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TTY USERS CALL VIA MD RELAY

February 15, 2006

Chairman Gilles Burger  
Maryland State Board of Elections  
P. O. Box 6486  
151 West Street, Suite 200  
Annapolis, MD 21401-0486

Dear Chairman Burger:

As you are aware, there has been widespread national concern about the reliability and security of electronic voting systems. Many states have decertified Diebold voting machines, including those similar to the ones used in Maryland, because certain components were never subjected to federal testing. In light of these recent national decertifications and the Maryland General Assembly's decision to override my vetoes of bills implementing early voting and allowing voters to cast ballots anywhere in the state, I no longer have confidence in the State Board of Elections' ability to conduct fair and accurate elections in 2006.

California, Pennsylvania, and dozens of local jurisdictions recently have decertified or denied certification to the Diebold voting machines pending further testing by federal authorities, citing, among other concerns, the potential for manipulation of election results due to the susceptibility to tampering of the vote-counting memory cards. In response, the Independent Testing Authority (ITA) has been reviewing Diebold voting systems and their electronic components for almost two months and has not released any findings. The State Administrator issued a letter to Diebold requesting daily status reports on the testing, but to my knowledge, no information has been shared with the State Board of Elections members, the Administration or the General Assembly about the implications for Maryland with regard to this testing.

It is imperative that I receive accurate information on the potential consequences that these test results may have on Maryland's ability to conduct fair and accurate elections this year. In discussions with my staff, you have stated that members of the State Board of Elections have not received regular updates on the testing controversy. I believe that it is time for the Board to get aggressive in responding to citizens' concerns over public confidence in the elections system.

I am also disheartened by the unresponsiveness of the State Administrator to the issue of voter verification. It is my personal belief that the voters of Maryland should be allowed to vote a paper ballot or have a voter verification paper-trail to electronic voting as reassurance to voters that their votes are being accurately cast. Therefore, I had requested that the Commission on the Administration of Elections chaired by George Beall, evaluate the potential for the introduction of this technology in Maryland. The Commission intended to rely on the report commissioned by the State Board of Elections and being compiled by Dr. Donald Norris of UMBC. That report was due to be completed in early December. I am sure that you share my disappointment that Dr. Norris' report still has not yet been released and that the Beall Commission has been unable to complete its work.

I also continue to be troubled by the rapidly escalating costs of election administration in Maryland, especially in comparison to fiscal estimates that were prepared for the General Assembly. In 2001, Governor Glendening signed House Bill 1457 requiring the State Board of Elections to select and implement a uniform statewide voting system. At that time, the General Assembly's fiscal note for House Bill 1457 estimated that the total cost would be \$36,890,000. The actual cost, which has been financed by the State Treasurer was \$65,564,674 – an almost 78 % increase from the original cost estimate. However, this misjudgment pales in comparison to the 1000% increase for estimates of the annual maintenance costs for this system. The 2001 fiscal note estimated such maintenance would be \$858,000. For the upcoming fiscal year, the State Board of Elections requested \$9,528,597 for these costs. The cost of Maryland's Diebold voting machines has skyrocketed as our confidence in the system has plummeted.

In 2005, the State Board of Elections provided a fiscal estimate of \$175,000 for the State costs associated with an early voting program, which will now be implemented because the General Assembly overrode my veto. Astonishingly, the State Administrator recently submitted a supplemental budget request that increases these statewide costs from \$175,000 to \$11.5 million. Ironically, the supplemental budget justification provided by the State Administrator focuses on the potential for voter fraud and strikingly echoes the findings of the Beall Commission and the concerns raised in the floor debate by those opposed to the legislation.

These repeated instances of inaccurate fiscal estimates damage the credibility of the State Board of Elections and makes an informed judgment by the General Assembly of the fiscal implications of electronic voting and early voting impossible. The State Board of Elections continues to pursue an electronic fix at a time when electronic technology for voter registration is untested in Maryland and could create more problems than it solves. I do not want to repeat the mistakes made in 2001 when Maryland adopted emerging technology without understanding fully the potential consequences of a new era of electronics in election administration.

At the least, we should re-evaluate our position as of February 2006 – just a mere seven months before the primary election. It is essential the State Board of Elections aggressively advocate its previously adopted position before the General Assembly that any early voting program be deferred until the 2008 election and that legislation be passed to enact this deferral.

I also direct the State Board of Elections provide me with a written report by February 28<sup>th</sup> that addresses each of the issues cited below:

### **Diebold Voting Systems**

1. What specific electronic components are being tested by the ITA and how does it relate to the Diebold voting systems used in Maryland?
2. Have other jurisdictions decertified or failed to certify any version of the Diebold Optical Scan or Touch Screen (DRE) systems used in Maryland?
3. What does the Maryland Election Law statute provide regarding the certification of election systems? Under what circumstances does it require the State to decertify an elections system?
4. What is the State Board of Elections' contingency plan if the current voting system is decertified, or otherwise found to be incapable of administering a 2006 election free of any charges of compromise?
5. Can new machines be successfully procured for use in the 2006 elections?
6. What are the likely mitigation steps necessary to ensure public confidence in our elections system?

### **Voter Verification Systems**

1. When will the Voter Verification Study conducted by UMBC be available for review?
2. What is the State Board of Elections' plan if the General Assembly requires the Board to purchase a voter verified paper audit trail or optical scan machines to replace the current system in time for the 2006 elections?
3. What voter verification system technologies are compatible with our current voting system?
4. Could we acquire and implement a statewide voter verification system for the 2006 elections?

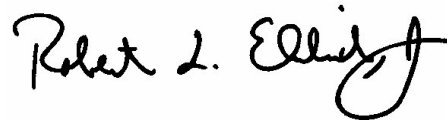
5. What is the estimated cost to the State to acquire a voter verification system for the 2006 elections?
6. How do the costs of a statewide voter verification system compare to the costs of implementing a statewide optical scan system?

### **Early Voting**

1. What is the State Board of Elections' plan for implementing Early Voting for the 2006 elections?
2. What is the position of the county and local boards of election on the implementation of early voting for the 2006 election?
3. What is the State Board of Elections' plan for administering early voting in a secure manner if the State is unable to purchase electronic pollbooks for the 2006 elections?

Finally, I want to express my disappointment with the State Board of Elections' staff. The State Board of Elections is intended to be an independent, non-partisan agency and should not take positions on partisan election law issues. While I expect the Elections Administrator and her staff to testify on all issues relating to the administration of elections as directed by their Board, it has become evident that they have been working primarily on behalf of partisan legislators and their interests and not on the interests of the citizens of Maryland. A recent legislative briefing revealed actions by a staff member of the Board of Elections where he was surreptitiously advocating to override the Governor's veto in direct opposition with the Board's position. The recurring lack of judgment by the State Board of Elections' staff cannot not be tolerated. I urge the State Board of Elections to restore the independence and fairness of the elections office; otherwise we risk losing public confidence in Maryland's election processes.

Very truly yours,



Robert L. Ehrlich, Jr.  
Governor

cc: The Honorable William Donald Schaefer, Comptroller  
The Honorable Nancy K. Kopp, State Treasurer  
The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House  
Members, Governor's Commission on the Administration of Elections  
Cecilia Januskiewicz, Secretary of Budget and Management