

INTRODUCTION TO ELECTION WORK GROUP REPORT

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The right to vote is the essence and foundation of the constitutional framework of our federal and state governments in the United States. The American Revolution was sparked by the desire for self-determination to choose governmental leaders and to retain control over the form and substance of government. The paramount nature of the right to self-determination was clearly manifested in the 1776 Annapolis deliberations preceding the adoption of our first state governing documents—*The Maryland Declaration of Rights* and the *Constitution of the State of Maryland*.

The first article of the Maryland Declaration of Rights expressly provides “*that all Government of right originates from the People,*” recognizing the fundamental right of citizens to participate fully in their government. The right of suffrage (voting) is set forth in Article I of the Constitution of Maryland, placed significantly ahead of the articles outlining the branches and levels of government and their respective duties and responsibilities. The recognition of the sanctity and power of the right to vote requires that its exercise not be diminished or impaired.

In Maryland, the election reforms that have been adopted and implemented over the past few decades have been successful in providing increased access to citizens for registering to vote and voting. Improvements in voting systems and election procedures have captured voter intent more accurately and completely. State and local election administrators, boards, directors, officials and staff deserve a tremendous amount of credit and hearty congratulations for their outstanding efforts in assuring that our state consistently ranks among the best in the nation in the administration of elections and, most importantly, in accurately capturing the intent of the Maryland electorate. It should be noted that there is **no** evidence of the intentional or unintentional loss of votes in the conduct of Maryland’s elections during the 2002, 2004 and 2006 election cycles using the current direct recording electronic voting system.

For a presidential general election, in 2004, more Marylanders were registered to vote than ever before; more Marylanders went to the polls and cast ballots than ever before; more votes were cast for the Office of President, United States Senate and United States Congress representatives than ever before; and, **most importantly, a higher percentage of those who went to the polls had a vote recorded for President than in any election in**

Maryland history!¹ For a gubernatorial election, again in 2006, more Marylanders were registered to vote than ever before; more Marylanders went to the polls and cast ballots than ever before; more votes were cast for the Office of Governor, United States Senate and United States Congress representatives than ever before; and, **most importantly, a higher percentage of those who went to the polls had a vote recorded for Governor than in any election in Maryland history!**²

Can and should there be improvements made in the voting systems and election procedures utilized in Maryland? **Yes, and of course!** Have there been implementation problems as local and state officials endeavored to perform under stressful work conditions often beyond their direct control? **Yes, and mistakes can be reduced!** Should the legitimate concerns about the security, integrity and accuracy of elections be addressed? **Yes, and solutions should be sought!** Election officials, candidates and citizens should insist that voting systems and election procedures permit the maximum participation of citizens and provide for accuracy in the recording, aggregating and tabulating of the intent of our citizen-voters and should always be vigilant in guarding against any effort to corrupt the election process. As the Report of the Special Committee on Voting Systems and Election Procedures in Maryland observed in 2001, *“There needs to be adequate testing of voting systems before, during and after an election.”*

As the new Administration embarks on its constructive course of governance to address the issues related to the administration of elections presented in this Report, it will be important to carefully define the problems, select appropriate evaluative criteria and thoroughly assess the alternatives before deciding on a course of public policy in the best interests of Maryland and its citizens. It is also reasonable and prudent for Maryland to pursue the best technology to capture voter intent fully, accurately and securely. There will no doubt be future improvements in voting system technology. Controlled testing of new products that improve voter interface and usability should be done; and, administrative practices that enhance management, operational and technical security should be employed.

In a speech to the delegates of the Constitutional Convention in 1787 urging an end to divisiveness and in support of the proposed new federal governing document, Ben Franklin keenly observed:

Much of the strength and efficiency of any government, in

¹ See Appendix 1, *Table of Residual Votes in Presidential Elections*, prepared by John T. Willis for a work in progress, **Maryland Election History** (copy. 2/12/07).

² See Appendix 2, *Table of Residual Votes in Gubernatorial Elections*, prepared by John T. Willis for a work in progress, **Maryland Election History** (copy. 2/12/07).

*procuring and securing happiness to the people, depends on **opinion**, on the general opinion of the goodness of that government, as well as of the wisdom and integrity of its governors.*

Franklin's observations ring true today. The citizens' perception and opinion of their government and political leaders is based, in large part, on their level of trust in fair, open and accurate elections. Improvements in voting systems and election procedures are therefore a crucial component in promoting the essential relationship in our democratic form of government between actively engaged citizens and the fair, responsive government cherished by our nation's founders.

In order to manifest the wisdom and integrity urged by Ben Franklin, careful, deliberative and thoughtful public policy needs to be developed combined with strong, cooperative federal, state and local government partnerships for the successful implementation of the administration of elections. It is the intent of the Transition Election Work Group to contribute to this public policy process with the accompanying Report and help enhance the "general opinion" of our state citizens with regard to the administration of elections in Maryland.

O'MALLEY BROWN TRANSITION

ELECTIONS WORK GROUP REPORT

The administration of elections is a large, complex enterprise that extends well before and beyond any given Election Day. It requires careful and prudent planning. In preparation for each Election Day, it requires cooperation and hard work by nearly 300 employees working for the State Board of Elections and the 24 local boards of elections to meet firm deadlines imposed by federal and state law. It requires the assistance of over 20,000 citizens who serve as election judges to administer the election at the 1,785 precincts located in 1,591 polling places throughout the state on each Election Day.

The voter registration and election laws of Maryland are codified in the “*Election Law Article*” of the Annotated Code of Maryland containing nearly 350 pages of general and specific provisions. The Code of Maryland Regulations (COMAR) applicable to the administration of elections consists of another 375 pages of rules and regulations that have been adopted by the State Board of Elections (hereinafter sometimes cited as “SBE”). There are also numerous directives, guidelines, instructional letters and memoranda, as well as local customs and traditions, which form the basis for the conduct of elections in Maryland.

In addition to the very detailed state election laws, rules and regulations, the administration of elections is governed and impacted by several important federal laws including the 1965 Voting Rights Act, the 1984 Voting Accessibility for the Elderly and Handicapped Act, the 1986 Uniform and Overseas Citizens Absentee Voting Act, the 1990 Americans with Disabilities Act (ADA), the 1993 National Voter Registration Act (“NVRA”), the 2002 Help America Vote Act (“HAVA”) and the 2006 Voting Rights Act Reauthorization and Amendments Act. Federal legislation affecting the administration of elections has increased significantly over the past several decades and will likely continue to affect and change the administration of elections at the state and local levels of government. In addition, the United States Election Assistance Commission, created by HAVA in 2002, is charged with producing voluntary voting system guidelines and developing a national program for the testing and certification of voting systems that impact decisions made by the State Board of Elections.

I. GOVERNANCE STRUCTURE AND ELECTION MANAGEMENT

A. Governance Structure and Reporting

The administration of elections in Maryland, like the vast majority of states in our nation, is a shared state and county (including Baltimore City) responsibility.³ This bifurcated structure inherently creates challenges and presents obstacles for the efficient administration of elections. There is not a unified table of organization and administration with clear lines of authority. Differences, and significant disparities, exist among the local jurisdictions in the fiscal, physical and technology resources available to implement election laws, rules and regulations and to employ *best practices* in the administration of elections.

Until 1969, there was no state entity with any responsibility for the conduct of elections. The State Administrative Board of Election Laws (SABEL) was created to exercise supervision over the conduct of voter registration and elections; to review, approve, certify or decertify voting systems and to be a depository for election records.⁴ Pursuant to the recommendations of the Commission to Revise the Election Code, SABEL was replaced in 1998 with the current governance structure.⁵ A five-member State Board of Elections (SBE) is charged with managing and supervising elections in the State and ensuring compliance with state and federal election laws. The State Board appoints a State Administrator. As the State's chief election official, the State Administrator is charged with oversight of the State Board functions as well as with supervising the operations of the local boards. Each county of the State (and Baltimore City) has a local board of elections, appointed by the Governor and confirmed by the State Senate, which is subject to the direction and authority of the State Board. Each local board of elections appoints an election director who in turn appoints the employees for that jurisdiction's operations and supervises the local staff.

Although the State Board of Elections received increased responsibility from the General Assembly in 1998 for election administration and supervisory authority over State elections, there are limits on the extent of SBE authority over the local boards of elections. The State Board has no control over the appointment or removal of local board members or local election directors. The State Board has no control over the resources and

³ Maryland's 156 incorporated municipalities administer elections in accordance with their respective municipal charters and consistent with general applicable federal and state laws.

⁴ Chapter 555, Laws of 1969.

⁵ See Title 2, *Election Law Article*, Annotated Code of Maryland, and *Report of the Commission to Revise the Election Code* (December 1997).

expenditures of local boards. The State Administrator has no direct supervisory authority over the local election directors or local budgets and expenditures. County governments continue to bear the primary responsibility for the conduct and cost of elections. Section 2-203 of the *Election Law Article* requires each county and Baltimore City to “*appropriate the funds essential for the operations of its local board.*” Since 2002, the cost of acquiring and operating a statewide voting system has been shared equally between the State and the counties.⁶ This statutory governance and funding scheme for the administration of elections, rooted in historical origins, limits the ability of the State Board of Elections and State Administrator of Elections to meet their general statutory obligations and public expectations.

Confronted with a fragmented structure for administering the election laws of Maryland, mutual cooperation and coordination between election officials and staff working for the State Board and local boards is essential for the efficient and effective delivery of this critical public service. Limitations on the resources and time of the relatively small staff at the State Board of Elections has, on occasion, left it with the inability to perform all of its assigned functions, including the requirement that the State “*direct, support, monitor, and evaluate the activities of each local board.*”⁷ For example, the Office of Legislative Audits has found that the State Board of Elections did not assess the local boards’ compliance with election laws and regulations. Similar resource and time limitations on the staff of the local boards of elections hinders the performance and completion of administrative duties and responsibilities. Both state and local election officials expressed a compelling need to the Work Group for increased technology support and assistance. Local election officials also noted that existing personnel rules often hamper their ability to attract and retain qualified staff.⁸ The increasing complexity of administering elections has placed unique burdens on state and local election officials, especially during gubernatorial election cycles. Several local election officials and others have recommended the administration of elections would be improved by providing more time between the gubernatorial primary and general elections.

1. **Recommendation:** The Administration should initiate a review of the structure for the administration of elections in Maryland

⁶ This requirement was in an uncodified section of HB 1457 (Chapter 564, Laws of 2001).

⁷ See Election Law Article, §2-102(b)(2); see also “*Audit Report: State Board of Elections,*” Department of Legislative Services, October 2006, page 13.

⁸ Personnel issues are particularly acute in smaller jurisdictions where personnel classifications and pay scales are currently limited by rules related to the number of locally registered voters, not function.

examining the relationship between the State Board of Elections and local boards of elections.

2. **Recommendation:** The Administration should initiate a review of the fiscal resources available to the State Board of Elections and the local boards of elections. To assist in this review, local boards of elections should make annual fiscal year reports, in a uniform format, on the costs of administering elections in their respective jurisdictions.
3. **Recommendation:** The Administration should provide sufficient resources to the State Board of Elections and the State Administrator of Elections for evaluating the compliance of the local boards of elections with State law, rules, regulations, and procedures. Alternatively, the Office of Legislative Audits should be asked to evaluate the compliance of the local boards with State law, rules, regulations and procedures. For those local boards that are found not to be in compliance with State law and procedures, the State Administrator of Elections should have direct supervisory authority over the offending local board of elections' offices.
4. **Recommendation:** The Administration should provide the State Board of Elections and the State Administrator of Elections and the local boards of elections and local election directors with additional support in areas such as procurement and information technology (e.g. system auditing and testing, voter registration database, website development and maintenance).
5. **Recommendation:** The Administration should initiate a study to consider moving the gubernatorial primary election from September to an earlier date in the calendar year to facilitate the orderly administration of elections.

B. Reporting Requirements

Federal and state election laws define many areas of reporting requirements by the local boards of elections to the State Board. Examples include: creation of new precincts, security authorizations, election canvass reporting, candidacy filings, cost reporting, voter registration, voter turnout, residual votes and absentee ballot processing. Accurate and timely reporting by the local boards of elections is necessary for the State Administrator to meet federal reporting responsibilities to the U.S. Election Assistance Commission on NVRA and HAVA compliance, funding usage and the Federal Voter Assistance Program. Unfortunately, the collection, compiling and

reporting of relevant data and information by the local boards of election has not been uniform and timely in past election cycles.

6. **Recommendation:** The Administration should assist the State Board of Elections and the local boards of elections to insure the uniform and timely reporting of relevant data, information and required reports.

C. Training for Election Officials

Under current law, the State Board of Elections is required to conduct a statewide biennial preelection meeting in the year before a primary and general election.⁹ Attendance at this meeting is required for all members of the local boards of elections, election directors, local counsel and others designated by the State Board or a local board. Other than this requirement, there are no regularly scheduled training programs for Maryland election officials although the State Administrator conducts monthly meetings with local election directors.

Various national organizations offer election-related training programs on a range of election administration topics. At the twice annual meetings of the National Association of Secretaries of State and the National Association of Election Directors, programs are presented featuring important topics on the administration of elections. The National Association of County Recorders, Election Officials and Clerks (a related entity to the National Association of Counties) also sponsors programs related to the administration of elections as well as publishes a quarterly newsletter. The 2002 Help America Vote Act established two advisory boards to assist the U.S. Election Assistance Commission—the EAC Standards Board and the EAC Board of Advisors. The Maryland State Election Administrator, the SBE Election Reform Director and one Maryland local election official serve on these important national advisory bodies. Some Maryland election officials have attended training programs run by The Election Center and the National Association of Election Officials. Over 21 current and former election officials from ten counties have completed the requirements for being designated a “Certified Elections/Registration Administrator” by these organizations. Although these national organizations and training programs are valuable, a limited number of election officials in Maryland are able to participate because the meetings, programs and training sessions are costly--requiring membership, travel, lodging and course fees.

Other states have established their own election administration training programs. For example, the State of Washington has had a

⁹ Section 2-104, *Election Law Article*, Ann. Code of Md.

[Certification and Training Program](#) since 1992 and requires each county to have at least two “Certified Election Administrators.” The Georgia Office of Secretary of State and Kennesaw State University formed a cooperative venture, [The Center for Election Systems](#), to provide training sessions throughout the year for county election officials on topics related to the administration of elections. A similar approach to training in Maryland would support the implementation of uniform practices and procedures in the administration of elections. Election directors and key staff could be offered a standard curriculum covering the full range of election administration duties and responsibilities under Maryland law. Introductory courses could be given for all new election administration employees to provide a basic understanding of election law and procedures. New classes could be developed when there are significant equipment or procedural changes. In addition, there is a need for general management training for local election directors and state and local key staff in areas including budget, personnel management and project management.

7. **Recommendation:** The Administration should support the development and implementation of election administration training programs for local election directors and state and local election board staff.
8. **Recommendation:** The Administration should provide resources and access for state and local election directors and staff to general management training such as the State’s “Managing for Results Training Program.”
9. **Recommendation:** With the exception of Baltimore City, local boards retain local counsel to advise them on election laws and procedure. Attorneys for all local boards of elections should be required to participate in a uniform training program provided by the State Board of Elections and the Office of Attorney General which should include at least one session no more than ninety days before an election.

II. VOTER REGISTRATION

The registration of qualified citizens is the foundation or essential building block of the administration of elections in Maryland. The statewide voter registration database contains millions of records.¹⁰ It is a database that is dynamic--it changes every month, every week, every day and every hour during the hours of operation of state and local agencies involved in the voter registration process. Management of this important, large database is a difficult task, particularly when the input is derived from multiple sources and applicable federal and state law places requirements on the verification of the applicant and application. The Elections Work Group recommends that the Administration seek to eliminate any administrative and structural barriers to voter registration; expand the ways in which citizens can register to vote; provide fiscal and technical support to the responsible state and local entities for the registration of voters; and, embark upon a concerted statewide education program to increase the percentage of registered voters in Maryland.

Although Maryland ranks high in many measurements of the administration of elections, Maryland ranks low—in the bottom ten— among the 50 states in the percentage of its voting age population registered to vote. The 2004 Election Day Survey conducted for the U.S. Election Assistance Commission ranked Maryland 43rd lowest in the percentage of voting age population that was registered to vote.¹¹ For the 2006 gubernatorial election, there were 3,142,551 registered voters in Maryland, representing 73.85% of the estimated 4,255,196 persons of voting age residing in Maryland. The number of Marylanders of voting age who are not registered has consistently exceeded 1,000,000 over the past two decades. In addition, there are substantial disparities in voter registration percentages that exist among the various jurisdictions, legislative districts, communities and neighborhoods. Voter registration of voting age population ranges from 56% to nearly 91% among the 23 counties and Baltimore City and from a low of 43% to nearly 92% among legislative districts. Variances are as large and even greater at the community, neighborhood and precinct levels that are impacted by a variety of demographic, economic, legal and social factors.

A. National Voter Registration Act of 1993

¹⁰ In 1999, the State Board of Elections began the process of creating a statewide voter registration database. At the time the 24 local jurisdictions were using twelve different types of systems for voter registration functions. The 2002 Help America Voter Act subsequently also required a statewide voter registration database. The State contracted with E S&S to develop the statewide database known as MDVoters which included all counties by December 2005.

¹¹ See *2004 Election Day Survey Report, Part @ Survey Results, "Voter Registration"* submitted to the U.S. Election Assistance Commission.

The National Voter Registration Act of 1993 (NVRA) provided a much needed set of national standards for records management in the administration of elections. NVRA requires, among other things, that states provide voter registration opportunities at government agencies that issue driver's licenses and provide social services. The act provided an outline for voter records management, but left room for the states to make decisions as to process and procedures. State and local election officials have worked together to establish uniform reporting practices and procedures. The goal of accurate, high quality records management should remain a top priority for state and local election boards, directors and staff.

Section 7 of the NVRA requires states to offer voter registration opportunities at all offices that provide public assistance, as well as offices that provide state-funded programs primarily engaged in providing services to persons with disabilities. Section 7's requirements reflect congressional concern with providing registration opportunities to "the poor and persons with disabilities who do not have driver's licenses and will not come into contact with [motor vehicle agencies]."¹²

In Maryland and other states, voting rights advocates have raised concerns with the failure to implement Section 7's requirements, resulting in the failure of low-income citizens who receive public assistance and persons with disabilities to receive voter registration opportunities. A lawsuit was brought against the State of Maryland in 1996 seeking remedies for violations of Section 7.¹³ In recent years, the implementation of programs and procedures to make voter registration available in agency offices covered by Section 7 has been uneven and inconsistent throughout the state.

10. **Recommendation:** The Administration should conduct a review of agency compliance with the requirements of Section 7 of the National Voter Registration Act and institute performance measurements for each applicable agency.

B. Voter Disenfranchisement

Persons Convicted of Crimes

¹² NVRA Conference Report (H.Rept. 103-66).

¹³ *National Coalition for Black Voter Participation, Inc., et.al. v. Glendening, et.al.*, Case No. L-96-2263.

Section 3, Article I of the *Constitution of Maryland* grants to the General Assembly the authority to limit or otherwise regulate the right to vote of persons convicted of infamous or other serious crime. In 2002, the onerous state disenfranchisement law was modified creating different categories of individuals eligible to register to vote. The consensus of the Work Group is that additional reform of Maryland law is needed not only because of the merits of expanding suffrage but also because the current law is complex, virtually impossible to administer and places Maryland well outside the mainstream of other states on this public policy issue involving fundamental rights. This recommendation is widely supported by election officials throughout the country and by recent prominent election reform commissions.¹⁴

Under Section 3-102 of the *Election Law Article*, a citizen who has been convicted for the first time of “*theft or other infamous crime*” will be denied the right to vote until the completion of the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines. A citizen who has been subsequently convicted of a second or subsequent “*theft or other infamous crime*” is only eligible to register to vote three years after the completion of the court-ordered sentence. A citizen who has been convicted of a second or subsequent crime of violence, as defined in Section 14-101 of the *Criminal Law Article*, is permanently barred from registering to vote and voting in Maryland. Persons convicted of buying or selling votes are permanently denied the elective franchise pursuant to Section 6 of Article I of the *Constitution of Maryland*.

One of the complexities of the Maryland law arises from the definition and meaning of “*infamous crimes*.” The Office of the Attorney General has issued opinions on the meaning of “infamous crimes” and maintains a list or index of such crimes. The July, 2006 list stretches 19 pages and includes over 300 statutory and common law offenses which are considered to be “infamous crimes” under state law. While this list is described as comprehensive, it is not exhaustive insofar as it does not include federal crimes, crimes committed in other states and only includes what the Attorney General considered “crimes that, by their very nature, are ‘infamous’ and

¹⁴ See “*Election 2004: Review and Recommendations by the Nation’s Election Administrators*,” National Task Force on Election Reform (created and sponsored by the National Association of Election Officials and The Election Center), May, 2005, Recommendation No. 12, page 5; “*Building Confidence in U.S. Elections*,” Report of the Commission on Federal Election Reform (co-chaired by President Jimmy Carter and former Secretary of State James A. Baker), September, 2005, Recommendation No. 4.6, pages 40-41, which can be accessed at www.american.edu/ia/cfer/ ; “To Assure Pride and Confidence in the Electoral Process,” The National Commission on Federal Election Reform (co-chairs included former President Jimmy Carter and former President Gerald R. Ford), August, 2001, pages 44-45, which can be accessed at www.reformelections.org .

excludes crimes that may or may not be ‘infamous’ depending on the particular facts.”¹⁵ Among the offenses which the Attorney General considered, by their very nature, to be “infamous crimes,” which could result in disenfranchisement under the Election Law, are numerous misdemeanor offenses under the *Criminal Law Article*, including writing a bad check under §500 (8-106); turning in a false alarm (9-503); fraud in securing welfare or other public benefits (8-503-504); falsely obtaining representation by the Public Defender (8-521); and false statements and misrepresentations regarding agricultural products (12-101). In addition to the complexity of definition, there are substantial issues related to individuals who may have had their right to vote restored in other states but who then move to, or return to, Maryland.

In contrast to Maryland’s generally progressive posture on a wide range of public policy issues, Maryland’s law on disenfranchisement ranks among the harshest in the nation.¹⁶ Maryland is one of only eleven states that impose a permanent registration ban on some or all ex-offenders. Only three states permanently disenfranchise all felony offenders, unless the government approves individual rights restoration. Eight states, including Maryland, permanently disenfranchise at least some felony offenders, unless the government approves individual rights restoration. Nineteen states provide for voting rights automatically after completion of sentence, including incarceration, parole and probation. Five states provide for eligibility of voting rights after release from prison and discharge from parole (probationers can vote). Thirteen states and the District of Columbia provide for eligibility of voting rights after release from incarceration. Two states (Maine and Vermont) do not disenfranchise their citizens as a result of a criminal conviction.

11. **Recommendation:** The Administration should support legislation that would permit individuals to be eligible to register to vote upon completion of a court ordered sentence (including parole and probation).

Persons under Mental Guardianship

¹⁵ See 67 Op. Atty. Gen. Md. 176.

¹⁶ See *Felony Disenfranchisement Laws in the United States*, The Sentencing Project, November, 2006 which can be accessed at www.sentencingproject.org (Attached hereto as Appendix 3); see also *Report of Task Force to Study Repealing the Disenfranchisement of Convicted Felons in Maryland*, December, 2001.

Under Article I, Section 4 of the Maryland Constitution, “[t]he General Assembly by law may regulate or prohibit the right to vote of a person . . . under care or guardianship for mental disability.” Section 3-102(b)(2) of the *Election Law Article* states that a person is not qualified to be a registered voter if the individual “is under guardianship for a mental disability.” Maryland law further provides that a person can be placed under guardianship in order to protect those who, because of illness or other disability, are unable to care for themselves.

A “disabled person” is an adult who has been judged by a court “to be unable to manage his property,” and therefore needs a guardian of the property, or “to be unable to provide for his daily needs sufficiently to protect his health or safety,” and therefore needs a guardian of the person.¹⁷ A person who is under guardianship for person or property in Maryland is automatically prohibited from voting without a court specifically finding that the person does not have the capacity to vote.

In 2001, a federal court struck down Maine’s prohibition on voting by anyone under guardianship by reason of mental illness. The court found that the Maine prohibition violated the Equal Protection Clause of the U.S. Constitution and Title II of the Americans with Disabilities Act. The court also held that failing to give people notice before a guardianship hearing that they might lose their right to vote violated their Due Process rights. See *Doe v. Rowe*, 156 F. Supp. 2d 35 (D. Me. 2001). Another case filed in Missouri also challenges the state election law but is currently on appeal after the district court upheld the law. See *Scaletty et al. v. Carnahan et al.*, Civ. No. 06-3014 (8th Cir.).

Since the Maine decision, several states have corrected their election law language that bars individuals with disabilities from voting. Delaware fairly recently removed its “idiots and insane” language as did Nevada. Washington also changed its guardianship standard so a person only loses the right to vote if there is a finding that he or she is not competent to understand the nature and effect of voting. Recent legislation proposed in New Jersey states “no person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage.”¹⁸

12. **Recommendation:** Maryland should modify its existing election law that broadly denies a specific group of individuals with disabilities the right to vote without a specific finding that they are not competent to vote.

¹⁷ Section 13-101(e) *Estates and Trusts Article*.

¹⁸ NJ Senate Bill 2476.

D. Election Day Registration

Election Day Registration (EDR), or “same day registration,” permits eligible citizens to register and vote on Election Day, and expands the opportunity for voter participation. EDR also helps overcome technical or administrative errors in the registration process that unnecessarily disenfranchise voters. Every election, a significant number of voters arrive at their polling places only to find that their names are not on the precinct voter registration list because of errors that occurred in the registration process or from improper removal during list management practices. Currently, these individuals would be able to cast a provisional ballot that may or not be accepted. An Election Day Registration process would reduce the number of people needing to cast provisional ballots and would permit persons not previously registered to participate in that election.

In the 2006 legislative session, the Maryland General Assembly passed HB 1338 directing the State Administrator of Elections and the Office of the Attorney General to “*review the efficacy of, and any legal impediments to*” Election Day Registration, including consulting with election officials in Maryland and other states, and to issue a report with findings and recommendations to the Governor and General Assembly by the end of 2006. The recently issued report concludes among other things that Election Day Registration could increase voter turnout from one to three percent and would likely reduce the number of provisional ballots. The Report also noted that implementation of Election Day Registration would require amendments to the Maryland Constitution, election law statutes and COMAR.

13. **Recommendation:** The Administration should support a constitutional amendment that would include the authority for the Maryland General Assembly to approve election day registration which would allow qualified individuals the right to vote in that election.

E. Processing Voter Registration Forms

The magnitude of the voter registration database and the variety of sources generating voter registration application are a major challenge in the administration of elections. Hundreds of thousands of applications and related forms are processed every year by state and local election officials. In 2006, there were 216,403 new voter registration application forms processed; another 21,694 duplicate forms received; 142,914 registrations removed; and, over 300,000 modifications made to individual voter records generated by changes of address, name or party affiliation. Problems persist with the

processing of voter registration applications that need attention and enhanced resources. Local election officials expressed the desire to be involved in improving the usability, functionality, and efficiency of the current voter registration system.

The single largest source of voter registration activity over the past decade has occurred at the offices of the state Motor Vehicle Administration (MVA). In calendar year 2005, nearly one-half (48.9%) of the new voter registration applications and forms were prepared and received at these offices. At MVA headquarters in Glen Burnie, employees of the State Board of Elections are responsible for receiving the application forms and sending them to the appropriate local board of elections for processing, verification and entry into the statewide voter registration database known as MDVoters. Application forms at the other 22 MVA offices are collected daily by an MVA lead worker or supervisor and picked up at least weekly by representatives of the local boards of elections. Although the State Board of Elections and local board of elections have worked cooperatively with the Motor Vehicle Administration to implement voter registration laws, the physical handling of voter registration applications and forms contributes to duplications, errors and mistakes. MVA and election officials continue to work on improving the quality of their administrative processes and are discussing the potential of an electronic transfer of all information required for completed voter registration applications and forms for change of address, name and party.

Another problem in the processing of voter registration applications involves compliance with federal law that requires the matching of an applicant's driver's license number or the last four digits of a Social Security number or the assignment of a unique identifying number before a citizen's application to register to vote can be fully accepted. Persons without driver's licenses or social security numbers are disadvantaged in the administrative processes. In addition, there are applications that do not "match" because of differences between and among public records and databases (e.g., typos, incorrect name spellings, use of maiden names, etc.). The requirement for verification and matching of individuals registering to vote for the first time is also occasionally complicated by the efforts of groups and organizations conducting voter registration drives. To the degree a voter registration application is incomplete or incorrect, the administrative difficulties are increased for state and local election officials in processing the application. In considering these processing issues, it should be noted that out of a database of over 3.3 million voters, an average of approximately 10-12,000 individuals are listed as "pending" on any given day as a result of the processing issues described hereinabove.¹⁹

¹⁹ In the 2006 general election, 1,269 individuals with a "pending" voter registration status completed provisional ballots—752 of these individuals (59.2%) had their ballots accepted and

14. **Recommendation:** The Administration should support the implementation of a process for transferring voter registration applications electronically from the Motor Vehicle Administration to the local boards of elections.
15. **Recommendation:** The Administration should review the process by which the State Board places individuals who have attempted to register to vote but for whom there is no immediate “match” with government databases in “pending” status. This review should assess whether that process is in compliance with federal law as interpreted under recent caselaw.
16. **Recommendation:** The State Board and local boards of election should insure that organizations and individuals performing voter registration activities and drives receive proper guidance and training on the completion of voter registration application forms.
17. **Recommendation:** There should be periodic performance audits of the voter registration process at the state and local level of all agencies and entities responsible for voter registration.

III. VOTER TURNOUT AND PARTICIPATION

Our state and local governments are strengthened by the broadest and greatest participation of citizen voters in the electoral process. The recent Maryland record on voter turnout and voter participation leaves substantial room for improvement. Voter turnout rates are reported in two ways—one, as a percentage of registered voters and, two, as a percentage of voting age population. As a percentage of registered voters, statewide voter turnout rates for presidential general elections since 1980 have averaged 75.67%, ranging from a high of 81.19% in 1992 to a low of 69.61% in 1996. For gubernatorial general elections, voter turnout rates for registered voters have averaged 57.85% since 1978, ranging from a high of 60.67% in 1994 to a low of 54.26% in 1990. As a percentage of voting age population, Maryland’s turnout rates fall below national averages. There are substantial differences in turnout rates among the State’s subdivisions and among the congressional and legislative districts in each election.

Rigorous studies have indicated that voter turnout and participation rates are affected by a multitude of factors. Many of the legal and structural

cast and 517 (40.7%) had their provisional ballots rejected by the local boards of elections.

barriers to registration and voting have been eliminated or reduced over the past several decades. Although additional steps can be taken to facilitate voter turnout, it should be noted that voter turnout is more likely significantly affected by social, economic and cultural factors as well as by the competitiveness of a particular election and the dynamics of each campaign and election cycle.

A. Voter Intimidation and Deceptive Practices

Every election cycle, voters are inundated with a flurry of information; unfortunately, many voters are confronted with deceptive information designed to prevent them from casting a meaningful ballot. Example of such practices include telephone calls that advise voters to go to the polls on Wednesday rather than Tuesday; flyers that falsely warn voters that they will be punished at the polls if they have unpaid parking tickets; and false information that it is illegal for naturalized citizens to vote. Such practices were present in Maryland's 2006 general election.

18. **Recommendation:** The Administration should support legislation that will provide voters with adequate recourse for intimidating or deceptive practices that seek to prevent voters from voting. Effective legislation should include a remedial structure that provides members of affected communities with immediate, correct information from a reliable and trusted source.

B. Early Voting

“Early voting” is providing citizens the opportunity to vote in person before an Election Day at designated locations in their jurisdiction other than their precinct polling place. Early voting has been authorized by law in 34 other states and is widely used by citizens. For example, in the 2004 presidential election nearly 19% of the voters in Florida voted in person in advance of election day. Shortly before the 2006 primary election, the Court of Appeals of Maryland overturned a law passed by the Maryland General Assembly in 2005 that designated five days (Tuesday through Saturday) just prior to an election as early voting days.²⁰ The legislative leaders of the Maryland General Assembly have introduced amendments to the Constitution of Maryland which would permit early voting.²¹

19. **Recommendation:** The Administration should support a constitutional amendment and legislation to allow the citizens of

²⁰ *Lamone v. Capozzi*, 396 Md. 53 (2006).

²¹ Senate Bill 1 and House Bill 1, 2007 Session of the Maryland General Assembly.

Maryland the opportunity to vote in person in advance of Election Day.

C. Absentee Voting

The Maryland General Assembly expanded the opportunity for citizens to use absentee ballots overriding, in its 2006 legislative session, a gubernatorial veto from the 2005 legislative session of House Bill 662. With this legislative action, Maryland joined 28 other states in the national trend of increasing the availability of absentee voting for their citizens.

During the 2006 election cycle, a record number of Marylanders cast absentee ballots spurred significantly by an unprecedented effort of political parties and candidates to have voters use the new absentee ballot law. Ironically, during the week before the general election many local election boards were turned into *de facto early vote centers* as voters came to their offices to deliver, or request and cast, absentee ballots. There were 189,312 requests for absentee ballots received by the local boards of election; 158,765 were returned and 154,834 were accepted and counted by the local boards of elections (constituting 8.60% of the total voter turnout). The increased volume of absentee ballots for a gubernatorial general election (coupled with the very short time period between certification of the primary election and ballot preparation for the general election) generated some administrative problems with timely ordering, printing and mailing of absentee ballots. It can be reasonably anticipated that the use of absentee ballots by Maryland voters will exceed past levels²² and, accordingly, the rules, regulations, procedures and reporting of absentee ballots should be reviewed and revised to reflect changed absentee ballot laws and voting behavior. It should be noted that the State of Maryland ranked among the very best states in the nation in the highest percentage of absentee ballots returned under the Uniformed and Overseas Citizens Absentee Voting Act.²³

20. **Recommendation:** Retain and strengthen absentee voting rights. Modify procedures as appropriate to make sure that absentee ballots are processed and mailed with adequate time for their return.

D. Vote Centers

²² The level of absentee voting in the 2006 general election was the highest in absolute and percentage terms in Maryland election history. In the 2004 presidential general election, the previous high, there were 137,953 absentee ballots cast, representing 5.76% of the total voter turnout.

²³ See U.S. Election Assistance Commission testimony before the U.S. Senate Committee on Armed Services, September 28, 2006.

The increasing complexity, cost, and scope of administering elections has generated discussion in Maryland, and throughout the country, about how and where voters are offered the opportunity to vote. One concept that is drawing attention and has been initiated in other states is the establishment of vote centers. Counties in Colorado and Missouri have begun using vote centers that permit citizens to vote in a convenient central location outside of their assigned precinct. In the 2006 general election, Denver city and county utilized 55 vote centers where citizens could cast their votes regardless of their precinct assignment which reduced the number of poll workers needed and the number of polling place locations from 400. Vote centers have received positive support from the National Task Force on Election Reform and the National League of Women Voters. The Work Group received the attached proposal submitted by the Election Director and President of the Anne Arundel County Board of Elections. Their proposal outlines the potential benefits of vote centers for a local jurisdiction. (Appendix 4) There was consensus among the Work Group that vote centers are a good idea and could significantly reduce the costs associated with running elections, insure proper technical expertise at the polling place and potentially boost voter turnout by being more convenient for voters.

21. **Recommendation:** The Administration should support constitutional amendments and statutory changes that would permit the implementation of vote centers as an additional method of providing citizens with the opportunity to vote.

E. Provisional Ballots

Provisional ballots provide citizens with the opportunity to cast a vote in circumstances where their names do not appear on a precinct polling place roster, where their registration application was incomplete or where the identity of the voter is questioned. Provisional ballots were first authorized under Maryland law for the 2002 primary and general elections. The use of provisional ballots was mandated in 2004 for federal elections by the Help America Vote Act. This reform election administration procedure has benefited tens of thousands of Marylanders who, in past years, would have been unable to cast a vote. In addition to providing previously unavailable relief for individuals seeking to vote, the provisional ballot process provides election judges with a fail safe procedure to handle voter registration problems and other issues that may arise at the polling place.

In the 2004 presidential general election 31,860 individuals had their provisional ballots accepted and counted. In the 2006 gubernatorial general election, 36,782 individuals had their provisional ballots accepted and counted, representing 2.04% of the total ballots cast. During the 2006

election cycle, 12,139 individuals who did not have their provisional ballots accepted and counted (either in the primary or general election) had their provisional ballot application successfully processed as a voter registration application adding them to the statewide voter registration list.

The provisional ballot process is paper driven and requires a thorough understanding of its use by the precinct election judges. Data collected from the past two election cycles has revealed the need for special training for election judges serving as a “Check-In Judge” or “Provisional Ballot Judge.” The reasons for providing a provisional ballot need to be correctly recorded and each provisional voter needs to be given proper assistance and instruction to insure the best opportunity to have their vote counted. In addition, there is a need for uniformity and greater detail to be captured at the local boards of election for the reasons a provisional ballot is accepted or rejected.

22. **Recommendation:** The rules, procedures, forms and relevant information to be collected applicable to provisional ballots should be reviewed and revised, as appropriate.
23. **Recommendation:** Local boards of elections and election judges should insure the proper recording and tracking of the reasons that provisional ballots are utilized and the reasons that provisional ballots are accepted or rejected.

IV. POLLING PLACE OPERATIONS

In Maryland, the overwhelming number of ballots are cast in precinct polling places. There were 1,785 precincts designated by the 24 local boards of elections for the 2006 gubernatorial election in 1,591 different polling place locations. These precinct polling places were operated by over 20,000 citizens serving as “election judges.” It is noteworthy that these election judges constituted over 1.2% of the total number of voters in the 2006 general election. The recruitment and training of these 20,000 election judges is a substantial task deserving of additional resources. It is the individual and collective actions of election judges that most directly influence the quality of any given election.

The Elections Work Group received recommendations and ideas from a variety of sources—election directors, election judges, advocacy groups, experienced professional trainers—concerning polling place operations. The Work Group also received anecdotal information, suggestions and reports from various advocacy groups and organizations. For example, the

“Maryland Election Protection Coalition”²⁴ provided the Work Group with a report based upon calls received at its national hotline during the 2006 general election. Work Group participants also included students from the campus of University of Maryland at College Park who encountered problems on election day related to voter registration and insufficient supply of voting system equipment.

A. Disparities and the Need for Uniformity

Many of the persistent problems associated with election administration in the United States arise from inadequate and inequitable resources that often have a disproportionate impact on precinct polling places that serve historically disadvantaged communities including African Americans, low-income voters, language minorities, individuals with disabilities, seniors and students. Such disparities were evident in Maryland during the 2006 election cycle. Voters in some precincts faced particularly long lines and long waits--up to three hours--due to insufficient numbers of voting units, malfunctioning equipment, insufficient supplies, inadequate election judge training and management mistakes. Long lines occurred at precincts such as Evangel Cathedral in Upper Marlboro, where voters confronting a long ballot with five less voting units than should have been allocated, waited for over two hours to vote and Stamp Student Center at the University of Maryland at College Park, where only four voting units (eight less than should have been allocated for the 2,311 registered voters) complicated the voting process for students. A citizen’s ability to cast a ballot should not depend upon where a person happens to live. To ensure equal access to voting and to remedy systemic and chronic problems, the State and local boards of elections should review and revise polling place equipment allocation plans.

The State Board of Elections has promulgated extensive regulations that seek to insure compliance of local boards of elections with federal and state legal requirements. The regulations include a requirement for the establishment of a “Polling Place Evaluation Program” in every jurisdiction. Some jurisdictions endeavor to perform the evaluation with their own board members and staff while other jurisdictions utilize outside organizations such as the League of Women Voters to perform this function. This is a useful feedback tool for state and local election administrators to gauge polling place operations. There is, however, a lack of uniformity, consistency and completeness among the local boards of elections in satisfying this requirement.

²⁴ The participating organizations are the American Civil Liberties Union, the Lawyers’ Committee for Civil Rights Under Law, the Maryland League of Women Voters, the Maryland Disability Law Center, the Maryland NAACP and the People for the American Way Foundation.

24. **Recommendation:** The State Board of Elections and the local boards of elections should review and revise their plans and procedures for the allocation of voting units and equipment for all polling places within each jurisdiction. Allocation plans should insure that current voter registration information is used in making proper allocations. Equipment and voting unit allocation plans should contain “check lists” and provide for an independent review (or second check) to insure that voters at any given polling place do not have to wait an inordinate period in order to cast their votes.
25. **Recommendation:** The State Board of Elections and the local boards of elections should develop special resource allocation plans and election judge training for precinct polling locations that serve unique population cohorts such as college students, seniors, persons with disabilities, language skills and rapidly growing areas.
26. **Recommendation:** The State Board of Elections and the local boards of election should develop and implement a plan to collect data on “wait times” at polling places.
27. **Recommendation:** The State Board of Elections and the local boards of election should improve the implementation of the Election Day “Polling Place Evaluation Program” to identify problem areas and to improve continuously polling place operations and procedures.

B. Emergency Provisions

Immediately following September 11, 2001 the country was in a high state of alert for possible terrorist strikes to American institutions. Election day was no exception and local boards were advised to develop emergency plans in the event any polling place(s) became unusable. The state and local election officials should not let these emergency plans become outdated. At any given time a polling place, for whatever reason, could become unusable. A natural or manmade disaster at 12 noon on election day could have far-reaching effects on the election outcome if the situation was not quickly managed to reopen or redirect the voters to an alternate location.

28. **Recommendation:** The State Board of Elections and the local boards of election should review, revise, and update rules, regulations and procedures for any unforeseen polling place closures and coordinate with other appropriate state and local government agencies.

C. Electronic Poll Books

Electronic poll books were used for the first time statewide in Maryland during the 2006 primary election. While there was some major faltering in the primary election (due in large part to delayed procurement and production and hasty implementation that in turn led to insufficient training of election judges) corrections to the equipment were made prior to the general election. Feedback from election officials and election judges on the use of Electronic Poll Books has been positive. They cite faster processing of voters at the polling place as well as the benefits of access to the statewide voter database to resolve voter registration issues. This was a great help to the voters who were not in the correct location or had changed their address. Electronic Poll Books also greatly assist the administrative burdens associated with reconciling voter turnout and voter participation at the polling place and in the post election administrative tasks required to be performed at the local boards of election offices.

Election directors and election judges overwhelmingly recommend the retention of electronic poll books to assist in the operation of the polling place and post-election administrative tasks. It is important that election judges receive sufficient “*hands-on*” training with the Electronic Poll Books before any election day to minimize data entry and processing errors. To account for power outages or unforeseen problems, a paper record of the registered voters assigned to each precinct should be available as a back-up, check-in roster at the precinct polling place.

29. **Recommendation:** Retain electronic poll books and insure adequate “*hands on*” training for election judges.

D. Election Judges

On each election day, the responsibility for the accurate, fair, impartial conduct of the election is placed in the hands of over 20,000 individual citizens who serve as election judges. Election judges are providing a public service and the State should not only be grateful for their service but also insure that an adequate pool of election judges are recruited and receive proper training to perform their important duties and responsibilities. The consequences of inadequate training were vividly demonstrated during the 2006 primary election when a significant number of individuals in some jurisdictions were not sufficiently trained in advance of using new technology on Election Day.

Many jurisdictions in Maryland, and throughout the country, have been confronted with an aging election judge (pollworker) workforce at the same time that there have been enormous legal and technological changes in the administration of elections. Election judges are required to work 15-17 consecutive hours (from approximately 6:00 a.m. until closing procedures are completed in the evening). The rate of compensation for service as an election judge varies significantly among the 24 counties and Baltimore City with some compensation fixed by state statute and other compensation determined by local boards of elections and county officials. Some local election officials noted that these disparities, as well as low pay and long hours, added to the difficulty in recruiting election judges.

Given the additional complexity and legal requirements that have been placed on the operation of the precinct polling places, it is critical that election judges receive comprehensive training in their duties and responsibilities. During the 2006 election cycle, Maryland jurisdictions varied in their approach to election judge training. A sixteen chapter, election judge manual was produced by the staff of the State Board of Elections for distribution to election judges although delays in the procurement of the Electronic Poll Books led to a late completion and distribution of portions of the manual. While most jurisdictions conducted training “in-house,” Baltimore County contracted with the Schaefer Center for Public Policy at the University of Baltimore to conduct election judge training for the over 3,000 individuals who served at the county’s 218 precinct polling places in the primary and general election. Training sessions were conducted by college professors, aided by student assistants, in a traditional classroom setting with voting units and equipment available for

demonstration and practice. For the general election, the Schaefer Center was engaged to provide training for nearly 2,900 election judges that served in the 290 precincts in Baltimore City. Evaluation of these training sessions, together with survey feedback from the election judges, clearly revealed that the most effective means of training included “*hands-on*” practice with the voting units, electronic poll books, other equipment and forms that would be used in the precinct polling place on Election Day.

30. **Recommendation:** The State Board of Elections should continue to develop a statewide, uniform training program with input from the local boards of election.
31. **Recommendation:** Election judges should be provided uniform training that includes “*hands-on*” training experience with all voting system components, equipment and required forms that will be used on Election Day. All chief judges should have the opportunity to receive “*hands-on*” refresher training within 45 days of each election.
32. **Recommendation:** The Administration should support a study to review, revise and make uniform, the rate of compensation for election judges and provide for a uniform method for making adjustments in such compensation.
33. **Recommendation:** The local boards of election should be encouraged to consider the option of allowing election judges to split work days.
34. **Recommendation:** Local boards of elections should be encouraged to utilize education professionals experienced with adult learning to conduct training classes.
35. **Recommendation:** The Administration should support efforts to recruit new election judges from a variety of sources including public, private and non-profit employers and college students.

E. Voter Privacy

The Work Group received reports about the inadequacy of privacy for the voter in the casting of ballots on the voting system.

36. **Recommendation:** The local boards of elections should develop polling place site plans for the placement of voting systems to

ensure and enhance voter privacy. Polling place site plans should be reviewed by the local boards of election prior to Election Day. In addition, election judge training should emphasize the need for sensitivity to voter privacy.

V. VOTING SYSTEMS

Throughout the country there has been heightened awareness and unprecedented public discussion about voting systems since the 2000 presidential election. Unfortunately, the legitimate debate about the security, integrity and accuracy of voting systems at the federal level and in many states has been clouded by a considerable volume of incomplete and misleading information, some inaccurate reporting and media accounts and some misguided political agendas. The current debate is often simplistically and misleadingly described as electronic voting versus paper when the proper focus of discussion and deliberation should be on appropriate evaluative criteria for voting systems and a careful, comparative analysis of potential alternative voting systems.

There have been exhaustive studies of the voting system and election procedures used in Maryland. The following reports are public documents and may be accessed on the websites for the Maryland General Assembly and the State Board of Elections:

1. On September 2, 2003, the Science Application International Corporation (SAIC) issued a report to the Department of Budget and Management entitled *“Risk Assessment Report, Diebold AccuVote –TS Voting System and Processes.”* SAIC had been previously selected to provide Information System Security Support Services to the state and was competitively selected in 2002 to provide Statewide IT Security Support.

2. On January 20, 2004, RABA Technologies, a Maryland Technology company requested to assist the Department of Legislative Services, issued a *“Trusted Agent Report, Diebold AccuVote-TS Voting System.”*

3. In January, 2004, the Department of Legislative Services presented to the Senate Education, Health and Environmental Affairs Committee and the House Ways and Means Committee, a detailed report entitled *“A Review of Issues Relating to the Diebold Accuvote-TS Voting System in Maryland.”*

4. In January, 2006, the Center for American Politics and Citizenship and the Human-Computer Interaction Lab at the University of Maryland, College Park released a report entitled, “*A Study of Vote Verification Technology Conducted for the Maryland State Board of Elections: Part II: Usability Study.*”

5. In February, 2006, the National Center for the Study of Elections at the University of Maryland, Baltimore County, released the results of a survey on “*Maryland Registered Voters’ Opinions About Voting and Voting Technologies.*”

6. On October 12, 2006, the Freedman, Craft, McGregor Group issued a “*Report from a Review of the Voting System in The State of Maryland,*” pursuant to an independent assessment requested by the State Board of Elections.

In addition to the above referenced state studies, there are federal reports²⁵ and agency guidelines that should be considered in determining the best public policy decision to make for Maryland. Part of the 2002 Help America Vote Act established a Technical Guidelines Development Committee (TGDC) chaired by the National Institute of Standards and Technology (NIST) to assist the U.S. Election Assistance Commission with the development of voluntary voting system guidelines. In December 2006, the TGDC passed several resolutions (Appendix 5) that will be presented to the Election Assistance Commission for adoption in July, 2007 and that will affect the procurement of a new voting system for Maryland.²⁶ These resolutions included directions to a subcommittee “*to spur development of new and innovative secure voting systems,*” a recommendation to prohibit “wireless in equipment” for the casting, counting and reporting of votes, and a recommendation that would require “*the next generation of voting systems to be software independent.*” For Maryland, it is significant to note that TGDC Resolution 06-06 expressly stated:

“Election officials and vendors have appropriately responded to the growing complexity of voting systems by adding more stringent access controls, encryption, testing and physical security to election procedures and systems. The TGDC has considered threats to voting systems and, at this time, finds that security

²⁵ See e.g., Fischer, Eric A., “*Voting Technologies in the United States,*” Congressional Research Service, December 15, 2000; *Report to Congress on the Efforts to Improve Security and Reliability of Electronic Voting Systems*, General Accounting Office, 2005 (accessible at www.gao.gov/new.items/d05965.pdf).

²⁶ Section 9-102(2) of the *Election Law Article* should be amended to reflect changes in federal law regarding “independent testing laboratories” and “performance and test standards” that are now under the jurisdiction of the U.S. Election Assistance Commission.

*concerns do not warrant replacing deployed voting systems where EAC Best Practices are used.*²⁷

It should be noted that every voting system has strengths and weaknesses. No voting system is absolutely immune from a malicious intent to interfere with the recording, compiling, counting, tabulating and certifying the results of an election and no voting system is perfectly protected from the innocent mistakes of its makers, users and operators.

The Elections Work Group considered and evaluated the voting system issue in depth and sought the opinion of academics, advocacy groups, election officials and experienced practitioners. Attached is a report from a Work Group subcommittee that diligently endeavored to address relevant voting system issues (Appendix 6). Neither the subcommittee nor the Work Group reached universal consensus among its participants on the specific voting system that should be used in the administration of elections in Maryland. There was general consensus among the Work Group members that the following evaluative criteria should be used by the Administration in determining the next voting system for use in Maryland:

- | | |
|---------------------------------|---|
| 1. Accuracy – | Does the system record and report votes as voters intended? |
| 2. Accessibility – | Is the system accessible to persons with disabilities? |
| 3. Usability – | Do voters find the system easy or difficult to use (including privacy)? |
| 4. Reliability – | Does the systems work properly and without fail, election after election? |
| 5. Security– | Is the system secure from tampering and fraud? |
| 6. Audit and--
Recount – | Can the system be audited adequately and can the system provide for a recount of the votes? |
| 7. Election
Administration – | To what extent does the system add |

²⁷ Resolution #06-06 adopted by the Technical Guidelines Development Committee, December 4-5, 2006 Plenary Session (accessed on 1/29/07 at <http://vote.nist.gov/AdoptedResolutions12040506.pdf>).

effort and complexity to running elections (including impact on elections judges)?

8. Cost – What is the magnitude of the cost of the system—one time and recurring?

Supporters of the current direct recording electronic voting system in Maryland note that the touch screen voting system has not failed in any of the elections in which it has been deployed.²⁸ There is no evidence of any corruption of the voting system by the vendor, testing laboratory, state or local board personnel or election judges. Tampering with an electronic voting system is a felony, punishable by up to ten years incarceration.²⁹ Supporters note that the management, operational and technical security measures that have been used in Maryland are among the best and most secure in the country. It is noted that all logic and accuracy testing, election day parallel testing and public demonstrations of the current touchscreen voting system have verified its accuracy and reliability. Proponents of touchscreen voting observe that the usability features of touch screens rate high with voters. Touchscreen technology is widely, and increasingly, used daily in billions of commercial, governmental, retail, service and personal transactions and activities. Touchscreen technology prevents “overvotes” by voters; has reduced disparities in the voter error rate and residual vote rate among precincts;³⁰ can accommodate multiple language ballots; provides voters with a visual summary of their ballot; offers magnification features for voters; and, permits persons with disabilities the opportunity to cast a secret ballot with its audio capabilities. The use of a touchscreen voting system in Maryland has resulted in the state having the lowest residual vote rate in the country.³¹ Further, it is observed that the concept of a “paper trail” for an individual vote reflects an attitude that was dormant for much of the history of modern elections in Maryland. From 1935 until 2002, mechanical lever voting machines that did not have a “paper trail” were used in Maryland. The Maryland General Assembly mandated their use statewide beginning with the 1956 general election.³² The direct recording electronic voting system used in Baltimore City from 1996 through the 2004 elections did not have a “paper trail” but was used without controversy. Finally, it is observed that

²⁸ The statement that “voting system has not failed” is distinguished from problems associated with individual voting units that did experience screen freezing, screen calibration discrepancies and power failures.

²⁹ Section 16-804, *Election Law Article*, Annotated Code of Maryland.

³⁰ See Comparison of Residual Vote Rates in Baltimore County (prepared by J.T. Willis as an exhibit for testimony on SB 713 and HB 244, 2006 Session, Maryland General Assembly) (Appendix 7).

³¹ See Appendices 1 and 2 and “*Residual Vote in the 2004 Election*,” CALTECH/MIT Voting Technology Project, February 2005.

³² Chapter 701, Laws of 1955.

voters have repeatedly expressed high levels of confidence in electronic voting systems in surveys conducted in Maryland and elsewhere in the country³³ and that recent experience states with a “paper trail” law have demonstrated the accuracy, efficiency and reliability of direct recording electronic voting systems.³⁴

Advocates for changing Maryland’s current voting system in favor of a “paper trail” voting system express fear that the potential for tampering of the current voting system is unacceptably high. They state that the software source code developed by the vendor is capable of being corrupted and is not subject to independent verification. Further concern is expressed about a corrupt or mischievous individual working for the vendor, the state or local election boards or, even an election judge at the polling place, being able to distort the collecting, recording, compiling and transmitting of voter choices and election results. Other interested parties have expressed concern over the consequences of a voting system malfunction or mistake that could occur as a result of an unintentional error in software or hardware of the current voting system. A Brennan Center for Justice report entitled, *“The Machinery of Democracy: Voting System Security, Accessibility, Usability, and Cost,”* summarizes these concerns. Advocates for changing Maryland’s current voting system also cite publications from several computer scientists discussing the risks and vulnerabilities of software dependent voting systems. Because the current voting system is computer based and is difficult to assess and test for accuracy, can be comprised or attacked and can fail for a myriad of unknown reasons, advocates for changing the current voting system believe that a second verified record is essential for meaningful audits and recounts.

A “paper trail” is one example of independent dual verification. Other “independent verification devices” include capturing voter choices independently from the electronic voting system through or with a video display signal copying a voter’s final choices; an independent interactive verification module (two screens and a click and save feature for an independent back-up); advanced mathematical cryptography; audio audit transcript trails; and a generation and verification of an optical scan ballot with audio assistance.³⁵

³³ See *“Maryland Registered Voters’ Opinions About Voting and Voting Technologies,”* National Center for the Study of Elections, Maryland Institute for Public Policy Analysis & Research, University of Maryland, Baltimore County (February 2006) (a survey of 800 registered voters who voted in the 2004 election); *“Maryland Policy Choices: 2007,”* Schaefer Center for Public Policy, University of Baltimore (January 2007) (a survey of 810 of Maryland residents over the age of 21 which found less than 1.0% stating they had a problem with the voting machines).

³⁴ See e.g., *“Pilot Project: Voter Verifiable Paper Audit Trail,”* Cobb County, Georgia, Saron Dunn, Director of Elections, December 21, 2006

³⁵ These alternatives are discussed in Saltman, Roy G., *“Independent Verification: Essential Action to*

Voting system technology has changed in the past and will undoubtedly change in the future. In deciding whether and when to require the implementation of a new voting system, public policy decision makers should determine whether sufficient evidence of problems with the current voting system exists to require its prompt replacement or whether the replacement of the current voting system should await the development of additional voting systems that would meet the proposed EAC Voluntary Voting System Guidelines for software independence³⁶ that are expected to be considered for adoption in July, 2007. If a “paper trail” voting system is adopted in the future, the issue of what constitutes the “official ballot” needs careful consideration because of the demonstrable difficulties in handling paper reflected in current paper trail systems (paper jams in printers) and the historical experience of accidental loss, defacing or chicanery in the handling of paper ballots. It is also important that any new voting system maintain high voter usability performance and satisfy accessibility standards for the state’s citizen voters.³⁷

A majority of the Work Group participants generally agreed that statewide implementation of a new voting system cannot occur quickly. Input should be received from the State Board of Elections and local election boards as to the minimum time required to provide for selection, certification and acquisition of a voting system, writing of required training manuals, training of local election officials and poll workers, and voter outreach and education regarding a new voting system. The State procurement processes would need to be followed. Sufficient lead time is needed for testing and certifying any new voting system, conducting acceptance testing when equipment is received, developing procedures, re-writing the election judges’ manual and the accompanying curriculum, and training staff. Although there is no statewide election in 2007, it should be noted that there are primary and general elections in September and November of 2007 in Baltimore City, and that the presidential primary is currently scheduled for March 2008. The current voting system was implemented statewide in phases over a four year period. Trying to compress the implementation time for a new statewide voting system in less than a year would undoubtedly result in Election Day problems.

Assure Integrity in the Voting Process, “submitted to the National Institute of Standards and Technology, August 22, 2006.

³⁶ Software independent would mean under TGDC proposed guidelines that “the accuracy of the election will not rely exclusively on the accuracy of the voting system software; the accuracy of the system’s electronic record will be able to be independently audited against a voter-verified record.”

³⁷ A statement from the Maryland Disability Law Center is attached as Appendix 8.

37. **Recommendation:** In light of evolving technology, potential federal voting system legislation and the likely adoption of new voting system guidelines by the U.S. Election Assistance Commission in 2007, the Administration should not support legislation that mandates a particular voting system or technology.
38. **Recommendation:** The Administration should support legislation that modifies the requirement of a statewide uniform voting system in order that the State can implement pilot programs for new technology, if desired.
39. **Recommendation:** The majority consensus of the Work Group is that a new statewide voting system cannot be implemented successfully prior to the 2008 election cycle and that any new statewide voting system should be planned for implementation during the 2010 election cycle.
40. **Recommendation:** The State Board of Elections and local boards of elections should not rely exclusively on vendors for technology support during an election cycle.
41. **Recommendation:** The State Board of Elections should expand parallel testing and other forms of testing of the software and hardware components of the current voting system and of any new statewide voting system.
42. **Recommendation:** The State Board of Elections should permit greater public examination of software and hardware used in any voting system.

Post-Election Audit Procedures

Another significant issue that the Work Group considered in connection with voting systems and election administration was post-election audit procedures. The procedures for the random audit of DRE TS machines found in COMAR 33.10.02.38 are adequate, but the prescribed procedures are not always followed. Also, the results of post-election audits are not readily available. The Work Group consensus is that post-election audit results ought to be more accessible to the public. Transparency of, and confidence in, the election process would be enhanced if the results of the required audits of election materials and voting system verifications were made more accessible to the public. Other states have begun placing the results of post-election audits on their respective state election office websites.

43. **Recommendation:** The State Board of Elections should develop rules and regulations requiring that post-election audit information be made publicly available.

VIII. CAMPAIGN FINANCE

Maryland has comprehensive campaign finance laws that govern the receipt and expenditure of funds, govern personal candidate accounts, campaign committee accounts, slate committees, political action committees, ballot issue committees and party central committees. These laws are codified in Title 13 of the *Election Law Article* of the Annotated Code of Maryland. In addition, Title 14 of the *Election Law Article* requires that persons (which includes business entities) doing business with the state and that make a campaign contribution must file disclosure statements with the State Board of Elections. Several issues relating to the implementation of Maryland's campaign finance laws were discussed by the Work Group. These included the administrative burdens associated with filing campaign finance reports, the information that should be contained on campaign finance reports, the timing of filing of campaign finance reports and the consequences of unfiled campaign finance reports. The Work Group also noted and discussed that current limits on campaign contributions have not been revised since 1991. There was not consensus over the appropriate limit on contributions to a single candidate but there was general consensus that the overall limit for a single contributor during a four year election cycle has been outpaced by the economy in the past sixteen years.

In addition, the Work Group discussed the lack of use of the gubernatorial Fair Campaign Fund Account intended for public financing of gubernatorial campaigns and the potential for using these monies for other public campaign finance purposes or for other election related purposes. Title 15 of the *Election Law Article* provides for a "Fair Campaign Finance Fund" to be distributed to eligible gubernatorial tickets for use in a primary or general gubernatorial election campaign. Revenue for this Fund comes from voluntary contributions made by filers of Maryland income tax returns. The Fair Campaign Finance Fund contained \$4,511,640.49 as of January 31, 2007. This Fund has only been used in the 1994 gubernatorial election cycle. It was the opinion of the Work Group members that future use of this Fund by gubernatorial candidates was unlikely and that the State should consider alternative uses for these monies. Suggestions included financing of non-partisan judicial elections and seed money for a system of public campaign financing of elections for the Maryland General Assembly or the statewide

offices of Attorney General and Comptroller as contemplated by the original act passed in 1974.³⁸

The Elections Work Group makes the following recommendations regarding campaign finance:

44. **Recommendation:** The Administration should support legislation and rules and regulations that would require the “*on-line*” electronic filing of campaign finance reports which would ease the administrative burdens for candidates, campaign committees and election board staff.³⁹
45. **Recommendation:** The Administration should support legislation, rules and regulations that would require campaign contributors to identify the names and addresses of their respective employers and related entities.
46. **Recommendation:** The Administration should support legislation providing for regular quarterly campaign filing deadlines. There should be additional filing requirements for large contributions and expenditures made within a short period (e.g., one week or ten days) prior to an election.
47. **Recommendation:** The Administration should support legislation, rules and regulations providing for stronger enforcement of campaign finance laws. In addition, the State Board of Elections should be provided with sufficient staff and resources to review filings for sufficiency and to undertake enforcement.
48. **Recommendation:** The Administration should support legislation that would make the candidate liable for the failure of his or her campaign treasurer to file a report as required by law.
49. **Recommendation:** The Administration should consider whether the money allocated to public financing would be better allocated for some other election-related purpose. For example, the Administration may wish to consider using this money for the

³⁸ See Chapter 729, Laws of 1974. The Attorney General has previously opined that monies in the Fair Campaign Finance Fund could not be transferred to the general funds but might be able to be utilized for comparable or related purposes. *66 Opinions of the Attorney General 54* (1981). See also, *Final Report of the Study Commission on Public Funding of Campaigns in Maryland* (February 2004).

³⁹ The Work Group acknowledges the practicality of exempting campaign finance accounts involving limited contributions and expenditures (e.g., less than \$1,000 to \$5,000) from “on-line” filing.

public financing of judicial or legislative elections or another election-related purposes.

50. **Recommendation:** The Administration and the Maryland General Assembly should conduct a comparative review of state campaign finance limits.

IX. Performance Measurements

The administration of elections should be open and transparent through every stage of the election process. Confidence in the results of elections are critical not only for the successful candidates but for the citizens and society. The Elections Work Group believes that improvements can be made in the transparency and openness of the administration of elections in Maryland. Further, public policy decisions regarding the administration of elections and voting system equipment should be based on data-driven performance measurements. These performance measurements should be regularly reported and made public as well as regularly reviewed and assessed by the Administration.

51. **Recommendation:** The performance measurements for the State Board of Elections and local boards of elections should be reviewed and revised. There should be tangible performance measurements made on an annual basis by the State Board of Elections and each of the 24 local boards of elections.

APPENDIX TO ELECTION WORK GROUP REPORT

1. *Table of Residual Votes in Presidential Elections*, prepared by John T. Willis for a work in progress, **Maryland Election History** (copy 1/9/07).
2. *Table of Residual Votes in Gubernatorial Elections*, prepared by John T. Willis for a work in progress, **Maryland Election History** (copy 1/9/07).
3. “*Felony Disenfranchisement in the United States*,” *The Sentencing Project, November 2006*,
(accessed on 2/16/07 at www.sentencingproject.org)
4. “*Maryland Voting Centers*,” a proposal developed by Barbara L. Fisher, Election Director, and Garry H. Voith, President, Anne Arundel County Board of Elections (November, 2006).
5. Resolutions adopted by the Technical Guidelines Development Committee (TGDC) to the U.S. Election Assistance Commission at its plenary session on December 4-5, 2006.
6. Voting Systems Subcommittee Report of the Elections Transition Work Group
7. Scatter Diagrams Comparing Residual Votes in Baltimore County in the 2000 and 2004 presidential general elections
8. Statement from Maryland Disability Law Center on Voting Systems