

MINUTES
Fairfax County Electoral Board
January 10, 2018

The Fairfax County Electoral Board met on Wednesday, January 10, 2018, in Conference Room 315 at the Fairfax County Government Center located at 12000 Government Center Parkway, Fairfax. Chairman Stephen M. Hunt, Vice Chairman Seth T. Stark, Secretary Katherine K. Hanley, General Registrar Cameron Glenn Sasnett, Deputy Registrar Gary Scott, Deputy County Attorney Erin Ward, Assistant County Attorney Martin R. Desjardins, Public Information Officer Lisa Connors, and Clerk to the Board Beth Dixon Methfessel were present. Keith Damon representing the Fairfax County Republican Committee (FCRC); Donna Rostant representing the Fairfax County Democratic Committee (FCDC); John Farrell member of FCDC; Maggi Luca, Therese Martin, Judy Helein, and Sidney Johnson representing the Fairfax League of Women Voters (LWV); Fairfax County resident Jean Thoensen also attended the Electoral Board meeting. Matt Miller from GIS and Mapping Services participated in a portion of the meeting.

Mr. Hunt called the meeting to order at 7:00 p.m. and introduced himself, Vice Chairman Stark and Secretary Hanley (Board). Mr. Hunt called for a motion to approve the January 10, 2018 meeting agenda. Mr. Stark moved to approve the agenda, and by a vote of 3-0, the agenda was adopted.

Mr. Hunt asked for approval of the Draft Minutes of the Electoral Board meetings held on November 3, 2017, November 8, 2017, November 30, 2017, and January 4, 2018. Ms. Hanley moved to adopt, and without corrections, and by a vote of 3-0, the Board adopted the November 3, 2017, November 8, 2017, November 30, 2017, and January 4, 2018, Minutes.

Under the General Registrar's Update, Mr. Sasnett explained that after the November 2017 election, the State Board of Elections (SBE) withheld certification on two of the House of Delegates races, the 28th and the 88th, due to claims that improperly assigned voters received the incorrect ballots for their respective House of Delegates districts. Mr. Sasnett asked Mr. Miller to analyze the House of Delegate districts in Fairfax County to ascertain if voters were properly assigned. Mr. Miller discussed how he used the official address repository along with data in VERIS, Virginia's voter registration system, to determine the accuracy of voter assignments. He reported that approximately 333 registered voters in VERIS did not match the district to which they should be assigned. Voter credits showed that 126 of the 333 voted in November 2017. None of these voters cast ballots in the 40th House of Delegates district. Ms. Hanley asked what steps were being taken to fix these assignments. Mr. Sasnett answered that the street file in VERIS will be corrected. This action will trigger a notice informing the affected voters of any change to their legislative district. Mr. Miller added that GIS will forward a list of recommendations to Mr. Sasnett so that these anomalies might be avoided in the future.

FCRC asked if any of the addresses of the 333 improperly assigned voters were close enough to the boundaries to require a “judgment call.” Mr. Miller used a map to show that the position of most of the addresses in relation to the boundary lines was unambiguous; therefore, after comparing this information with VERIS, the decision to classify the voters as improperly assigned is reliable.

FCDC asked Mr. Sasnett what prompted him to initiate this research. Mr. Sasnett responded that at the December SBE meeting, ELECT informed the public of the analysis in the 28th/88th House of Delegate districts. Mr. Sasnett concluded that these irregularities might also exist in every district in Virginia. This level of scrutiny should, therefore, be applied to all localities to make certain of the correctness and the accuracy of the data of their voter rolls.

Mr. Hunt thanked Mr. Sasnett for being proactive, considering congressional races will be held in November. Ms. Hanley suggested that with the upcoming May Town Elections, that the towns also be prioritized. Mr. Miller said that his task list includes reviewing and analyzing all boundaries that divide voters by ballot.

Mr. Sasnett then addressed the second issue under the General Registrar’s Update, Voter Registration Transfers. He explained that by law a voter is allowed to sign a statement and submit it to change their address or initiate a transfer within Virginia. There is no definitive structure to the statement; it can be written on a “cocktail napkin.” The registrar of the locality to which the voter has moved would then request the original record from the locality from which the voter has moved and put them together to authorize the transfer. After October 22, 2017, [registration closed for November 7, 2017 election] ELECT changed the manner by which they were presenting address changes and transfers to the localities submitted through the DMV. First, if the transaction was an update, ELECT labeled it as such to clearly distinguish it from a new registration. Second, ELECT added the voter ID number if it found a match in VERIS. Finally, ELECT stopped the practice of filling in the answers to the qualifying eligibility questions (felon, mental incapacitation, protected voter, military service) on these records. These changes were acknowledged in an email dated November 15, 2017 from Commissioner Edgardo Cortès (attached and made a part of this record).

As such, Mr. Sasnett said, that from July 1, 2016, until this practice ended in October 2017, ELECT was providing to the DMV some mechanism to determine if an individual was a registered voter. When voter registration was confirmed, the DMV asked the voter if the mailing address provided in the transaction could be used to send the updated information to ELECT for voter registration purposes. The voter was not prompted at any time to respond to the eligibility questions, nor requested to sign, under penalty of law, a statement indicating the information being forwarded to ELECT was true. Mr. Hunt pointed out that the “cocktail napkin” would not have provided the answers to these questions, to which Mr. Sasnett responded that the “cocktail napkin” is a different process because “the voter initiates it.” Mr. Sasnett said that the DMV, as well as other voter registration organizations as defined by the National Voting Rights Act (NVRA) of 1993 are “required to follow certain procedures.” He further added that Va. Code § 24.2-416.7 and Va. Code § 24.2-411.1

pertain specifically to electronic transfers through the DMV that include “asking all the questions that are required of a voter registration application.” The transactions he questions were solicited “outside the requirements of the law.”

Mr. Sasnett said that these electronic transfers/updates from the DMV, prior to October 22, 2017 were processed under the assumption that the required eligibility questions had been asked and answered. When registration reopened after the November 2017 General Election, these types of transactions no longer included the answers to the eligibility questions. Mr. Sasnett reported that upon further research, it was discovered that the responses added by ELECT to these transactions between July 2016 and October 2017, had been deleted from VERIS. Mr. Hunt asked if Mr. Sasnett knew when the records were altered. Mr. Sasnett responded that according to ELECT, the records were revised on December 12, 2017, 10:38 p.m. by Admin_tfs885, a VERIS contractor. The reason given for the removal of the answers was “because the questions were not answered by the voter.” Mr. Sasnett expressed his extreme concern over this action because for almost 15 months, electronic DMV updates and transfers were processed under the assumption that they were “whole and complete” and as such, the electronic transaction would then supersede and replace the original paper voter registration card (alpha card). In Fairfax County these paper records or alpha cards, digitized during the completion of the 2017 scanning project, have been destroyed.

Mr. Hunt asked if electronic updates/transfers show where they were transacted, and Mr. Sasnett responded that the transactions do indicate the source from which they originated.

FCDC stated that if a person already has a Virginia voter registration record, then the eligibility questions have been asked and answered. To require voters to answer them every time they update their record is “putting in restrictions not required by the Code.”

Ms. Hanley asked Mr. Sasnett how the Office of Elections (Office) is handling these transactions. Mr. Sasnett explained that after consulting with colleagues around Virginia, in order to uphold his statutory responsibility of ensuring accurate voter rolls when original records are no longer available that show the eligibility questions were answered, he is holding the records in question in an incomplete status in order to solicit additional information. He will not cancel or deny any transaction except those required by law. He proposes to send these voters a letter, including a postage-paid return envelope, explaining that an application was submitted through the DMV to update their voter registration information but it did not contain certain required elements, including their digital signature. It will instruct them to go to vote.virginia.gov and complete a new application, or the letter will include a supplementary question asking them if they will affirm that they meet the voter eligibility requirements. Ms. Hanley asked how many transactions this involved. Mr. Sasnett responded that approximately 6,000 are being held as incomplete, but new voter registrations and updates/transfers that do not originate from the DMV are being processed immediately.

Ms. Hanley asked if any other jurisdictions are taking similar actions. Mr. Sasnett responded that other jurisdictions “don’t know what to do.” Mr. Hunt asked if an attempt is being made to match any of the 6,000 applications deemed incomplete with original records. Mr. Sasnett replied that it is his “belief that the applications were solicited outside of the law that establishes how they are supposed to be solicited.” Additionally, he said, the applications “include responses that the voter did not authorize.” Mr. Sasnett added that he experienced first-hand the way DMV handles these transactions. Mr. Sasnett explained that on January 4, 2018, he went to the DMV to change his address. He said he was not asked whether he was a citizen or whether he met the requirements to be a registered voter, however, when his application reached the Fairfax County hopper, it indicated that he was a citizen. Mr. Hunt pointed out that citizenship status must be proved in order to receive a driver’s license, so the DMV already knew Mr. Sasnett was a citizen. Mr. Hunt asked if Mr. Sasnett’s transaction reflected any response to the eligibility questions, and Mr. Sasnett answered that there were no responses.

Mr. Hunt summarized Mr. Sasnett’s concerns into three issues: 1) ELECT filling in responses to the eligibility questions; 2) ELECT removing the responses to the eligibility questions. The consequence of this action by ELECT is that the original record with the required answers may now no longer exist; and 3) approximately 6,000 applications are in the hopper and have been deemed by Mr. Sasnett to be incomplete because the answers to the various eligibility questions are blank. Mr. Hunt then asked Mr. Sasnett if these persons submitting an application for a transfer/update *had been* (emphasis added) presented with the eligibility questions and failed to respond, then the appropriate response would be to deny the transaction. Mr. Sasnett agreed that if a transfer/update transaction was received from a designated agency without the responses to these questions, it would be denied. Mr. Hunt commented that he “understood the dilemma” facing the processing of these transactions. Ms. Hanley remarked that when a voter wants to change their address, “the minimal requirement in the Code should apply.”

FCDC asked Mr. Sasnett what transactions originating from the DMV would be considered complete. Mr. Sasnett answered that he has confidence that new applications from the DMV contain all the elements required by law, and as such, will be processed and for the reasons previously stated, transfers and updates transactions will be deemed incomplete. FCDC asked if this was his decision or did the Board make this decision. Mr. Stark answered that the Board was not consulted prior to Mr. Sasnett’s determination. FCDC asked if Mr. Sasnett consulted with counsel prior to reaching his decision. Mr. Sasnett answered affirmatively. FCDC asked if his decision had been “ratified by the lawyers in the county.” Ms. Ward advised Mr. Sasnett that he did not have to respond to this question under “attorney-client privilege.” Mr. Sasnett stated that his decision was not “unilateral” and that Secretary Hanley was made aware of the issues at the December 19, 2017 General Registrar/Electoral Board (GR/EB) work group. Ms. Hanley responded that she co-chairs the GR/EB workgroup meetings. They are public meetings, and Mr. Sasnett attended as an observer when these concerns were discussed. Amongst the registrars that are members of the GR/EB workgroup, there was not a consensus on how to resolve these issues. The president of VRAV (Voter Registrars Association of Virginia), also a member of the GR/EB

workgroup, indicated that he could only follow what ELECT directed with respect to the DMV transfers, and ELECT's guidance specifies that they be processed.

While appreciating Mr. Sasnett's diligence with respect to accurate voter rolls, FCDC observed that Va. Code § 24.2-416.7 and Va. Code § 24.2-411.1, although referred to by Mr. Sasnett as the basis of his refusal to process DMV transfer/update transactions, do not support his position. FCDC stated that Va. Code § 24.2-411.1(A) provides the opportunity to register to vote by electronic means to each person who comes to the DMV to apply for, replace, or renew a driver's license; apply for, replace, or renew a special ID card; or change an address on an existing driver's license or special ID card. Once registered to vote, Va. Code § 24.2-411.1(B)[Para 3] provides that "any completed application for voter registration submitted by a person who is already registered shall serve as a written request to update his registration record. Any change of address form submitted for purposes of a motor vehicle driver's license or special identification card shall serve as notification of change of address for voter registration for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes." FCDC concluded that Mr. Sasnett is "reading into the Code something that does not exist and disenfranchising 6,700 people" who have complied with the provisions of Va. Code § 24.2-411.1 to change or update their address.

Mr. Farrell commented that "the conversation proceeds from a false premise that the questions have to be answered every time someone fills out the form." The questions were answered when the voter originally registered. Mr. Farrell asked, "Where in the Code is it written that the questions must be answered again?" He concluded that having answered the questions once and with no countervailing evidence to the contrary, such as notification from ELECT of felon status, these transfer/updates should be processed. Mr. Sasnett replied that he agreed "that it is on file that these answers are already listed" and has "no qualms with what is already existing, however, the process by which they have been solicited for the last 15 months has led to less confidence in the data."

Sidney Johnson, LWV, commented that if information is now missing on a voter's registration record, no matter how it was lost, this data must be retrieved.

Mr. Stark suggested that asking for an Attorney General's opinion may resolve these issues and volunteered to draft a letter. Secondly, he said that some action must be taken to administer the "incomplete" transactions being held by Mr. Sasnett.

Mr. Sasnett stated that he is not "out to disqualify voters", however, to maintain the accuracy and completeness of the voter rolls, "there has to be one voice who is in charge of making sure that the process itself, regardless of politics, is done appropriately." He added that electronic submissions from the DMV that have led to putting in answers to questions that the voters were not asked, then removing those answers from the database, could ultimately lead to questions regarding the legitimacy of the voter rolls.

Mr. Hunt recognized Mr. Sasnett's concerns with respect to voter data, however, he commented that with respect to address changes/updates, "the information coming in can

probably be trusted.” Mr. Hunt observed that furnishing a social security number or citizenship status to the DMV also provides it to the Office of Elections because it is information that is interchangeable and shared between the two organizations. He asked if a decision is made to process the “incomplete” transactions in the hopper, can those records then be identified if the Attorney General returns an opinion that concludes the transfers should not have been processed. Mr. Scott responded that transfers occurring within Fairfax County can be reversed, but cannot be changed for those who transfer either into or out of Fairfax County.

Mr. Sasnett also referred to a cautionary email issued by the Commonwealth’s Attorney in Wise County. C.H. “Chuck” Slemph, III. Ms. Hanley read the email outlining Mr. Slemph’s concerns with DMV’s electronic voter registration system (attached and made a part of this record).

FCDC asked Mr. Sasnett if he would process anything other than an initial, original voter registration from the DMV, and Mr. Sasnett replied that he would not because the registrar has an obligation to determine eligibility for voter updates/transfers. Mr. Stark asked Mr. Sasnett what his response would be if the Board disagrees with his interpretation of the Code, and his position of not accepting the transfer/updates from the DMV. Mr. Stark queried whether Mr. Sasnett considered the Board’s position on this issue “irrelevant” because Mr. Sasnett considers the registrar the authority on how to process these transactions. Mr. Sasnett replied that while the Board’s position is not irrelevant, the Board might not give full consideration regarding the concerns he has over the integrity of the data.

Mr. Sasnett then acknowledged the desire of the Board to process these transactions, and suggested the following course of action. Based on the premise that these transactions were accepted from July 2016 up through December 4, 2017, and as long as nothing else within the application disqualifies it, he will process them. However, he will include a letter that explains that because the transaction occurred at the DMV, some elements of eligibility may not have been proved. FCDC asked if a meeting with the DMV is planned to find a solution to handling these sensitive data issues. Mr. Sasnett answered that the DMV requires the Attorney General to be present, but the Attorney General has thus far declined to arrange such a meeting.

Mr. Hunt moved that the Electoral Board request in writing an Attorney General opinion on Va. Code § 24.2-416.7 and § 24.2-411.1, specifically, whether there was any inappropriate use of personally identifiable information in the processing of voter registration update transactions through the Division of Motor Vehicles, and to determine if the series of eligibility questions that are part of the voter registration application must be answered when a Division of Motor Vehicles address update transaction is initiated, and the voter requests the new address information be forwarded for voter registration purposes. If the Attorney General concludes that the voter’s personally identifiable information was improperly applied to complete the update transaction, then those voters will be contacted to confirm that their voter registration information is accurate and complete. Concurrently, the General Registrar will approve any pending and ongoing electronic DMV voter registration

updates, notwithstanding the lack of responses to various eligibility questions, unless some other issue or omission requires denial of the update. The motion passed by a vote of 3:0.

A copy of the letter will be forwarded to the political committees, as well as any response received from the Attorney General.

Under the Chairman's report, Mr. Hunt commented on the professional and competent handling of the 40th House of Delegates recount. Completed in less than two days, the process went smoothly with no major controversy. He complimented Mr. Sasnett and staff for managing the November election in an efficient and organized manner and asked that this commendation be passed on to all staff and election officers.

Under the Vice Chairman's report, Mr. Stark commented that Election Manager Judy Flaig's retirement party was held on January 9, 2018. Mr. Stark attended, along with Ms. Hanley and Carol Ann Coryell, former Electoral Board member, plus several supervisors including Chairman of the Board of Supervisors Sharon Bulova. Among the many honors and awards she received, Mr. Stark mentioned that Mr. Sasnett presented Ms. Flaig a plaque, now mounted outside of Conference Room 315, dedicating the space as the "Judy Flaig Election Officer Training and Meeting Center." Mr. Stark stated that Judy Flaig was the consummate professional; she helped people to do their jobs better while serving with the utmost dedication to the integrity of the electoral process.

Under the Secretary's report, Ms. Hanley reminded the local committees that the list of approved election officers is due on January 22, 2018. She thanked them for their cooperation. She also mentioned that because the new oath term begins on March 1, 2018, all election officers must be trained prior to serving in their first election in the new appointment term. Ms. Hanley also thanked all of the officials, party representatives, and observers who worked exceptionally well together in the 40th House of Delegates recount. She praised the recount court and the counsel for both candidates for their attention to detail which led to a "text book" recount process. She suggested passing on appreciation in writing to Chief Judge Bruce White, and copying Clerk of Court John Frey. Mr. Sasnett commented that he sent the judges on the recount court, as well as Clerk Frey and his staff, a thank you note and a commemorative 2017 election pin.

There was no New or Old Business.

The next Electoral Board meeting will be on Tuesday, February 6, 2018, to appoint election officers for a two-year term.

Under Public Comments, Maggi Luca reported that LWV is translating the Facts for Voters into Spanish and hopes the Electoral Board will consider changing their policy and allow the Office to distribute this material.

FCDC and FCRC thanked the Board for listening to their comments and concerns.

There being no further business, Mr. Stark made a motion to adjourn. The motion carried, and without objection, the meeting was adjourned at 10:22 p.m.

Attachments

Stephen M. Hunt, Chairman

Seth T. Stark, Vice Chairman

Katherine K. Hanley, Secretary