



DISTRICT OF COLUMBIA
BOARD OF ELECTIONS
WASHINGTON, D.C. 20001-2745



July 22, 2016

BY EMAIL AND HAND-DELIVERY

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, D.C. 20005

RE: Audit Report: "The District of Columbia Voter File: Compliance with
Law and Best Practices"

Dear Ms. Patterson:

As I indicated in earlier communications, the Board of Elections (BOE) respectfully submits its response to the findings and recommendations set forth in the above-referenced Audit Report consistent with the committed timeline. We appreciate the opportunity to work with your audit team to continue improving the elections process for the citizens of the District of Columbia.

Best regards,

A handwritten signature in blue ink, appearing to read "D. Michael Bennett".

D. Michael Bennett, Chair
District of Columbia Board of Elections

The District of Columbia Board of Elections' Response to the Office of the District of Columbia Auditor's Report titled "The District of Columbia Voter File: Compliance with Law and Best Practices"

I. Introduction

An accurate voter list is essential to election planning and management. It prevents fraud in elections by ensuring that those who are ineligible to vote do not vote, and that those who have already voted in an election do not vote multiple times. It also introduces efficiencies into the voting process which allows voters to get in and out of the polling place expeditiously.

There are a myriad of challenges inherent in maintaining an accurate and up-to-date voter registry. These challenges are well-documented. The District of Columbia is a very transient jurisdiction; voters move within and outside of the District without notifying the BOE. Voters register multiple times with different information, which results in duplicate registrations. The voter registration system in the District of Columbia is, for the most part, paper-based, and thus susceptible to data entry errors. (For example, a clerk's inability to read the handwriting on a voter's application may impact the way the voter's name appears in the record). The BOE is constantly working to fine-tune the processes by which we legally rectify anomalies in the voter registry that are present as a result of challenges to list maintenance, and this work has proven fruitful. The District of Columbia has been recognized for being among the first jurisdictions to initiate a multi-state voter roll comparison with its contiguous jurisdictions, Maryland and Virginia. This comparison resulted in the removal of dual registrants and the referral of individuals who had voted in more than one jurisdiction during a presidential election to the U.S. Attorney's Office for prosecution.

The BOE's list maintenance efforts have been greatly improved by its online voter registration system, participation in the Electronic Registration Information Center (ERIC) and State and Territorial Exchange of Vital Events (STEVE) programs, and the stabilization of the environment in which the BOE voter registration database resides. As a result of these enhancements, the District of Columbia's voter registry today is as accurate as it has ever been.

The BOE is wholly committed to the accuracy of the voter registry. That said, as we strive to identify and remove ineligible voters from our rolls, we must concurrently exercise extreme care not to remove eligible voters from the voter registry. Accordingly, the BOE does not remove voters unless there is clear and confirmable information that removal is the only appropriate course of action. To do otherwise would not only be improper, but would also undermine confidence in the integrity of the electoral process. The enfranchisement of eligible District of Columbia residents is the primary pillar of the BOE's mission. Any list maintenance activity must be conducted in accordance with that overarching principle based on the mandate of the law and regulations we are required to follow.

Below are the BOE's responses to the recommendations that have been made in the Audit Report issued on June 7, 2016. We will continue to work with the Office of the D.C. Auditor as we aim to ensure that the voter roll for the District of Columbia is thoroughly maintained in a manner that is consistent with federal and District law, as well as the BOE's regulations.

II. BOE Responses to the Office of the District of Columbia Auditor (ODCA) Recommendations

ODCA Recommendation #1: The BOE should develop written policies and procedures to ensure the implementation and monitoring of the following practices to ensure the integrity of the voter roll, as required by both federal and District law:

- Removal of incarcerated felons from the voter list;
- Removal of decedents from the voter list;
- Removal of duplicate voter records from the voter list; and
- Removal of inaccurate birth dates from the voter list.

Response: BOE disagrees.

The BOE currently has in place written policies and procedures to ensure the implementation and monitoring of the removal of incarcerated felons, decedents, duplicate voter records, and inaccurate birth dates from its voter registry. Moreover, the Board routinely reviews its list maintenance policies and procedures to ensure that we maintain compliance with our obligations under federal and District law, and we will continue to do so.

Below, the BOE addresses ODCA's specific findings concerning the removal of incarcerated felons, decedents, duplicate voter records, and inaccurate birth dates, and the actions the Board has taken or will take going forward with respect to each.

Incarcerated Felons. The BOE acknowledges that D.C. Official Code § 1-1001.07(k)(3) provides that "[t]he Board shall request at least monthly, and the Superior Court of the District of Columbia shall furnish, the name and address of each person incarcerated as a result of a felony conviction since the date of the previous report." While we have been receiving information regarding felony criminal convictions from the U.S. Attorney's Offices, we have now formally requested that the D.C. Superior Court also begin providing to the BOE, on a monthly basis, the name and address of each person incarcerated as a result of a felony so that the Board can ensure that all individuals who are ineligible to vote on this basis are removed from the voter registry.

Deceased Voters. Pursuant to D.C. Official Code § 1-1001.07(k)(2), "[t]he Board shall request at least monthly, and the Mayor shall furnish, the name, address, and date of birth, if known, of each District resident 18 years of age and over reported deceased within the District of Columbia, together with the name and address of each District resident who has been reported deceased by other jurisdictions since the date of the previous report." The BOE meets its obligations under D.C. Official Code § 1-1001.07(k)(2) by accessing vital records data housed at

the D.C. Department of Health through STEVE¹ and taking the appropriate action with respect to the information provided.

The Audit Report alleges that the BOE is not in compliance with D.C. Official Code § 1-1001.07(k)(2) and federal law because, as of November 4, 2015, the voter registry contained the names of 33 decedents whose dates of death ranged from January 30, 2011 through December 6, 2014. According to ODCA, the BOE failed to prove that it had requested verification of the deaths of these 33 individuals from the Mayor as required. This is simply not the case. BOE accessed STEVE on January 12, 2016 to retrieve a list of decedents in accordance with D.C. Official Code § 1-1001.07(k)(2). At that time, the BOE received a report containing a list of 242 decedents, including the 33 decedents identified by ODCA. The BOE removed 209 of these decedents from the voter registry upon finding an exact match between the data provided by STEVE and the data in the BOE voter registry for each of them. With respect to the remaining 33 individuals - those identified by ODCA - there was not an exact match between the data provided by STEVE and the data in the BOE voter registry. Consistent with established BOE practice, the BOE proceeded on the side of enfranchisement and did not remove these voters from the registry.²

Duplicate Voter Records. Duplicate registrations are due most often to voters registering multiple times with different information. More often than not, BOE staff is able to flag and resolve the duplications. However, despite best efforts, some duplicate registrations slip through the initial processing of records. In an effort to eradicate duplicates, we have adopted specific procedures to follow to assist with minimizing the duplicates that appear on the voter registry. In the past, BOE staff processed the Voter Merge Queue in Integrity, the Board's voter registration database, on a weekly basis. In an effort to identify and resolve duplicate records in a more efficient manner and to minimize the number of duplicate records that appear in the Voter Merge Queue, BOE staff has begun to review and meticulously work through potential duplicate files identified in Integrity's Voter Merge Queue on a daily basis.

The Audit Report correctly indicates that, through its participation in ERIC, the BOE is able to better identify and eliminate duplicate voter files. One of the list maintenance reports that ERIC provides is an In-state Duplicates Report.³ On September 18, 2015, the BOE received one such

¹ STEVE is a web-based application that allows for the secure exchange of vital records data between the D.C. Department of Health (DOH) and the BOE. DOH is the subordinate agency responsible for maintaining death records for the District of Columbia, and it performs this function through its Center for Policy, Planning and Evaluation's Vital Records Division (CPPE-VRD). In February 2014, and again in December 2015, the BOE entered into a Memorandum of Understanding (MOU) with CPPE-VRD under which CPPE-VRD established a mailbox through which the BOE could access pertinent death record data on a monthly basis through STEVE.¹

² As of this writing, four of the 33 individuals have been deleted from the voter registry because the BOE received verification of the deaths of these individuals. The remaining 29 individuals have been placed on the inactive list.

³ The other list maintenance reports are: 1) the In-state Movers Report (the Department of Motor Vehicles or other in-state record identifies newer contact information for the voter); 2) the Cross-state Movers Report (A newer in-state record has been found for the voter, indicating that the voter may no longer live in the state); and 3) the Deceased Report (the voter has a matching record on the Social Security Death Master list). The January 19, 2016

report which identified 1868 potential duplicate voter records. BOE staff reviewed each of these records and merged or otherwise resolved 1711 of the duplicate voter files identified. With respect to the remaining 157 records identified as potential duplicates, BOE staff could not determine with certainty that the multiple records in question were, in fact, associated with the same individual. Consequently, the Board did not merge or delete the records at issue.

Inaccurate Birth Dates. Prior to the enactment of the Voter Registration Act of 1975 (December 16, 1975, D.C. Law 1-37, § 2(3)-(5), 22 DCR 3426), there was no explicit requirement in District of Columbia law for a voter registration applicant to provide his or her date of birth. The Voter Registration Act contained a provision that required the Board of Elections to mail to qualified applicants a nonforwardable registration notification form that included, among other things, the applicant's birth date. Accordingly, the BOE's voter registration application was amended in 1976 to solicit birth dates. Because the BOE did not have birth dates for voters who registered prior to 1975, each of these voters was assigned a default birth date of 12/31/1800 in Integrity, the BOE's voter registration system, so as to indicate that that particular data was missing. The inaccurate birthdates are generally those individuals who registered prior to the requirement to provide a date of birth.

Despite the fact that the records with default birth dates predate the specific legal requirement that a date of birth is needed to register to vote, the BOE has taken active steps to reduce the number of default birth dates in Integrity. We have attempted to contact all voters with default birth dates, but most of them have been unwilling to provide the BOE with accurate birth dates. The BOE has instituted a program wherein Integrity data is regularly compared to data in the Department of Motor Vehicles (DMV) database. In instances where all data fields for a particular record match across both databases, except for the date of birth, we update the date of birth field in Integrity with the information from the DMV database. In addition, the BOE attempts to collect dates of birth from those voters with default birth dates who show up to vote.

ODCA Recommendation #2: The Board should maximize its use of ERIC to improve accuracy of the voter roll.

Response: BOE agrees.

The BOE intends to fully maximize its use of ERIC to improve accuracy of the voter roll. The Audit Report implies that the BOE is not maximizing its use of ERIC because it did not receive its first ERIC list maintenance reports until September 2015 despite joining ERIC in January 2014 and paying \$71,000 in dues between January 2014 and August 2015. BOE's "delay" in submitting its initial request for ERIC list maintenance reports was not due to mere inaction on the BOE's part. Rather, it was due to the fact that the BOE was engaged in extensive preparatory efforts with ERIC in advance of its first transmission of official data to ERIC, which occurred on July 28, 2014. ERIC members are not eligible to receive reports

mailing to 13,651 voters was in response to the Cross-state Movers Report that the Board received in September 2015. Based upon the information yielded from this mailing, the BOE deleted 5,943 voters who confirmed that they had moved out of state, updated or preserved the records of 190 voters who indicated that they still lived in the District of Columbia, and made the remaining 5943 voters, who did not respond to the mailing, inactive.

from ERIC until after they have transmitted their initial collection of data. Therefore, the BOE was not able to receive any list maintenance reports from ERIC until late July 2014.

Within 90 days of receiving list maintenance reports, ERIC members must initiate contact with 95% of the voters whose records are deemed to be inaccurate for the purpose of conducting list maintenance. This requirement operates in parallel with the requirement that all voter registration list maintenance activity based on information provided by ERIC must be conducted under the strict guidelines of the National Voter Registration Act of 1993 (NVRA). The NVRA mandates that any list maintenance program undertaken to systematically remove ineligible voters from the official list of registered voters must be completed by the 90th day before a primary or general election for federal office. *See* 52 U.S.C.A. § 20507(c)(2)(A).⁴ The BOE conducted a federal election on Tuesday, November 4, 2014. Accordingly, the Board would have had to complete any systematic list maintenance program, including an ERIC-based program, by Wednesday, August 6, 2014. Clearly, the BOE would not have had sufficient time to conduct and complete this activity prior to the November 2014 general election. In short, the BOE requested its inaugural list maintenance reports within approximately 10 months of the first real opportunity it had to do so.

The BOE has discussed herein (in the “Duplicate Voter Records” section and in footnote 3 regarding the Cross-state Movers Report) the actions it has taken with respect to the list maintenance reports it has received from ERIC, each of which has greatly increased the accuracy of the voter registry. The BOE looks forward to the improvements in its voter registry that will accrue from its participation in ERIC, and it considers the \$71,000 paid during the pertinent time period entirely reasonable. Moreover, as more states join, the BOE’s share of ERIC’s annual operating costs will decrease.

ODCA Recommendation #3: The Board should work with the Mayor and voter registration agencies (VRAs) to develop the capacity for electronic transmission of voter registration information from the DMV and other VRAs to the Board.

Response: BOE agrees.

The BOE agrees that voter registration information should be electronically transmitted from all VRAs to the BOE. In its April 2010 report titled “Study of the Feasibility of Implementing Automatic Voter Registration in the District of Columbia” that the BOE submitted to the Council pursuant to the Omnibus Election Reform Act of 2009 (the “AVR Report”), the BOE indicated its support for automatic voter registration, stating that it was “technologically feasible and could greatly improve the accuracy, efficiency, and cost-effectiveness of voter registration.” In the AVR Report, the BOE noted that the ability to electronically transmit voter registration data from VRAs to the BOE was integral to establishing automatic voter registration.

⁴ Although the NVRA 90-day provision applies only to federal elections, District law provides that any systematic list maintenance program shall be completed not less than the 90th day preceding *any* citywide election, including local elections.

Although the AVR Report discussed the electronic transmission of voter registration information from the DMV and other VRAs to the BOE in the specific context of establishing an automatic voter registration system, the BOE wholeheartedly supports the electronic transmission of voter registration data even in the absence of such a system, as it would greatly improve the accuracy of the information contained in the voter rolls. The BOE is ready and willing to partner with the Mayor and the Council to realize the goal of electronic transmission of voter registration information from the DMV, as well as the other VRAs, to the BOE.