



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Electoral Board

Seth T. Stark
Chairman

Stephen M. Hunt
Vice Chairman

Brian W. Schoeneman
Secretary

General Registrar
Cameron P. Quinn

December 12, 2013

William H. Hurd, Esq.
Troutman Sanders LLP
1001 Haxall Point
P.O. Box 1122 (23218-1122)
Richmond, VA 23219
VIA EMAIL

Kevin J. Hamilton, Esq.
Perkins Coie
700 13th Street, NW
Washington, D.C. 2005-3960

Dear Mr. Hurd and Mr. Hamilton:

I am in receipt of Mr. Hurd's response to our letter of December 10, 2013. Our investigation of the issues raised in your letter of December 9, 2013 is on-going and has not been completed at this time.

Attached to this letter is one email, from Voting Machine Custodian Chris Doherty to the Electoral Board on December 6, 2013, which was used to compile the information I provided you on December 10, 2013. I am also attaching copies of the forms used to certify the delivery of the voting materials that were delivered to the Courthouse on a November 13, 20, 26 and December 5, 2013. I am also enclosing a copy of written notes taken by Chris Doherty on Monday, November 18, 2013, when the ballots from 731 Tysons were discovered. I am also attaching a list of the Election Officials who served in the two precincts where voted ballots were left in the secured precinct carts, rather than delivered to FCOE on election night for transfer to the Courthouse, per established FCEB policy. These documents are attached and Bates stamped Fairfax 1 – Fairfax 9.

A follow-up interview with Mr. Doherty indicates that he discovered the voted ballots from 731 Tysons on Monday, November 18 during the cleanup of materials at the secure warehouse. Following the discovery, Mr. Doherty transported the ballots to the Fairfax County Government Center, where they were stored in the FCOE Ballot Storage Room. This room is locked and secure at all times, with limited approved staff only able to access the room - the General Registrar, for example, does not have electronic access to this room. The ballots remained in the Ballot Storage Room in the FCOE until Wednesday, November 20. Mr. Doherty then delivered them to the Courthouse on Wednesday, November 20. Mr. Doherty has informed the Board that the reason for the two day delay was to allow staff time to continue the clean up of the warehouse and consolidate any materials for delivery to the Courthouse at one time, in the event that more materials were discovered. Given the time it was taking Mr.

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12000 Government Center Parkway, Suite 323
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Doherty to work through each precinct cart, it became clear to him that it would take more time to finish the warehouse cleanup than he anticipated, or had available at that time, and not wanting the materials from Precinct 731 Tysons to remain at FCOE any longer, they were delivered to the Courthouse on Wednesday, November 20 by Mr. Doherty.

The November 18 date appears to be an error on the part of the drafter of the delivery document. The document itself was dated November 20 and the Clerk's representative signed the document on November 20. Further, the line of the document that says "Wednesday, November 18" clearly is in error, since Wednesday was November 20, not November 18. It is the opinion of relevant staff and the Board that the discrepancy in dates was an error on the part of the drafter of the document, and that the materials were delivered to the Courthouse on Wednesday, November 20.

As we noted in our letter of December 10, the boxes of voted and unvoted ballots were secure at all times. Those boxes were sealed and secured on Election Day with tamper tape by the Election Officials. The tamper tape has not been disturbed. While the boxes were erroneously placed in the precinct carts, those carts were both locked with a physical lock and sealed with tamper resistant, numbered seals when they were delivered to our secure warehouse. The seals on the carts had not been disturbed when Mr. Doherty and his FCOE staff team unsealed them to inspect the contents. As noted in our letter to you on December 10, our warehouse facility is secure, and the Electoral Board's area of the warehouse has additional security, in the form of a fenced-in area within the County's secure warehouse. The Electoral Board's area in the secured warehouse is not only fenced and locked, but it is monitored by video cameras and is equipped with a dedicated alarm system, in addition to the facility's alarm system. We have checked with the County's security contractor, and their taping only goes back approximately one week at a time. At the Board's request, the security contractor has removed the DVR machine and replaced it with a secondary unit so the data on that machine may be saved and archived. County security has informed the board that it is technically possible provide a copy to you, if desired.

At no time were any of the voted or unvoted ballots outside the exclusive possession and control of FCOE. There is no break in the chain of custody on these ballots, and there is no evidence of any tampering with any of the boxes. There is also no evidence of any tampering with any of the secured carts into which those boxes were deposited, and those carts remained locked and sealed until they were opened by FCOE staff during the warehouse inventory.

And, again, it is the opinion of the Electoral Board that the reason why these boxes were put into the precinct carts rather than transported to the warehouse was the result of inadvertent errors on the part of Election Officials on Election Day. This is, as I noted in the December 10 letter, a common error.

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I would ask that all the parties involved here recognize that the Electoral Board and the staff of FCOE are not only planning for an historically close recount in the Attorney General's race, where Fairfax County will be recounting over 300,000 paper ballots cast, but are also being asked to almost simultaneously plan and execute a recount in the 86th House District. Given the closeness of these races, the intense scrutiny on Fairfax County and the preparations for the recount, both the Board, General Registrar and FCOE staff have been maintaining a grueling schedule that is heavily taxing our staff. While we are doing our best to respond as quickly as possible to your requests for information, please be patient as our investigation continues, and understand that any errors made by staff and by the Board in responding as expeditiously as possible in our communications to you are not intentional. If we develop any new information relating to these issues, especially if any information we develop contradicts information we have provided to you in either this or any previous communications, we will notify you as soon as possible.

To be clear, there is no evidence that there was any breach of security or break in the chain of custody involving any voted or unvoted ballots in Fairfax County. I strongly urge all parties to be judicious in your characterizations of this investigation and other parts of the recount, given the intense media scrutiny surrounding this historic recount. It is in the best interests of the Commonwealth that the citizens of the Commonwealth have faith in the electoral process, and that faith can be easily undermined by speculation and innuendo of malfeasance when there is no evidence of malfeasance.

After discussions with the Fairfax County Attorney's office, any additional documents requests you made in your letters of December 9 and December 11 will be treated as a Virginia Freedom of Information Act request. Searching for, identifying, and collecting responsive documents will take some time. As your initial request was received after business hours on Monday, December 9, under Virginia Code § 2.2-3704(B), the Electoral Board has until Tuesday, December 17 to produce a written response. We have been able to produce a limited amount of documents at this time based on our understanding of your specific requests and concerns, and we will produce the other responsive documents as promptly as possible. If we have questions about your document requests, the County Attorney's Office will be in contact with you so that our written response and document production can be expedited.

Judy Flaig, Election Manager for Fairfax County, is the most knowledgeable person regarding our security procedures. Voting Machine Custodian Chris Doherty is most knowledgeable about the discovery and transportation of the materials discussed above and which other staffers were involved in this process and in the investigation. If you would like to talk to Ms. Flaig, Mr. Doherty, or any other FCOE staff or Election Officers about these issues, please contact Erin Ward, Senior Assistant County Attorney. She may be contacted at (703) 324-2421.

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Questions regarding any other issue should be directed to General Registrar Cameron Quinn or me. She may be contacted at (703) 222-0776. I may be contacted at (202) 294-2623. Questions regarding the status of your document request should be made to Erin Ward.

Thank you for your patience.

Sincerely,



Brian W. Schoeneman, Esq.
Secretary,
Fairfax County Electoral Board

cc: Don Palmer, Esq., Secretary, State Board of Elections
Cameron Quinn, Esq., General Registrar for Fairfax County
Seth Stark, Esq., Chairman, Fairfax County Electoral Board
Steve Hunt, Vice Chairman, Fairfax County Electoral Board
Judy Flaig, Election Manager
Chris Doherty, Voting Machine Custodian
Erin Ward, Esq., Senior Assistant County Attorney, Fairfax County
Corinne Lockett, Esq., Assistant County Attorney, Fairfax County
Jay McConville, Chairman, Fairfax County Republican Committee
Cesar de Aguila, Chairman, Fairfax County Democratic Committee

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Electoral Board

TO: John T. Frey
Clerk of the Fairfax County Circuit Court

Seth T. Stark
Chairman

FROM: Lawrence Costanzo
Election Specialist

Stephen M. Hunt
Vice Chairman

DATE: November 13, 2013

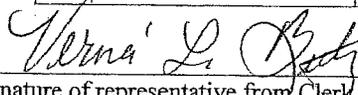
COPY

Brian W. Schoeneman
Secretary

SUBJECT: Delivery of the November 5, 2013, General Election material, and other election material. The following items were delivered to the Clerk of Courts Office on Wednesday, November 13, 2013, in sealed containers:

General Registrar
Cameron P. Quinn

BOX LABELED AS	NUMBER	COMMENTS	INITIALS
# 2 ENVELOPES	9 BOXES	Retain for Two Years	JTB
# 2A ENVELOPES	1 BOX	Retain for Two Years	JTB
# 3 ENVELOPES	14 BOXES 6 ENVELOPES	Retain for One Year	JTB
# 4 ENVELOPES	2 BOXES	Retain for One Year	JTB
# 5 ENVELOPES	12 BOXES 1 ENVELOPE	Retain for One Year	JTB
# 6 ENVELOPES	40 BOXES 2 ENVELOPES	Retain until after recount/contest period	JTB
# 7C ENVELOPES	2 BOXES	Retain until after recount/contest period	JTB
LATE ABSENTEE BALLOTS	1 BOXES 3 ENVELOPES	Retain for Two Years	JTB
PROVISIONAL VOTING MATERIALS	1 BOX	Retain for One Year	JTB
ABSENTEE APPLICATIONS	15 BOXES	Retain for Two Years	JTB
LATE ABSENTEE APPLICATIONS	5 ENVELOPES	Retain for Two Years	JTB


Signature of representative from Clerk of Courts Office accepting delivery

11/13/13
Date

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Fairfax1



County of Fairfax, Virginia

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Electoral Board

TO: John T. Frey
Clerk of the Fairfax County Circuit Court

Seth T. Stark
Chairman

FROM: Lawrence Costanzo
Election Specialist

Stephen M. Hunt
Vice Chairman

DATE: November 20, 2013

Brian W. Schoeneman
Secretary

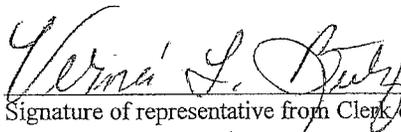
SUBJECT: Delivery of November 5, 2013, General Election material. The following items were delivered to the Clerk of Courts Office on Wednesday, November 18, 2013, in sealed containers:

COPY

General Registrar

Cameron P. Quinn

BOX LABELED AS	NUMBER	COMMENTS	INITIALS
# 3 ENVELOPES	2 BOXES	Retain for One Year	JFB
# 6 ENVELOPES	7 BOXES	Retain until after recount/contest period	JFB
# 7C ENVELOPES	1 ENVELOPE	Retain until after recount/contest period	JFB
LATE ABSENTEE BALLOTS	1 BOX	Retain for Two Years	JFB
LATE ABSENTEE APPLICATIONS	1 ENVELOPES	Retain for Two Years	JFB


Signature of representative from Clerk of Courts Office accepting delivery

11/20/13
Date



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Electoral Board

TO: John T. Frey
Clerk of the Fairfax County Circuit Court

Seth T. Stark
Chairman

FROM: Lawrence Costanzo
Election Specialist

Stephen M. Hunt
Vice Chairman

DATE: November 20, 2013

COPY

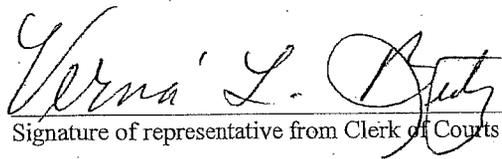
Brian W. Schoeneman
Secretary

SUBJECT: Delivery of November 5, 2013, General Election material. The following items were delivered to the Clerk of Courts Office on Tuesday, November 26, 2013, in sealed containers:

General Registrar

Cameron P. Quinn

BOX LABELED AS	NUMBER	COMMENTS	INITIALS
# 3 ENVELOPES	BOXES 2	Retain for One Year	JSB
# 6 ENVELOPES	BOXES 1	Retain until after recount/contest period	JSB


Signature of representative from Clerk of Courts Office accepting delivery

11/26/13
Date



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Electoral Board

TO: John T. Frey
Clerk of the Fairfax County Circuit Court

Seth T. Stark
Chairman

FROM: Lawrence Costanzo
Election Specialist

Stephen M. Hunt
Vice Chairman

DATE: December 5, 2013

COPY

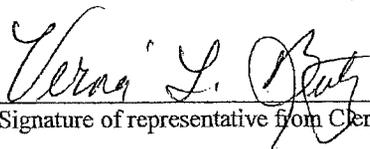
Brian W. Schoeneman
Secretary

SUBJECT: Delivery of November 5, 2013, General Election material. The following items were delivered to the Clerk of Courts Office on Thursday, December 5, 2013, in sealed containers:

General Registrar

Cameron P. Quinn

BOX LABELED AS	NUMBER	COMMENTS	INITIALS
# 3 ENVELOPES	1 ENVELOPE	Retain for One Year	VSB
# 6 ENVELOPES	5 BOXES	Retain until after recount/contest period	VSB
# 7C ENVELOPES	1 ENVELOPE	Retain until after recount/contest period	VSB
LATE ABSENTEE BALLOTS	1 ENVELOPE	Retain for Two Years	VSB
LATE ABSENTEE APPLICATIONS	1 ENVELOPE	Retain for Two Years	VSB



Signature of representative from Clerk of Courts Office accepting delivery

12-5-13

Date

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Fairfax4

Nov Nov 18

WAREHOUSE

8:55 - Tom BERKE FOUND FROG ENV.

IN BLACK BIN

9:25 - LARRY KUNKLE FOUND

USED & UNUSED BATS 2x#3 & 2x#6

IN 731 TUBS

10:30 GEORGE GETTE FOUND UNUSED

1x#6 IN 806 SYDENSTRICKER

11:10 GEORGE GETTE FOUND UNUSED BATS

IN 417 GARFELS

3

4753 = BILL TAYLOR

LIGHT INSIDE FENCE FMD

T ATTENDANCE

Methfessel, Beth D.

From: Doherty, Christopher
Sent: Friday, December 06, 2013 12:32 PM
To: Stark, Seth T.; Schoeneman, Brian; Hunt, Stephen M; Quinn, Cameron P.
Cc: Flaig, Judy; Rackowski, Jr, Henry M; Kunkel, Larry D; Methfessel, Beth D.
Subject: Items found at the Warehouse

Electoral Board and General Registrar,

As of Wednesday December 4, 2013 the "Warehouse Cleanup" has been completed, following the November 5, 2013 election. A significant portion of this process involved opening every precinct cart and every black bin which was used on election day. Historically this process has turned up important items which were errantly left in these devices, by the Chiefs, on Election Day. This election was no different. As such, I present a list of those items discovered during this election's Warehouse Cleanup:

1. Voted Ballots in #3 envelopes(boxes) from: 915 Virginia Run
731 Tysons
Ballots from 915 Virginia Run were delivered to the Courthouse on Tuesday, November 26th. Ballots from 731 Tysons were delivered to the Courthouse on Wednesday November 18th.

2. Un-voted Ballots in #6 envelopes(boxes) from: 915 Virginia Run
731 Tysons
802 Cedar
419 Lane
842 Parkway
234 Aldrin
417 Garfield
806 Sydenstricker
926 Powell
Un-voted Ballots from Precinct 915 were delivered to the Courthouse on Tuesday, November 26th. Un-voted Ballots from Precinct 731 were delivered to the Courthouse on Wednesday November 18th. Un-voted Ballots from Precincts 802, 419, 842, and 234 were delivered to the Courthouse on Thursday December 5th. Un-voted Ballots from Precincts 471, 806, and 926 were delivered to the Courthouse on Wednesday November 18th.

3. Four voted ballots from the 86th House District. Found loose in a black bin of unknown precinct number. Theses ballots were found by Rover Charles Collins on Tuesday December 3rd. Collins confirms they were found in the voted ballot storage area of the black bin, and were therefore fed through the OS reader on Tuesday November 5th. These Voted Ballots delivered to the Courthouse on Thursday December 5th.

4. One Provisional Ballot from Precinct 219. Found in a black bin by Rover Tom Bjerke on Monday, November 18th. This Ballot is currently stored in the Ballot Storage Room 319.1 at the Government Center.

5. One 7C envelope found in Precinct 717 Woodburn cart. This envelope was found on Wednesday, December 4th. The envelope was turned over to the Courthouse on Thursday December 5th, but has been brought back to the Government Center on Friday December 6th. All 7C envelopes have been released to our custody per court order.

Please let me know if you have any questions regarding these items.

Sincerely,

Chris Doherty

Assigned Precinct: 915 VIRGINIA RUN
Location: Virginia Run Elementary School
Location Telephone: (703) 988-8900

Rover: Daniel Per-Lee
Rover Cell Phone: Redacted

NAME		Cell Phone
Ritchie B Coryell	R	Chief
Terrie L Wortherly-Wilson	D	A/Chief
Marjorie Dedrick Starling	I	Officer Full-Day
Andrea Regalado	R	Officer Full-Day
Megan Rhae Peterman	R	Officer Full-Day
Paul Vernon LoChirco	I	Officer Full-Day
Andrea Maren Dulik	R	Officer Full-Day
James M Bonk	R	Officer Full-Day
Michelle Marie Johnson	R	Officer Full-Day
Hailey L Knapp		Page

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of document

Assigned Precinct: 731 TYSONS
Location: Providence Committee Meeting Room
Location Telephone: (703) 803-3844

Rover: Knute Berstis
Rover Cell Phone: Redacted

NAME		Cell Phone
Frank J Fisher	R Chief	Redacted from on-line version
John Jeffrey Shivnen	D A/Chief	of document
Waltraud R Freed	D Officer Full-Day	
Shahzad Ardestani	D Officer Full-Day	
Charles H Freed	R Officer Full-Day	
Max K Ardestani	D Officer Full-Day	
Del-Min Amy Chen	D Officer Full-Day	
Jean Ling Freeman	D Officer Full-Day	
Leslie Louise Groves	D Officer Full-Day	
Ashok Kumar Sengupta	D Officer Full-Day	