier Election Solutions by Election Solutions and Software. Mr. Darsie noted that this acquisition has a significant impact on a variety of issues. Mr. Darsie also noted that Sandra Brantely, Assistant Attorney General, was also involved with the Republican State Central Committee issue.

Mr. Darsie also reported that, in response to a request by the Harford County Board of Elections, the Office of Opinions and Advice is this week issuing an Opinion concerning the method of counting registered voters for purposes of EL §10-301.1(b), the statute mandating the number of early voting centers to be established in each county. If "inactive voters" were included in the count of registered voters, the number of early voting centers in Harford County could change from one to three. In essence, the Opinion of the Attorney General confirms an earlier letter of advice from AAG Brantley to Ms. Lamone on July 20, 2009), which concluded that the required count represents an "administrative purpose" under EL §3-503(d) and thus may not include inactive voters in the total.

Mr. Darsie next reported that attorneys from the Office of the Attorney General met with representatives of the American Civil Liberties Union ("ACLU") on August 12, 2009, to discuss issues relating to the 100-foot "no electioneering" zone required by EL §16-206(b). The ACLU represents a Washington County homeowner whose property was located across the street from a polling station and partly inside the 100-foot restricted zone. On election day, political signs were removed from his lawn, first by the election judge and later upon the order of a Sheriff's Deputy. A separate but related issue concerned the right of groups such as the ACLU to distribute non-partisan voter's rights brochures to voters within the no-electioneering zone.

Neither issue has been finally resolved. With respect to the homeowner's objection, however, it was agreed that the Office of the Attorney General would undertake with SBE a review of SBE's guidance to local election officials in light of the constitutional questions presented. In responding to questions from Mr. McManus and Ms. McGuckian, Mr. Darsie noted that the advice given by the AG's office has been that the "no-electioneering" zone extends to private property. However, guidance from courts around the country have been divided. Nonetheless, the recommendation moving forward is to involve showing sensitivity to how the "no-electioneering" zone is applied to private property. In other words, there may be other factors that should be considered when determining whether or not to apply the "no-electioneering" zone to private property. Mr. Darsie also noted that the early voting regulations provide that a "no-electioneering" zone and an electioneering zone must be considered when selecting the early voting site. Ms. McGuckian also questioned whether a more proactive solution might be necessary – such as legislation amending current law.

**REGULATIONS**

Ms. Trella presented for final adoption proposed changes to Subtitles 13 (Campaign Financing), 15 (Precincts, Polling Places, and Directories), and 16 (Provisional Voting), 33.07.03 (Election Day Activities – Officials' Duties Generally) and 33.08.01 (Canvassing – Definitions; General Provisions). In response to a question from Mr. Thomann about which political committees were exempt from the electronic filing requirements, Mr. Goldstein responded that the proposed changes to the regulations address which committees are exempt from this requirement.

Mr. McManus made a motion for final adoption, and Mr. Thomann seconded the motion. The motion was approved unanimously.

### **REQUEST FOR POLLING PLACE AND DISTRICT CHANGES**

Ms. Duncan requested approval of the St. Mary's County request to change a portion of the boundary line between Legislative Districts 29A and 29C. The change is a corrective action from the 2002 redistricting recently discovered through the census mapping efforts with the Maryland Department of Planning.

Mr. Thomann made a motion to change the boundary line, and Ms. Mack seconded the motion. The motion was approved unanimously.

### **APPROVAL OF EARLY VOTING CENTERS**

Ross Goldstein reported that the Carroll County and Allegany County local boards of election had submitted their early voting site selection forms for the State Board's approval. Mr. Goldstein stated that staff had reviewed the forms and supporting materials from each county and found them to be complete and in compliance with the requirements established by the State Board in the recently approved early voting regulations (33.17.02). Specifically, the Board reviewed photos, maps, site layouts and population data for each of the sites.

In response to a question from Ms. Mack, Mr. Goldstein confirmed that the Carroll County site was not accessible by public transportation, but, according to Carroll County election officials, there is no public transportation in the county. With respect to Allegany County, the site is accessible by public transportation. Ms. McGuckian made a motion to approve the Carroll County and Allegany County early voting centers, and Ms. Mack seconded the motion. The motion was approved unanimously.

### **BIENNIAL CONFERENCE**

Mr. Goldstein stated that this is the year during which a biennial conference would normally be held. However, staff determined that trying to hold a biennial conference this year, without having detailed information about the new voting system or early voting would not be beneficial for participants. Accordingly, the decision was made to recommend postponing the meeting until next year. To save money for SBE and the local boards, the plan is to combine the biennial conference with the annual MAEO conference, which is scheduled for May 15<sup>th</sup> through 19<sup>th</sup> of next year. Ms. Lamone noted that since the biennial meeting is a mandatory (see §2-104 of the Election Law Article), counties will be required to provide the funds necessary to ensure that staff can attend the meeting. This year, many counties refused to fund attendance at the MAEO annual conference. This was detrimental to the election officials in those counties who missed out on important information and educational opportunities.

Ms. Mack made a motion to approve the proposal to postpone the biennial meeting until May 2010, and Mr. Thomann seconded the motion. The motion was approved unanimously.

### **OLD BUSINESS**

Mr. Walker stated that the bylaws had been on hold pending a meeting with the full Board. The members of the State Board agreed on the following changes to the version of the bylaws presented at the meeting:

1. Section 1.3E – adopted Mr. Thomann's language providing for an annual review of the bylaws as opposed to only reviewing the bylaws when a two or more new member are appointed.
2. Section 2.2A2 – changed the chairman from the "sole" spokesperson to the "primary" spokesperson.
3. Section 2.2B – inserted "Beginning after the term of the current vice-chairman, the vice chairman shall not be a member of the same party as the chairman."
4. Section 3.2B – inserted the requirement that all Board members receive notice of all requests for public participation.
5. Section 3.3E2 – changed the sentence to be gender neutral.
6. Section 4.2 – adopted an approach that allows members to engage in campaign and political activities, but require disclosure to the Board for certain activities.
  - Removed the two alternative versions.
  - B5 – removed the requirement to disclose the fact that campaign material is being displayed.
  - B6a – removed the requirement to disclose the fact that campaign paraphernalia is being worn.
  - B7 – amended to allow a member to attend party central committee meetings provided this fact is disclosed to the Board.
  - B7 – removed the reference to consulting with party members.
  - C – inserted the following provision to address the issue of the timeframe for making required disclosures:

Members shall provide any required disclosure of an activity specified under subsection B to the Administrator or the Administrator's designee within a reasonable period of time following the activity that required the disclosure. The Administrator shall provide copies of each disclosure received from members at the Board meeting immediately following the receipt of the disclosure.

7. Section 4.3 – Inserted the financial disclosure due date of April 30<sup>th</sup> of each year.

Mr. McManus made a motion to approve the bylaws with the amendments agreed upon at the meeting and pending final review and approval by the members. Ms. McGuckian seconded the motion. The motion was unanimously approved.

Mr. Walker asked Mr. Goldstein to provide an update at the next meeting on the status of the local boards' adoption of bylaws.

#### **NEW BUSINESS**

Mr. DeMarinis informed the members of the State Board that a petition for a declaratory ruling was received from Michael Dawson, Chairman of the Constitution Party of Maryland. Mr. Dawson submitted a petition to question whether the Maryland Independent Party constitutes a legally permissible name under §13-208(d)(1) of the Election Law Article. That section prohibits a political committee from using a name that is "intended or operates to deceive people as to the political committee's true nature or character." Mr. Darsie stated that there was no role for the State Board to take because the law only applies to political committee names, not political party names. Mr. McManus asked whether the petitioner had any other recourse and suggested that SBE contact the petitioner and inform him that additional time would be needed to review the issue.

#### **SCHEDULE FOR THE NEXT MEETING**

The next meeting is scheduled for October 22, 2009, at 2:30 p.m.

#### **CLOSED SESSION**

Mr. Walker asked for a motion to end the open meeting and go into a closed session for the purpose of discussing a matter relating to the voting system procurement and preparation of the SBE budget. Ms. Mack made the motion which was seconded by Mr. McManus. The motion to hold a closed session was unanimously approved.

#### **ADJOURNMENT**

Mr. Walker adjourned the meeting at 3:45 p.m.

### **Closed Meeting Summary – September 24, 2009**

On September 24, 2009, at 3:45 p.m., the members of the State Board of Elections met in closed session to be briefed by staff and counsel on certain legal and procedural issues regarding the procurement of a new voting system and services, and SBE's budget submission to the Department of Budget and Management. All five members of the Board present at the September 24<sup>th</sup> public meeting voted to have a closed session under the authority provided in sections 10-503(c) and 10-508(a)(14) of the State Government Article of the Annotated Code of Maryland. In addition to the board members, Ms. Lamone, Mr. Goldstein, Ms. O'Connor, and Assistant Attorney General Jeffrey Darsie were present.

No actions were taken.

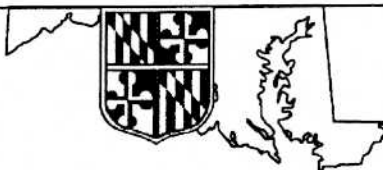
## ASSISTANT ATTORNEY GENERAL'S REPORT

October 21, 2009

1. On October 19, 2009, a federal district court judge dismissed all claims against all defendants in Kendall v. Howard County Maryland, Civil No. JFM-09-660, (U.S.D.C., D. Md.), among which were claims against defendants Robert L. Walker and Linda H. Lamone, in their official capacities, and against the State Board of Elections ("SBE"). Plaintiffs had challenged a decision of the Howard County Board of Elections not to certify plaintiffs' referendum petition due to their failure to submit the required number of valid signatures before the deadline. In dismissing plaintiffs' claims, the court found that Maryland's petition signature verification standards, set forth in Section 6-203 of the Election Law Article, are "non-discriminatory and content-neutral," as required by the First Amendment. Memorandum Opinion (Oct. 19, 2009) at 10. Assistant Attorney General ("AAG") Sandra Benson Brantley represented SBE in the litigation.

**STATE BOARD OF ELECTIONS**  
P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

Robert L. Walker, Chairman  
Bobbie S. Mack, Vice Chairman  
Rachel T. McGuckian  
David J. McManus, Jr.  
Charles E. Thomann



Linda H. Lamon  
Administrato  
Ross Goldstein  
Deputy Administrato

**Memorandum**

To: Members of the State Board

From: Jared DeMarinis, Director  
Division of Candidacy and Campaign Finance

Date: October 19, 2009

Subject: Declaratory Ruling - Constitution Party

Background

On August 19, 2009, a petition for declaratory ruling was submitted by Michael Dawson, Chairman of the State Central Committee of the Constitution Party of Maryland. The petition asserts that the name "Independent Party" used by the Independent Party Central Committee is deceptive under Election Law ("EL") Article §13-208(d)(1).

Recommended Action

COMAR 33.01.02 establishes the process for petitions for declaratory ruling. Specifically, Regulation .01 specifies:

*An interested person may petition the State Board for a declaratory ruling on the manner in which the Board would apply any of the following to a person or property on the facts set forth in the petition:*

- A. A Board regulation;
- B. A board order; or
- C. A statute that the Board enforces.

The petition at hand does not seek to determine how the board would apply a regulation, order, or statute that the Board enforces. Clearly, the Board has already acted by accepting the name "*Independent Party State Central Committee.*" Accordingly, there is no need to issue a declaratory ruling on how the Board would act in this instance and therefore the Board should decline to issue the ruling.

Since, what this petitioner is actually asking for is a reconsideration of an action already taken, the Board could direct staff and counsel to review the actions taken and determine whether they are both legally and administratively sound.

# Supplement to Petition for Declaratory Ruling

From: Michael W. Dawson  
Date: October 22, 2009

My claim of the deceptive nature of the committee name "Independent Party" does not point squarely at the Independent Party and claim that their name selection is intended to deceive. But rather it is the name, in conjunction with the State Board of Election's manner in which the political parties are listed on the voter registration application, that is the cause for my petition.

As you can see, the six parties are listed as one-word titles. In the case of the Republican and Libertarian, one word is fairly clear and straightforward and the addition of the word "Party" would really be unnecessary. But when it comes to Independent, I contend that the one-word title is deceptive to the voter registrant. While what is meant by the Board of Elections as the political committee recognized 08/25/2008, I hold that many (and what I might argue as most) voter registrants are misunderstanding "Independent" to mean "independent" or what is technically known as "unaffiliated."

Anecdotally, I have questioned several registered voters who have identified themselves as "independent" (their intent to be unaffiliated). When I showed them a voter registration form, 85 percent pointed to the "Independent" check box as the choice they either did or would make. The others were confused with the choices of both "Independent" and "unaffiliated." They thought, some for a great while, before concluding 'well, I guess I would be unaffiliated then'

My point is that there shouldn't be any confusion. The form should be clear and clearly identify the true identity of the choices available, recognizing and accounting for the dual usage of the word "I/independent"

I would like to offer two potential solutions to this matter. 1) Change the Voter Registration Application to include the word "Party" after each of the six recognized political parties or 2) Require the Independent Party to change its name because of the common and misrepresentative dual use of the word "I/independent."

I would like to bring an additional issue to the Board regarding the instructions of the Voter Registration Application. In Item 10, it reads, "10. Party - You must register with a party if you want to take part in that party's primary election. Check one box only." It is only the two principal parties that have hold primary elections as a means of party nomination to the general election ballot. There are, however, currently four additional parties that do not participate in the primary election nomination process, however, they each have their own method of nomination in accordance with their individual bylaws.

May I suggest changing the wording of Item 10 to read, "10. Party - You must register with a party if you want to take part in that party's primary election, caucus or convention. Check one box only."

Respectfully Submitted,  
Michael W. Dawson