

APPROVED

July 17, 2017

MEETING OF THE MONTGOMERY COUNTY BOARD OF ELECTIONS
18753-210 North Frederick Avenue, Gaithersburg, Maryland

In Attendance:

Board Members:

Jim Shalleck, President
Nahid Khozeimeh, Vice President
Mary Ann Keeffe, Secretary
David Naimon
Jacqueline Phillips

Board Attorney:

Kevin Karpinski

Staff:

Lisa Merino, Office Services Coordinator
Marjorie Roher, Management and Budget Specialist III
Janet Ross, Information Technology Manager
Christine Rzeszut, Operations Manager
Jessica White, Voter Services Manager

Guests:

Jim Epstein
Dolly Kildee
Nancy Farrar
Barbara Sanders
Marie Mapes

Audio of the meeting may be found at the link below:

<https://youtu.be/2196Ni-KWUU>

Convene the Board Meeting and Declare a Quorum Present

Mr. Shalleck called the Board meeting to order and declared a quorum present at 2:30 p.m.

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Mr. Shalleck stated that Ms. Jurgensen was unable to attend the meeting today due to an illness.

Mr. Shalleck announced that Mrs. Rivera-Oven has resigned from the Montgomery County Board of Elections. He paid tribute to Mrs. Rivera-Oven's years of dedication on the Board, adding that she has shown great leadership in promoting, protecting, and safeguarding voters' rights and has worked passionately to address concerns with accessibility/ADA issues. Mr. Shalleck stated that Mrs. Rivera-Oven is a great leader in the community and wishes her well.

Ms. Keefe agreed with Mr. Shalleck's comments, adding that Mrs. Rivera-Oven was very beneficial by providing her knowledge and insight with the Board of Elections' translations.

Mr. Naimon added that she was a great colleague and an advocate for reaching out to all aspects of the community and he greatly admired her for that and hopes to carry on that torch.

Ms. Phillips acknowledged Ms. McLaughlin for the tremendous job she did as an Officer of the MAEO conference. Ms. Phillips stated that the conference was very interesting, stimulating and went exceptionally well. Mr. Shalleck agreed with Ms. Phillip's comments. Mr. Shalleck noted that Ms. McLaughlin was not in attendance at the Board meeting, as she was attending a conference in Denver.

Approval of the June 19, 2017, Board Meeting Minutes

Mrs. Khozeimeh moved to accept the June 19, 2017, Board meeting minutes as amended.

The Board members discussed if specific names should be identified when visitors leave the meeting. The Board members agreed to approve the edits provided and that for future minutes, no names will be identified. Mr. Vincent noted a grammatical error.

Mrs. Khozeimeh moved to accept the June 19, 2017, Board meeting minutes as amended. The motion was seconded by Ms. Keefe and passed unanimously.

Mr. Vincent requested a copy of the FOIA request from the Public Interest Legal Foundation. Mr. Karpinski agreed to provide it.

Additions/Changes to the Agenda

Mr. Shalleck stated that the agenda would be slightly amended due to Ms. Jurgensen's absence.

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Public Comments

Jim Epstein stated that he served as a Chief Judge at Holiday Park and worked at the Wheaton Early Voting site. He thanked the Board members for their effort to maintain an Early Voting site in Wheaton. Mr. Epstein expressed his concern with the Holiday Park Senior Center as a site, as the facility has a small and tight room. However, he added that if there are no other sites in Wheaton, then Holiday Park will do. Mr. Epstein suggested that the building next to the AMC movie theater on the Wheaton Westfield grounds be considered as the Wheaton Early Voting site. He stated that the space is currently being used as the Art Factory and provides ample parking, has a big area for a polling place, is perhaps ADA compliant, and has sufficient space for electioneering boundary. The Board members thanked Mr. Epstein for his suggestion. Ms. Rzeszut will make inquiries of the site location and see if it meets the required regulations to be an Early Voting site.

Election Director Status Report (Incorporated as Attachment A)

Ms. Jurgensen was not present to provide a verbal report.

Public notice of the Board meeting was posted on July 7, 2017.

Personnel

See attachment A

Budget (Incorporated as Attachment B)

Ms. Roher stated that the budget spreadsheet detailing FY17 expenditures was provided in advance. She added that when she ran the report for July, there was \$4,000 left in the budget; however, when the two upcoming payrolls, office supplies, chargebacks from the county pertaining to the election judge module maintenance, print shop and mail charges hit the general ledger, there will be a \$200,000 to \$250,000 deficit as fiscal year 2017 ends.

Ms. Roher stated that funds allocated for the State Board of Elections' line item were encumbered. The final State invoice has been received and is under review.

Ms. Roher stated that the County is currently in the FY18; however, there is nothing to report at this time.

Ms. Roher stated that a memo regarding a proposal to accept credit card payment for products and a fee increase for certain products was sent in advance. Prior to the proposal Ms. Roher contacted the Department of Finance to discuss potential use of credit cards and its impact to the budget. Attachment C reflects the suggested increases. In addition, staff recommends a new fee of \$50 for absentee labels; this is a one-time cost per election, and must be paid in advance. Mr. Naimon questioned the justification to increase the postage for mailing. Mr. Naimon stated that the increase should reflect any United States Postal Service increases. Mr. Naimon

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inquired how much the Board of Elections is charged for the mailing of the binders; Ms. Roher will obtain the information and share it with the Board at the September Board meeting. He also requested that a volume of items sold be provided.

The Board agreed to discuss this item further at the September Board meeting.

Voter Registration

Ms. White reported there are 646,734 active registrants as of July 17 and 72,926 inactive registrants.

Board members inquired about the ERIC process and inquired what information is provided to ERIC. Ms. White and Ms. Roher stated that information is sent from the State Board of Elections; Ms. White will inquire what the State provides and follow up with the Board.

Board members inquired on the status of *Judicial Watch's* complaint letter; the conversation was tabled for the Board Attorney report.

State Board of Elections

Ms. Jurgensen was not present to verbally provide her report. See attachment A.

Ms. Keefe stated that Ms. Jurgensen wanted to address the election security issue brought to the Board's attention at the September 19, 2016, Board meeting.

Mr. Shalleck noted that he has requested that State Board of Elections' staff attend the September Board meeting to address security issues. Ms. Phillips suggested that the State Board personnel also discuss the issue at the State Board of Elections Board meeting in October.

Board Attorney Report

Judicial Watch

Mr. Karpinski stated that *Judicial Watch* has provided correspondence (see attachment D). He noted that this letter requests a response from the State Board of Elections and Montgomery County along with documents. He notes that the *Judicial Watch* letter cites an agreement with Ohio to follow procedures considered "best practices." It is Mr. Karpinski's opinion, in consultation with Voter Services Manager Ms. White, that Montgomery County is following similar procedures outlined in the Ohio and *Judicial Watch* agreement/settlement. Mr. Karpinski agrees with Mr. Vincent that a meeting should be arranged to inquire what *Judicial Watch* thinks Montgomery County is violating. Ms. Phillips suggested that the State Board of Elections' Attorney also attend the meeting. Mr. Naimon inquired whether the proposed meeting with *Judicial Watch* would be at a public meeting, and expressed concern about having a private meeting. He also suggested meeting with other organizations interested in this issue. Mr. Karpinski suggested as a

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compromise that the Board of Elections set forth a written response regarding Montgomery County's procedures, and ask *Judicial Watch* what is not adequate about our procedures. Mr. Shalleck asked that Mr. Karpinski inquire if the State Board of Elections would be responding on behalf of both the State and Montgomery County and if not, then Montgomery County could initiate a letter. The Board members agreed that Mr. Karpinski should check with the State Board about its participating in a letter with us to *Judicial Watch*, and prepare such a letter himself if the State Board does not choose to join in it. It was agreed that a draft response would be circulated amongst the Board members.

ES&S

Mr. Karpinski confirmed that the ballot marking device will only be used as the disability unit for the 2018 election cycle. He noted that it will be a problem during Early Voting for the Primary with the consumption of tons of paper. Board members expressed their disappointment.

Old Business

Presidential Advisory Commission on Election Integrity

The Presidential Advisory Commission on Election Integrity requested that the State Board of Elections provide voter rolls for Maryland, to include: full name of all registrants, addresses, dates of birth, political party, last four digits of social security number, voter history from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizenship information (See attachment E). The State Board of Elections has denied the request, noting that some information may be prohibited under State and/Federal Law.

2018 Proposed Polling Place Changes (Incorporated as Attachment F)

Mr. Shalleck requested that that all questions or concerns be provided after each proposed polling place.

Mr. Shalleck expressed his concern with the number of voters that will be impacted by the 2018 proposed polling place changes. Ms. Rzeszut and Mr. Karpinski stated that most of the changes are due to upgrades to the HVAC units, noting that it is a legal requirement that each polling place have air conditioning. The Board members expressed their desire to have the HVAC upgrades delayed until after the Primary Election to prevent disruption to voters. Mr. Naimon suggested that Board of Elections members discuss the issue directly with Board of Education members and the Superintendent of Schools. Mr. Karpinski stated that of the schools proposed, an estimated 56,121 voters would be impacted. Board members agreed that Mr. Naimon, who volunteered, should reach out to Michael Durso, President of the Board of Education, to speak on the behalf of the Board, to request construction and/or HVAC upgrades to polling places be delayed until after the Primary Election. The Board members agreed to not discuss those polling places today until Mr. Naimon has an opportunity to speak with Mr. Durso. Further discussion will take place at the September Board Meeting.

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Mrs. Rzeszut presented 2018 proposed polling place changes due to mergers, new site, or voters that will be returning to their polling place.

Mr. Karpinski stated that public notice is required for proposed polling places; staff will provide notice that comments can be provided via email or addressing the Board at the September Board meeting. The precincts reviewed by staff were presented to the Board; only those precinct changes that the Board members agreed to consider will be listed for public comment.

- Precinct 02-06, Hallie Wells Middle School (in precinct)
 - The Board members agreed to list this precinct for public comment.
- Precinct 02-08, Clarksburg High School (better facility, access, and parking)
 - The Board members agreed to list this precinct for public comment.
- Precinct 04-27/04-38, Twinbrook Recreation Center (ballot style)
 - The Board members agreed to list this precinct for public comment.
- Precinct 04-34, Redland Middle School (use of public facility)
 - The Board members agreed to not list this precinct for public comment.
 - Board members expressed concern with voters crossing Muncaster Mill Road and having voters moved outside their precinct. Ms. Rzeszut noted that a crossing guard would be placed. Board members did not see why voters needed to be inconvenienced and moved outside the precinct.
- Precinct 05-05, Burnt Mills Elementary School (ballot style)
 - The Board members agreed to list this precinct for public comment.

Mr. Vincent noted that each polling place presented has a 32% to 40% turnout; those figures suggest that half the voters are more than likely voting early. Thus, the impact of the Early Voting may have diminished the number of voters who are affected by an Election Day change in their polling place.

- Precinct 09-03, Brown Station Elementary School (return after renovation)
 - The Board members agreed to list this precinct for public comment.
- Precinct 10-06, Wayside Elementary School (return after renovation)
 - The Board members agreed to list this precinct for public comment.
- Precinct 13-43/13-70, Wheaton Woods Elementary School (return after renovation)
 - The Board members agreed to list this precinct for public comment.
- Precinct 13-67, Don Bosco Cristo Rey High School
 - The Board members agreed to list this precinct for public comment.

The precincts that the Board agreed on will be placed on the website.

New Business

Public Hearing

Ms. Roher presented Ms. Jurgensen's proposal to have a Public Hearing on September 18, 2017, at 7:00 p.m. Board members briefly discussed and proposed to have the Public Hearing on

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September 23, 2017, 10:00 a.m. to 12:00 p.m. to tentatively be held at the Executive Office Building pending facility approval. Ms. Roher will follow up with the Board once the site is confirmed.

Ballot Opening Proposal

The Board members agreed that this issue will be discussed in the September Board meeting.

Future Meeting

The next Board meeting is September 18, 2017. A Public Hearing to discuss Early Voting sites is tentatively scheduled to be held September 23, 2017.

Adjournment

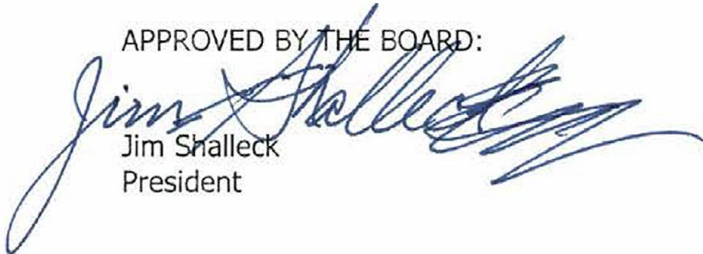
Mrs. Khozeimeh moved to adjourn the Board meeting at 5:12 p.m. The motion was seconded by Ms. Phillips and passed unanimously.

Respectfully Submitted,



Lisa Merino
Office Services Coordinator

APPROVED BY THE BOARD:



Jim Shalleck
President

Election Director Report
July 14, 2017

Meeting Notice Posted July 7, 2017

No speakers scheduled at this time

Additions and Changes to Agenda – nothing new at this time.

Election Director Status Report

A. Personnel

1. Temporary staff will be added to assist with scanning backlog of old registrations.
2. Mentoring a Student through the RISE program

B. Budget – Margie Roher

1. FY 17
2. FY 18
3. Memo reg: Credit Cards

C. Voter registration – Jessica White

D. State Board of Elections

1. Wall St. Journal Article
 - a.) Please review the September 19, 2016 Board minutes Powerpoint presentation (attachment E) addressing election security. The October 2016 Board meeting the issue was touched upon.
 - b.) Janet Ross, IT Manager ordered all Montgomery County Board of Elections staff to review and retake the County Security testing in September of 2016.
 - c.) Jim Shalleck had requested that SBE send someone to attend the Board meeting in September 2016 to address the security issues.

2. Election Judge Workgroup

- a.) Leslie Woods continues to work with the State to improve the training materials and revise forms
- 3. State Board Computer Policy
 - a.) State Board performed an audit on all computers with access to MDVoters.
 - b.) Implemented revisions to the previous computer policy.
- 4. State Inventory of voting equipment completed.

Board Attorney Report – Kevin Karpinski, Legal Counsel

- A. Judicial Watch
- B. ES&S response to State Board of Elections

Old Business

- A. Early Voting Center
- B. Polling Place changes

New Business

- A. Absentee Ballot Opening presentation – Jessica White

FY17 OPERATING BUDGET SPREADSHEET
Through June 30, 2017 (As of July 5, 2017) NOT FINAL

LINE ITEM	FY17 APPROVED	FY17 YEAR TO DATE*
PERSONNEL COSTS	4,098,274	4,031,192
5A001 - Salaries & Wages	3,335,363	3,318,656
50010 - Full Time Salaries	2,200,010	1,961,650
50012/50020 - Part Time Salaries/Seasonal Temps	684,709	802,592
60168 - Temporary Office Clerical (moved from OP for clarity)	201,329	138,464
SUBTOTAL FOR TEMPORARY PERSONNEL	886,038	941,056
50324 - Overtime (includes emergency, multi-lingual & holiday)	249,315	415,951
5A002 - FICA	226,428	256,333
5A003 - Group Insurance	357,768	292,941
5A004 - Group Retirement	178,715	163,263
OPERATING EXPENSES	4,490,999	4,554,190
6A001 - Services and Contracts	1,585,544	1,624,434
60060 - Legal/Attorney Services	75,000	101,466
60066 - SBE Program Management	614,079	614,079
60304 - Maintenance - Electrical	0	625
60314 - Maint - Computer Systems**	21,140	4,956
60326 - Repair/Maint Agmts - Office Equip	11,000	3,436
60412 - Moving Services	25,000	51,678
60414 - Building Construction	0	0
60530 - Other Professional Services - EJ Stipend	804,825	848,194
60532 - Other Non-Professional Services (includes EJ mod.)	34,500	0
6A002 - Maintenance	276,281	276,281
61010 - Computer Equip Repairs/Maint (EPB)	276,281	276,281
6A003 - Rentals/Leases	1,715,518	1,714,637
61902 - Furniture Rentals (Polling Place)	7,000	8,369
61924 - Other Equipment Rentals (MDVoters)	563,083	563,083
61926 - Bldg or Space Rental/Leases (Pol. Place)	34,485	32,235
61932 - Other Rentals/Leases (Voting System)	1,110,950	1,110,950
6A004 - Office Supplies & Equipment (<\$5,000)	164,804	160,500
62010 - General Office Supplies+	70,000	70,984
62016 - Computer Supplies	5,000	2,049
62018 - Computer Equip (<\$5,000)**	24,140	29,906
62022 - Paper and Supplies for Copiers	0	358
62028 - Other Supplies & Equipment	65,664	57,203
6A011 - Books, Videos, and Subscriptions	3,500	3,739
62700 - Books/Reference Materials	2,500	926
62712 - Other Books, Videos, and Subscriptions	1,000	2,813
6A012 - Other Supplies/Materials/Equipment	153,023	155,815
62826 - Keys and Locks	0	2,705
62848 - Tools	0	88
62896 - Parking Meters	0	0
62946 - Charges from SBE	153,023	153,023
6A013 - Printing/Central Duplicating Services	144,406	188,240
63016 - Imaging	10,000	4,178
63018 - Document Shredding	0	306
63020 - Office Mach. Cop. Leasing	11,760	18,407
63022 - Other Central Dup Svc - Printing (all printing costs)	122,646	165,349
Mandated Legal Requirements		
Charges from SBE		
Election Specific Costs		
Personnel Charges		
Temporary Personnel Charges		
Overtime Costs		
Benefits		

FY17 OPERATING BUDGET SPREADSHEET
 Through June 30, 2017 (As of July 5, 2017) **NOT FINAL**

LINE ITEM	FY17 APPROVED	FY17 YEAR TO DATE*
6A014 - Outside Printing	100,550	78,813
63100 - Outside Printing/Copying	550	939
63104 - Sample Ballot Printing	100,000	77,875
6A015 - Mail	138,361	167,936
63200 - Central Dup - Postage - Bulk (services, NO postage)	36,530	105,375
63202 - Central Dup - Postage - Individual (PO Box rental)	21,081	1,849
63206 - Inter-Office Mail/Pony Charge	750	2,594
63208 - Other - Mail (Sample Ballot Postage)	80,000	58,118
6A016 - Outside Postage and Mail	90,500	63,687
63300 - Outside Mail Services (VNCs and all other postage)	90,000	62,384
63304 - Other Outside Mail Services	500	1,303
6A017 - Motor Pool	10,965	21,966
63500 - Assigned Motor Pool Vehicles	8,965	19,866
63504 - Daily Rental Motor Pool	2,000	1,897
63508 - MP EZPASS Charges	0	203
6A018 - Communications Services	33,670	29,151
63604 - Cellular Phone Line Charges	2,800	4,390
63618 - Blackberry Charges (smart phones)	9,000	9,091
63626 - Communication Modems (SBE)	4,870	0
63634 - Other Communication Services (PP Phone Lines)	17,000	15,670
6A020 - Charges from Others	5,000	4,285
63810 - Charges for Facility Maintenance	5,000	4,285
6A021 - Travel	23,996	23,766
64010 - Metropolitan Area Travel	17,996	15,009
64012 - Non-Metropolitan Area Travel	6,000	8,757
6A022 - Education, Tuition, and Training	10,125	7,081
64100 - Local Conference Related	2,000	4,128
64102 - Non-Local Conference Related	0	429
64120 - Other Education, Tuition, & Training	8,125	2,524
6A023 - Dues/Memberships	2,000	2,280
64200 - Professional Memberships (Individual)	2,000	2,280
6A024 - Advertising	27,756	27,400
64300 - Advertising - Jobs	0	0
64304 - Advertising - Marketing/Sales	27,756	27,400
6A099 - Miscellaneous Operating Expenses	5,000	4,178
69999 - Other Misc Operating Expenses	5,000	4,178
DEPARTMENTAL TOTAL	8,589,274	8,585,382
* Included prior year encumbrances		
+ Includes office supplies, polling place supplies, and office furniture		
** \$3,860 moved from each line item to 46304 per Board Directive		
Mandated Legal Requirements		
Charges from SBE		
Election Specific Costs		
Personnel Charges		
Temporary Personnel Charges		
Overtime Costs		
Benefits		

James F. Shalleck
President
Nahid Khozeimeh
Vice President
Mary Ann Keelfe
Secretary
Alexander C. Vincent
Member
David Naimon
Member
Graciela Rivera-Oven
Substitute Member
Jacqueline Phillips
Substitute Member



**Montgomery County
Board of Elections**
Post Office Box 4333
Rockville, Maryland 20849-4333

Margaret A. Jurgensen
Election Director
Alysoun McLaughlin
Deputy Election Director
Janet A. Ross
Senior Information
Technology Specialist
C. Jessica White
Voter Services Program
Manager
N. Christine Rzeszut
Operations Manager
Kevin Karpinski
Counsel

MEMORANDUM

July 7, 2017

TO: Members, Montgomery County Board of Elections

VIA: Margaret A. Jurgensen, Election Director *[Signature]*

FROM: Marjorie M. Roher, Management & Budget Specialist III *[Signature]*

SUBJECT: Acceptance of Credit Card Payments for Products and Fee Increase for Certain Products

Purpose: The purpose of this memorandum is to request Board approval to begin accepting payment for products by credit card and to increase fees for certain products to cover the cost of fees that will be incurred by the Board of Elections (BOE) to accommodate this request.

Background: Over the last several years, the number of requests to pay for BOE products by credit card has increased. This was brought to my attention and, after discussion with the Election Director, a meeting was held with the Department of Finance to determine if this was possible and what costs would be incurred if credit card payments were to be accepted. During that meeting the following information was obtained:

- An initial cost of \$600 will be required to purchase a swiping machine which will need to be connected to the county network (network connections are currently available for this).
- A monthly fee of \$15 will be assessed regardless of the number or amount of transactions processed.
- An additional 2.5% exchange fee will be assessed to each transaction processed.

18753 North Frederick Avenue, Suite 210 • Gaithersburg, Maryland 20879
240-777-8500 • MD Relay 1-800-735-2258 • FAX 240-777-8505
elections@montgomerycountymd.gov • www.777vote.org

Credit Card and Fee Increase Proposal

July 7, 2017

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- The Department of Finance recommends that payments only be accepted by credit card for amounts more than \$5.

The last time fees were increased was July 27, 2009, when the fee for the voter registration file was increased to \$78. No other fees were increased at that time.

Currently, absentee labels (data) are provided free of charge, via e-mail, to candidates requesting them. They are provided twice a week for approximately 8 weeks and take two hours of staff time to prepare and e-mail. The State Board of Elections provides absentee data to a candidate for a one-time cost of \$75 for one jurisdiction or \$125 for the entire state. This data is uploaded to a secure FTP site and is updated daily.

Analysis: Actual revenue for the four election cycles provides additional data on approximate cost to the BOE for accepting credit card payments:

- Gubernatorial Primary Election - \$9,600 would cost approximately \$420
- Gubernatorial General Election - \$6,523 would cost approximately \$343
- Presidential Primary Election - \$2,364 would cost approximately \$239
- Presidential General Election - \$1,639 would cost approximately \$221

While the BOE can absorb the cost of the swiping machine in its current budget allocation, its limited budget cannot absorb the monthly exchange and service fees. Staff then looked to the possibility of increasing fees for some products, and adding a fee for the preparation of absentee labels (data), to enable customers to pay with a credit card.

Staff time to create absentee labels costs \$94.26 each time the labels are prepared, for an overall cost of \$1,508.16. With an average of six candidates requesting the labels, that is a per candidate cost of \$251.36. As mentioned above, The State Board of Elections provides absentee data to a candidate for a one-time cost of \$75 for one jurisdiction or \$125 for the entire state. This data is uploaded to a secure FTP site and is updated daily. The BOE provides the data twice weekly for a period of up to eight weeks.

Recommendation: After reviewing the data provided above, staff is recommending the following actions:

1. Beginning in August 2017, the BOE will accept credit card payments for all products with a cost of \$5 or greater.

2. Beginning with the 2018 Gubernatorial Primary Election, the BOE will provide absentee labels at a cost of \$50 to any candidate requesting them. This is a one-time cost, per election, and must be paid in advance with a credit card. The labels will continue to be sent electronically to the candidate twice weekly with no additional charge. The cost will not be pro-rated.
3. Beginning August 1, 2017, the BOE will increase certain publication fees five percent to recover most the costs associated with credit card payments.

ITEM	CURRENT COST	NEW COST
Voter Registration CD	78	82
Embossed VR Card	1	1
Duplicate VR Card	1	1
Maps		
Small	0.25	.25
All Precinct in Binder	40	40
Postage for Binder	5.95	6.5
Medium	0.5	.5
Large	20	25
Campaign Fund Report (per pg.)	0.25	0.25
Absentee Labels	0	50

Thank you for your consideration of this proposal.



**Judicial
Watch**
*Because no one
is above the law!*

RECEIVED
SUPERVISOR OF ELECTIONS

17 JUL -6 A10:37

MONTGOMERY COUNTY, MD

June 30, 2017

VIA USPS CERTIFIED MAIL AND EMAIL

The Honorable David J. McManus, Jr.
Chairman, Maryland State Board of Elections
151 West St., Suite 200
Annapolis, Maryland 21401

Re: Violations of Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507

Dear Chairman McManus:

I write as legal counsel for Hong Jeremiah Chen, Vincent Ionata, Michael Keeney, Dorothy McIntire, and David Makovoz, in their individual capacity as registered Montgomery County voters, to bring your attention to violations of Section 8 of the National Voter Registration Act ("NVRA") in Montgomery County, Maryland. From public records obtained, Montgomery County has more total registered voters than adult citizens over the age of 18 as calculated by the U.S. Census Bureau's 2011-2015 American Community Survey. This is strong circumstantial evidence that Montgomery County is not conducting reasonable voter registration record maintenance as mandated under the NVRA.

NVRA Section 8 requires states to do reasonable list maintenance so as to maintain accurate lists of eligible voters for use in conducting federal elections.¹ As you may know, Congress enacted Section 8 of the NVRA to protect the integrity of the electoral process. Allowing the names of ineligible voters to remain on the voting rolls harms the integrity of the electoral process and undermines voter confidence in the legitimacy of elections. As the U.S. Supreme Court has stated, "[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process."²

This letter serves as statutory notice that Hong Jeremiah Chen, Vincent Ionata, Michael Keeney, Dorothy McIntire, and David Makovoz, in their individual capacity as registered Montgomery County voters, will bring a lawsuit against you and, if appropriate, against Montgomery County, if you do not take specific actions to correct these violations of Section 8

¹ In Maryland, responsibility to coordinate statewide NVRA Section 8 compliance lies with the State Board of Elections. See Md. Elec. Law Code Ann. §§ 2-101, 2-102; 52 U.S.C. § 20509.

² *Crawford et al. v. Marion County Election Board*, 553 US 181, 197 (2008).

within 90 days.³ In addition, by this letter we are asking you and, to the extent that it keeps records separately, Montgomery County, to produce certain records to us which you are required to make available under Section 8(i) of the NVRA.⁴ We hope that litigation will not be necessary to enforce either of these claims.

As the top election official in Maryland, it is your responsibility under federal law to coordinate Maryland's statewide effort to conduct a program that reasonably ensures the lists of eligible voters are accurate. The following information explains how we determined that your state and Montgomery County are in violation of NVRA Section 8 and the remedial steps that must be taken to comply with the law.

1. Montgomery County Has More Total Registered Voters Than Citizen Voting Age Population.

Based on our review of 2014 Election Assistance Commission (EAC) data, the 2011-2015 U.S. Census Bureau's American Community Survey, and the November 2014 and 2016 active and inactive voter registration records, Montgomery County is failing to comply with the voter registration list maintenance requirements of Section 8 of the NVRA. For example, a comparison of the five-year American Community Survey conducted by the U.S. Census Bureau and 2014 EAC data shows that total registered voters were 102% of adult citizens over the age of 18 living in Montgomery County in 2014.

This situation in Montgomery County has, if anything, gotten worse since the publication of that report. A comparison of the November 2016 total voter registration records for Montgomery County obtained from your website with the 2011-2015 U.S. Census Bureau's American Community Survey data shows that there are now more total registered voters than adult citizens over the age of 18 in Montgomery County (registration rate 103%).

This failure to maintain accurate, up-to-date voter registration lists has created the risk that the 2018 federal elections will lack the integrity required by federal law and by the expectations of Maryland citizens, and will therefore undermine public confidence in the electoral process.

2. The NVRA Requires You to Undertake Reasonable Efforts to Maintain Accurate Lists of Eligible Registered Voters

Under Section 8 of the NVRA, Maryland and Montgomery County are required to undertake a uniform, nondiscriminatory voter registration list maintenance program that complies with the Voting Rights Act of 1965.⁵ Specifically, Section 8 requires states to make a

³ Judicial Watch, Inc. gave its statutory notice on April 11, 2017. Nothing in this current letter is intended to withdraw that notice, and Judicial Watch, Inc. reserves the right to sue as the named plaintiff in any future lawsuit.

⁴ 52 U.S.C. § 20507(i).

⁵ 52 U.S.C. § 20507(b)(1).

reasonable effort to remove the names of ineligible voters from the official lists of eligible voters due to (A) “the death of the registrant” or (B) “a change in the residence of the registrant” to a place outside the jurisdiction in which he or she is registered.⁶ Section 8 also requires states to ensure noncitizens are not registered to vote.⁷

The list maintenance obligations of Section 8 of the NVRA were elaborated upon by the Help America Vote Act (“HAVA”), which requires states to “ensure that voter registration records in the State are accurate and updated regularly” and undertake a “system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁸ HAVA also requires each state to coordinate its computerized statewide voter registration list with state agency death records.⁹ Finally, HAVA requires all states to remove convicted felons from the voter rolls if felons cannot vote under state law.¹⁰

As the chief state election official for Maryland, you are required to lead and direct voter list maintenance efforts in your state, and you must conduct an active oversight program to monitor local county election officials’ list maintenance activities.¹¹ If your oversight reveals that counties have failed to adequately execute list maintenance tasks, you must either change the state’s program to ensure county compliance, or assume direct responsibility over the failing counties’ list maintenance tasks.¹²

3. Failure to Comply with NVRA Subjects You to Lawsuits and Financial Costs

In passing the NVRA, Congress authorized a private right of action to enforce the provisions of the NVRA, including Section 8. Accordingly, private persons may bring a lawsuit under the NVRA if the violations identified herein are not corrected within 90 days of receipt of this letter.¹³ You are receiving this letter because you are the designated chief state election official under the NVRA.

Congress also authorized awards of attorney’s fees, including litigation expenses and costs, to the prevailing party.¹⁴ Consequently, if a lawsuit is initiated under the NVRA and the

⁶ 52 U.S.C. § 20507(a)(4).

⁷ *U.S. v. Florida*, 870 F. Supp. 2d 1346, 1351 (N.D. Fla. 2012) (“For noncitizens, the state’s duty is to maintain an accurate voting list . . . A state can and should . . . block[] a noncitizen from registering in the first place”).

⁸ 52 U.S.C. §§ 21083(a)(4) and 21083(a)(4)(A).

⁹ 52 U.S.C. § 21083(a)(2)(A)(ii)(II).

¹⁰ 52 U.S.C. § 21083(a)(2)(A)(ii) and (ii)(I).

¹¹ *U.S. v. Missouri*, 535 F.3d 844, 850-851 (8th Cir. 2008).

¹² *U.S. v. Missouri*, 535 F.3d 844, 851 (8th Cir. 2008).

¹³ 52 U.S.C. § 20510(b)(2).

¹⁴ 52 U.S.C. § 20510(c).

court finds you in violation, you will be responsible for paying our attorneys' fees, costs, and litigation expenses.

4. Avoiding Litigation

We hope you will promptly initiate efforts to comply with Section 8 so that no lawsuit will be necessary. We ask you and Montgomery County to please respond to this letter in writing no later than 45 days from today informing us of the compliance steps you are taking. Specifically, we ask you to: (1) conduct or implement a systematic, uniform, nondiscriminatory program to remove from the list of eligible voters the names of persons who have become ineligible to vote by reason of a change in residence; and (2) conduct or implement additional routine measures to remove from the list of eligible voters the names of persons who have become ineligible to vote by reason of death, change in residence, or a disqualifying criminal conviction, and to remove noncitizens who have registered to vote unlawfully.

When responding, please identify all the steps you are taking or plan to take in detail, and advise us of the results of those efforts or the target implementation date for each activity or program you will be undertaking. If you plan to begin taking new steps in 2017 to comply with your obligations, please outline them to us in your response, providing specific dates for completion of each activity. In order to avoid litigation, we may seek certain reasonable assurances that Maryland and Montgomery County will affirmatively undertake the steps outlined, up to and including the execution of a settlement agreement. You may wish to consult Judicial Watch's recent settlement agreement with the State of Ohio for examples of certain activities which tend to show compliance with NVRA Section 8.¹⁵ You should also evaluate whether your office is communicating and coordinating effectively for list maintenance purposes with the various federal, state, and local entities listed immediately below in Section 5 of this letter.

5. Production of Records

Finally, pursuant to your obligations under the NVRA,¹⁶ your office, and, to the extent that it keeps records separately from your office, Montgomery County, should make available to us all pertinent records concerning "the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency" of Maryland's official eligible voter lists during the past 2 years. Please include these records with your response to this letter. These records should include, but are not limited to:

1. Copies of the most recent voter registration database from Montgomery County, Maryland, including fields indicating name, date of birth, home address, most recent voter activity, and active or inactive status.

¹⁵ A copy of the Settlement Agreement between Judicial Watch and Ohio is available at <http://www.judicialwatch.org/wp-content/uploads/2014/01/01-14-Ohio-Voter-Rolls-Settlement.pdf>.

¹⁶ 52 U.S.C. § 20507(i).

2. Copies of all email or other communications internal to the office of the Maryland State Board of Elections, including any of its divisions, bureaus, offices, third party agents, or contractors, (hereinafter, collectively "State Board of Elections") relating to the maintenance of accurate and current voter rolls.
3. Copies of all email or other communications between the State Board of Elections and all Maryland County Voter Registration Officials concerning:
 - a. Instructions to the counties concerning their general list maintenance practices and obligations;
 - b. Instructions to the counties for the removal of specific noncitizens and deceased, relocated, or convicted persons identified by the State Board of Elections; and
 - c. Notices to the counties concerning any failure to comply with their voter list maintenance obligations under Maryland's program.
4. Copies of all email or other communications between the State Board of Elections and the Maryland State Department of Health, the Maryland State Department of Corrections, the Maryland Motor Vehicle Administration, and the Maryland State Judiciary concerning obtaining information about deceased, relocated, convicted, or noncitizen registered voters for the purpose of updating Maryland's voter registration lists.
5. Copies of all email or other communications between the State Board of Elections and the U.S. Attorney(s) for Maryland, the U.S. District Court for Maryland, the U.S. Social Security Administration, the U.S. Postal Service, the U.S. Citizenship and Immigration Services, and the U.S. Department of Homeland Security concerning the National Change of Address database, the Systematic Alien Verification for Entitlements database, or any other means of obtaining information about deceased, relocated, convicted, or noncitizen registered voters for the purpose of updating Maryland's voter registration lists.
6. Copies of all email or other communications between the State Board of Elections and the Interstate Voter Registration Cross-Check Program, the Electronic Registration Information Center, the National Association for Public Health Statistics and Information Systems, and any other U.S. State concerning information about deceased or relocated registered voters for the purpose of updating Maryland's voter registration lists.

If these records are not produced within 45 days, or if you fail to otherwise advise us that you are making them available to us at specified times and locations, you will be deemed to be in violation of the NVRA and subject to litigation.

* * * * *

Honorable David J. McManus, Jr.
June 30, 2017
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I hope that the concerns identified in this letter can be resolved amicably. However, if we believe you do not intend to correct the above-identified problems, a federal lawsuit seeking declaratory and injunctive relief against you may be necessary. We look forward to receiving your prompt response.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper

Robert D. Popper
Attorney, Judicial Watch, Inc.

By: U.S. Postal Service Certified Mail and Email

cc: Robert D. Popper, Esq., Judicial Watch; Hon. Patrick J. Hogan, Maryland State Board of Elections Vice Chair; Hon. Michael R. Cogan, Maryland State Board of Elections Member; Hon. Kelley A. Howells, Maryland State Board of Elections Member; Hon. Gloria Lawlah, Maryland State Board of Elections Member; Hon. Linda H. Lamone, Maryland State Board of Elections State Administrator; Hon. Nikki Charlson, Maryland State Board of Elections Deputy State Administrator; Hon. James Shalleck, Montgomery County Board of Elections President; Hon. Nahid Khozeimeh, Montgomery County Board of Elections Vice-President; Hon. Mary Ann Keefe, Montgomery County Board of Elections Secretary; Hon. Alexander Vincent, Montgomery County Board of Elections Member; Hon. David Naimon, Montgomery County Board of Elections Member



Presidential Advisory Commission on Election Integrity

June 28, 2017

The Honorable John Wobensmith
Secretary of State
16 Francis Street
Annapolis, MD 21401

Dear Secretary Wobensmith,

I serve as the Vice Chair for the Presidential Advisory Commission on Election Integrity (“Commission”), which was formed pursuant to Executive Order 13799 of May 11, 2017. The Commission is charged with studying the registration and voting processes used in federal elections and submitting a report to the President of the United States that identifies laws, rules, policies, activities, strategies, and practices that enhance or undermine the American people’s confidence in the integrity of federal elections processes.

As the Commission begins its work, I invite you to contribute your views and recommendations throughout this process. In particular:

1. What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?
2. How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?
3. What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?
4. What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?
5. What convictions for election-related crimes have occurred in your state since the November 2000 federal election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

In addition, in order for the Commission to fully analyze vulnerabilities and issues related to voter registration and voting, I am requesting that you provide to the Commission the publicly-available voter roll data for Maryland, including, if publicly available under the laws of your state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social

security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

You may submit your responses electronically to ElectionIntegrityStaff@ovp.eop.gov or by utilizing the Safe Access File Exchange ("SAFE"), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.amrdec.army.mil/safe/Welcome.aspx>. We would appreciate a response by July 14, 2017. Please be aware that any documents that are submitted to the full Commission will also be made available to the public. If you have any questions, please contact Commission staff at the same email address.

On behalf of my fellow commissioners, I also want to acknowledge your important leadership role in administering the elections within your state and the importance of state-level authority in our federalist system. It is crucial for the Commission to consider your input as it collects data and identifies areas of opportunity to increase the integrity of our election systems.

I look forward to hearing from you and working with you in the months ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Kobach". The signature is written in a cursive, flowing style.

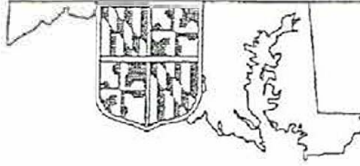
Kris W. Kobach
Vice Chair
Presidential Advisory Commission on Election Integrity

MARYLAND

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July 3, 2017

Via Electronic Mail Only

Mr. Kris W. Kobach, Vice Chair
Presidential Advisory Commission on Election Integrity

Dear Mr. Kobach:

I am the State Administrator of elections for the State of Maryland, and, in that capacity, I oversee access to Maryland voter registration information. The Secretary of State has referred to me your June 28, 2017, letter requesting certain voter registration information.

Your request is prohibited under § 3-506 of the Election Law Article of the Maryland Annotated Code, which governs access to Maryland voter registration lists. In addition, disclosure of some of the information encompassed by your request may be prohibited under State and/or federal law. Accordingly, I am denying your request.

Sincerely,

A handwritten signature in black ink that reads "Linda H. Lamone". The signature is written in a cursive style.

Linda H. Lamone

Polling Places Changes 2018 Preliminary Working Draft

D/P	Polling Place - 2018	Voters as of 5/31/17	In Precinct	Type Facility	Perm/Temp	Reason for Change	2016 Polling Place	CD	LD	CCD	Miles Between Facilities
02-06	Hallie Wells MS	4,344	Yes	MCPS	Perm	In Precinct	Clarksburg HS	6	39	2	1.8
02-08	Clarksburg HS	3,464	Yes	MCPS	Perm	Better: Facility, Access, Parking	Clarksburg ES	6	15	2	1.5
04-01	Rockville HS	3,906	Yes	MCPS	Temp	Construction	Maryvale ES	8	17	3	2.4
04-17	Kennedy Shriver Aquatic Center	2,829	Yes	MCRD	Temp	Construction	Luxmanor ES	8	16	1	0.7
04-27/04-38	Twinbrook Recreation Center	636	04-07	City of Rock	Perm	Ballot Style	Meadow Hall ES	8	18	3	1
04-34	Redland MS	1,852	08-04	MCPS	Perm	Use of Public Facility	Shady Grove Presbyterian Church	6	19	3	1.6
05-05	Burnt Mills ES	2,697	Yes	MCPS	Perm	Ballot Style	Springbrook HS	8	20	5	2.3
05-15	Private Pending (St. Andrew Orthodox Church)	3,548	05-16	MCRD	Temp	Construction	Cloverly ES	3	14	5	0.6
05-18	Paint Branch HS	1,781	05-19	MCPS	Temp	Construction	Burtonsville ES	3	14	5	2
06-01	Our Lady of the Visitation Parish	2,247	06-09	Religious	Temp	Construction	Jones Lane ES	6	15	2	2.5
06-08	Nancy H. Dacek Community Rec Center	2,033	06-06	MCRD	Temp	Construction	Stone Mill ES	6	15	3	1.3
07-01/07-08	Pending	4,882	Pending	Pending	Temp	Construction/Limited Parking	B-CC HS	8	18/16	1	
07-15	Burning Tree ES	3,640	Yes	MCPS	Temp	Construction	Thomas W. Pyle MS	8	15	1	1.1
07-19	Wyngate ES	4,193	Yes	MCPS	Temp	Construction	North Bethesda MS	8	16	1	0.9
07-20	Davis Library	2,396	Yes	MCPL	Temp	Construction	Ashburton ES	8	15	1	0.5
08-10	Wm. H. Farquhar MS	2,046	08-05	MCPS	Temp	Construction	Olney Swim Center	3	14	4	2.9
09-03	Brown Station ES	2,303	Yes	MCPS	Perm	Return After Renovations	Thurgood Marshall ES	6	17	3	2.9
09-09	Private Pending (Covenant Methodist Church)	4,133	01-03	Religious	Temp	Construction	Whelstone ES	6	39	2	1.9
10-02	Private Pending (Potomac Presbyterian Church)	2,863	10-01	Religious	Temp	Construction	Potomac ES	8	15	1	0
10-06	Wayside ES	2,485	Yes	MCPS	Perm	Return After Renovations	Herbert Hoover MS	6	15	1	3.3
12-04/02-09	Cedar Grove ES	3,071	Yes/12-04	MCPS	Temp	Construction	Lois P. Rockwell ES	6	14	2	1.8
13-21	Pending	3,765	Pending	Pending	Temp	Construction	Takoma Park MS	8	20	5	
13-38	Silver Creek MS	4,371	13-03	MCPS	Temp	Construction	Kensington-Parkwood ES	8	18	1	1.4
13-43/13-70	Wheaton Woods ES	2,383	Yes/13-43	MCPS	Perm	Return After Renovations	Aspen Hill Library	8	19	4/3	0.9
13-46	Bauer Drive Community Rec Center	2,226	13-52	MCRD	Temp	Construction	Lucy V. Barnsley ES	6	19	3	0.9
13-50	Pending	2,181	Pending	Pending	Temp	Construction	Sligo Creek ES	8	20	5	
13-67	Don Bosco Cristo Rey HS	1,700	Yes	Religious	Perm	Split Precincts to Original Configuration	Takoma Park Recreation Center	8	20	5	0.5
Total		77,975									
	Permanent Change - Return to original site										
	Temporary Change										
	Proposed Precinct Merger										
	Permanent Prec. Realignment/Split										
	New Site										
	New Precinct/Proposed Split										