



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

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AMERICAN CIVIL
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FOUNDATION OF
MARYLAND

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Via email to: linda.lamone@maryland.gov, nikki.charlson@maryland.gov,
atrento@oag.state.md.us, and info.sbe@maryland.gov

Dear Administrators and Board Members of the State Board of Elections:

Since 2004, the ACLU of Maryland's Election Protection campaign has been working across the state and in communication with the Maryland State Board of Elections (SBE) to ensure every Marylander can exercise their fundamental right to vote. Undoubtedly, the recent elections in the midst of a pandemic required the most unprecedented and comprehensive changes to our election systems we have ever seen.

While this letter is intended to outline our organization's concerns and recommendations following the Primary election based mostly on undisputed problems, we want to applaud the State Board of Elections' swift decision and execution of a primarily "vote by mail" system during a pandemic that has a disproportionate impact on people of color, people with low income, people with disabilities, and all people considered at risk of complications due to the COVID-19 pandemic. Despite the concerns expressed below, the Board's attempt to provide every registered voter with a ballot by mail helped to make it possible for the vast majority of registered voters to exercise their right to vote safely from home. If this had not been an option, we cannot even fathom how many people would have been disenfranchised, what the polling sites would have looked like, nor what the absentee voting process would have entailed. As such, any attempts to use this letter to argue against mailing registered voters their ballots in November would be a gross distortion of our report, analysis, and recommendations.

And, although we are pleased about the high turnout in the Primary (made possible by ballots mailed to every registered voter), we must not allow that to be an excuse for ignoring the problems, barriers and disparities that have emerged or persisted.



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The issues and concerns we have can be summarized in five main categories: 1) negligent or inadequate planning; 2) human error; 3) disenfranchisement of people in jails; 4) insufficient transparency and communication, and 5) lack of accountability. These issues came to our attention through various public sources, coalition partners, and our Election Protection Hotline, which received numerous calls in advance of the June 2 Primary. While the examples detailed in this letter originate from the 2020 Maryland Primary, these categories of concern are far from new. It should be no surprise to Maryland State Board of Election staff that the ACLU is concerned about technological “glitches”, process issues, poor planning that leads to long lines in polling places, mistakes that lead to confusion or voter disenfranchisement, and the overall disproportionate impact these issues have on Black voters, in particular.

We refuse to let another election cycle go by without speaking loudly and clearly about what Maryland voters and our democracy deserve: a well-resourced election system run by proactive, engaged elections administrators, governed by board members passionate about voting rights and with an understanding of the myriad barriers to voting that exist for some people, and a transparent process that promises clarity, equity, and accountability.

Core Recommendations

Investigate the cause of all technological glitches and mistakes, including all those detailed below, ensure results are transparent, and hold those responsible accountable for their mistakes. Without a clear understanding of what went wrong, how, and why, we cannot be certain the same problems will not persist or similar problems will not occur in the General election.

Establish a community task force to ensure the safety and integrity of our election. Bringing together a diverse range of stakeholders can alert elections administrators to concerns and considerations earlier and engage resources and support from community and advocacy partners. Community engagement creates buy-in from the outset and provides those with concerns access to information as well as avenues to address concerns.



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Produce a comprehensive, fully-funded plan with layers of oversight, audits, emergency/contingency planning, logistics, and outreach for the November election. Present the plan in advance to the public, and take community/stakeholder input. Planning for a General election during a pandemic is no easy feat. We know there will be challenges, so we must anticipate and plan to create a smooth, safe, accessible, and equitable election.

Address voter disenfranchisement of people in jails by providing voter registration forms, absentee ballot applications, and ballots with pre-paid postage to all jails and detention centers where eligible voters are held. These materials should be delivered with enough time to allow jail staff and eligible voters to learn and follow the steps (understanding the many barriers that may exist for prisoners.) While it has never been acceptable that people in jails rely entirely on outside volunteers and organizations who help with voter registration in some facilities, the COVID pandemic has left thousands of people who are eligible to vote with virtually no way to access their constitutionally protected right to vote. Now, more than ever, the responsibility lies fully with State Board of Elections to remove the barriers to voting for people in jails and ensure that eligible voters in jails have full and equal access to voting.

Specific Concerns and Recommendations

→ NEGLIGENT OR INADEQUATE PLANNING

Problems:

Our Primary elections suffered from a scarcity of in-person locations and no in-person early voting locations. Pervasive long lines throughout the day – but almost only in counties with high numbers of Black and Brown voters – even caused traffic jams, and inevitably, resulted in disenfranchisement. Long lines disproportionately disenfranchise people with disabilities and people with low income and others who cannot stand in line for two hours. Short lines and quick turnover at each voting location are necessary to ensure that individuals who need or want to vote in person can do so. Election year after election year, we see long lines in certain areas, areas where the polling places also run out of ballots and have glitches, even though advocacy organizations raise these



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concerns before the election and the administrators claimed to have it covered. Our elections deserve logistics experts and dedicated contingency planners to identify needs before they become problems and to resolve issues immediately.

Recommendations:

- Produce a comprehensive, fully-funded plan with layers of oversight, audits, emergency/contingency planning, logistics, and comprehensive voter outreach for the November election. Present the plan to the public and take community/stakeholder input.
- Provide all of the available options for voting: Vote by mail, drop boxes, online ballot delivery, in person early voting, same day registration, in-person voting, and provisional voting.
- Invest in robust, strategic logistics and planning such as cutting-edge, forward-thinking logistics, and communications, as well as appropriate IT staff and infrastructure to support the election.
- Plan for high turnout. Plan for unprecedented turnout in areas that all-too-often experience long lines and other issues.
- Develop robust contingency and emergency plans for possible problems.
- Create an Election Day logistics team to be dispatched to polls with growing lines to quickly identify and resolve needs, such as bottleneck at the polling location and other day-of issues.
- Develop a new recruitment and compensation plan for election judges. Improve education, training, handbooks, and support for poll workers.
- Have surplus machines, ballots, and election workers throughout the state available for quick delivery.
- Find solutions for slow-loading electronic poll books.
- Consider solutions for people who have their mail forwarded.
- Consider options for prepaid postage for online ballots.
- Provide signage and redirection at any polls that are not open.
- Create guidelines for police presence to ensure voters are safe (adequate amount of police presence for traffic and parking support, but not so much police presence that it creates an intimidating environment for voters).

→ HUMAN ERROR

Problems:

During the Primary election, the numerous errors made by State Board of Elections staff and vendors caused major delays and confusion in the timing,



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delivery, and information provided on the ballots to the public. Egregious mistakes by vendors and the State Board of Elections such as mailing ballots late, claims that ballots had been mailed when they had not, failure to make ballot corrections before mailing, and delays in sending information to vendors, caused public confusion about the timing for receipt of ballots. Moreover, inaccuracies on ballots were not corrected, including the date of Primary (explained as not having enough time to change) and District 1 title line, which caused further confusion about the accuracy and validity of the information on the ballots. Further, approximately 90,000 Prince George's voters were inadvertently sent instructions in Spanish only, the wrong ballots were sent to Remington Row in Baltimore City, and an e-poll book problem caused voters with "undeliverable" ballots to be marked as having already voted even when they had not in fact voted. Such blatant errors are unacceptable and must be investigated and addressed to prevent recurrence during the November election.

Recommendations:

- Develop a robust, dynamic, and constant auditing/testing system to identify glitches and errors in all aspects of our election system (to include SBE, local Boards, vendors, USPS, etc.), closely monitor lists and systems, ensure timely ballot delivery, and track voter experience.
- Invest in technology solutions that reduce opportunity for human error and ultimately save staff time.
- Build in staff and board member accountability measures.

→ INSUFFICIENT TRANSPARENCY AND COMMUNICATION

Problems:

A lack of transparency and communication with the public caused widespread confusion when major changes were made to the voting process. On the night after the Election, the Maryland State Board of Elections failed to communicate complete and timely information and explanations to the public about why the results had been removed from the website, which fostered confusion and mistrust in the election.

Moreover, the Maryland State Board of Elections has been inconsistent in the collection and sharing of data and numbers needed to fully understand and resolve problems. For example, the Maryland State Board of Elections says they cannot produce numbers for how many ballots arrived to voters from the vendor



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after Election Day, as they are lumped in with numbers of “undeliverable” ballots. It is critically important that we are able to separate out these numbers, as the causes, responsible parties, and reasonableness are vastly different between the number that arrived to the voter late and the number returned as “undeliverable.”

Finally, the Maryland State Board of Elections’ virtual meetings do not allow for public participation, comments, or open forum questions. Trust, transparency, and accountability require dialog. The “listen only” format sends a message to the public that their input and concerns are not valued, and keeps the Board from hearing from impacted voters and other stakeholders, who may have information and experiences that the Board could learn from.

Recommendations:

- Provide complete information, data, and explanations quickly and in language that is easy to understand.
- Collect, analyze, and provide complete, severable, and timely data.
- Invest in clear and consistent voter education and outreach that includes a clear, dedicated, measurable plan to reach Black and Brown voters.
- Improve the State Board of Elections’ website to avoid confusion, make processes simpler, and provide more and timely information to voters about the status of their ballot.
- Consolidate deadlines and clearly convey them to the public.
- Move State Board of Elections meetings to Facebook Live, WebEx, or Zoom so the public can participate.
- Consider a text alert system for major changes, including utilizing other texting systems maintained by public entities like schools.

→ LACK OF ACCOUNTABILITY

Problems:

Staff and vendors have not been held accountable for errors that disenfranchised voters during this process. No apologies have been made, no administrators or officials have been corrected, disciplined, or lost their jobs, no vendors have lost their contracts, and no board members have been removed.

Recommendations:



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- Investigate the cause of all glitches and mistakes, including all listed in this letter. Ensure the results of the investigation are made publicly available, and hold those responsible accountable.
- Establish a community task force that includes representation from community-based and Black-led organizations, people with disabilities, people with low income, people needing language assistance, and advocacy organizations with elections and voting rights experience
- Build in staff and board member accountability measures.

We fully understand that there is a lot to do in a short amount of time, and that 2020 has brought unprecedented and unforeseen challenges to many segments of our government and society. Now more than ever, given the crises we face, we must invest fully in the bedrock of our democracy and steadfastly safeguard the rights of the most marginalized. With proper investment and staffing, and the establishment of a community task force, we can ensure that November's elections are robust, safe, accessible, and equitable.

We look forward to our continued partnership and appreciate your consideration and action on these important recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Cruice", written in a cursive style.

Amy Cruice
Legal Program Manager
Election Protection Director

CC: Andrea W. Trento, Assistant Attorney General