

**IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY**

LINDA SCHADE, ANDREW HARRIS, JUDITH BURNS,
MARK ELRICH, KWAME ABAYOMI, TERRENCE
FITZGERALD, SHARON BEARD, and PAUL SUH,

Plaintiffs,

vs.

MARYLAND STATE BOARD OF ELECTIONS,
LINDA H. LAMONE (as Administrator of Maryland's State
Board of Elections),

Defendants.

CASE NO. C0497297

**PLAINTIFFS' FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 2-401, 2-402, and 2-422 of the Maryland Rules of Civil Procedure, Plaintiffs request that Defendants Maryland State Board of Elections and Linda H. Lamone produce the documents and things referred to in the following specific requests. The specific requests are preceded by Instructions and Definitions, which shall govern the specific requests. Documents and things responsive to these requests should be produced to counsel for Plaintiffs at the law firm of Tydings & Rosenberg LLP, 100 East Pratt Street, 26th Floor Baltimore, Maryland 21202, within the time required by Maryland Rule of Civil Procedure 2-422 or as otherwise agreed to by the parties or specified by the Court.

INSTRUCTIONS

1. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

2. The use of the singular form of any word includes the plural and vice versa.

3. Documents requested and to be produced include all Documents in the possession, custody or control of the defendant including, but not limited to, any agents, employees, contractors, attorneys, and consultants or experts working for or in favor of the defendant or its attorneys.

4. If, in responding to this Request for Production, you encounter any ambiguities when construing a request or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding.

5. Whenever in this Request you are asked to identify or produce a document which is deemed by you to be properly withheld from production for inspection or copying under claim of privilege (including, but not limited to, the work product doctrine), provide a privilege log that includes: the type of document, the general subject matter of the document, the date of the document, and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, the addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege protection claimed by you.

6. If production of any requested document(s) is objected to on the grounds that production is unduly burdensome, describe the burden or expense of the proposed discovery.

7. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration. Any redaction must be clearly visible on the redacted document.

8. If a responsive document exists but is no longer in your possession, custody, or control, state: its date, author(s), recipient(s), subject matter, what disposition was made of the document, and the person or entity, if any, now in possession, custody, or control of the document. If a responsive document has been destroyed, identify the date of destruction, the person who destroyed the document and the person who directed that the document be destroyed and state the reason for its destruction.

9. Produce all of the documents responsive to the numbered requests below either as they are kept in the usual course of business or by custodian.

10. If any of these documents cannot be produced in full, you are requested to produce them to the fullest extent possible, specifying clearly the reasons for your inability to produce the remainder and stating any information, knowledge, or belief you have concerning the unproduced portion.

11. If the requested documents are maintained in a file, the file folder is included in the request for production of those documents.

12. The terms “any,” “all” and “each” shall be construed to mean “any,” “all,” or “each.”
13. The term “including” shall be construed to mean “including but not limited to.”
14. The present tense shall be construed to include the past and future tenses.
15. The specificity of any request herein shall not be construed to limit the generality or reach of any other request herein.
16. Unless otherwise specified, this Request calls for the production of documents created, delivered, distributed, sent, received, accessed, or modified after January 1, 2001 through the date of trial of this matter.

DEFINITIONS

1. “Agents” means officials, employees, consultants or any other third-party advising or assisting the Maryland State Board of Elections in any way with the procurement of the electronic voting systems or the administration of the voting systems in elections, including without limitation SAIC, RABA, and Accenture.
2. “Communication” means any exchange or transmittal of information by any means of transmission, including, without limitation, face-to-face conversation, mail, overnight delivery, Internet, telephone, electronic mail, or facsimile.
3. The term “concerning” means relating to, referring to, describing, evidencing, or constituting.
4. “Diebold” means Diebold Election Systems, Inc. (formerly known as Global Election Systems Inc.) as identified in the Complaint.
5. “Document” means any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes, or databases,

or otherwise reproduced. "Document" or "documents" also includes electronic documents whether stored on servers or hard drives, e-mail, backup tapes, voicemail and video and audio recordings. A draft or non-identical copy is a separate document within the meaning of this term.

6. "DRE" means a Direct Recording Electronic voting machine by which votes are cast and recorded electronically.

7. The term "identify" (with respect to documents) means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

8. The term "person" is defined as any natural person or any business, legal or governmental entity or association.

9. The terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

10. The "Procurement Review Committee" means the committee established by the Maryland State Board of Elections in 2001 to assess the DRE technology as identified in the Complaint.

11. The term "relating to" means concerning, evidencing, referring to, or constituting.

12. The “Maryland Request for Proposals” means the Request for Proposals for Direct Recording Electronic Voting Systems and Optical Scan Absentee Voting System for Four Counties issued by the SBE on July 17, 2001.

13. The term “report” means information supplied to the SBE or its agents in writing, regardless of the format.

14. “SAIC” means the Science Applications International Corp.

15. “SBE” means the Maryland State Board of Elections, its Administrator, Board members, Agents, representatives, employees, and sub-entities.

16. A “Voter-Verifiable Paper Audit Trail” means a paper ballot printed by the DRE systems that the voter can see and approve before leaving the polling place.

17. “Weekly Summary Complaint Report” means the Report described in Section 3.4 of the July 17, 2001 Request for Proposals that Diebold is required to submit to the SBE, which includes: the name of the person issuing the complaint; the using entity represented by the person; the complaint type; the complaint resolution; complaints unresolved and other information specified by the SBE.

18. The terms “you” or “your” means “SBE” as defined in Definition 16.

DOCUMENTS TO BE PRODUCED

1. All documents and communications relating to the complete and unredacted contracts between the State of Maryland and Diebold, including without limitation all drafts of such documents and all documents concerning the negotiation and interpretation of such contracts.

2. All documents and communications relating to other vendors for electronic voting machines and optical scan systems, including without limitation product and

pricing information, sales and marketing presentations, product specifications, estimates, bids, service, warranty, and time required for delivery and training.

3. The complete and unredacted Report issued by the Procurement Review Committee to the State of Maryland on or around October 24, 2001.

4. All documents and communications concerning the Procurement Review Committee, including without limitation all communications within the State Board of Elections concerning the Procurement Review Committee's findings and/or recommendations and all communications between and among the SBE and/or its Agents, the Procurement Review Committee, and Diebold.

5. The complete and unredacted Report issued by Science Applications International Corporation ("SAIC") to the State of Maryland on September 2, 2003 entitled: "Risk Assessment Report Diebold AccuVote-TS Voting System and Processes."

6. All documents and communications concerning the SAIC report, including without limitation all communications within the State Board of Elections concerning the SAIC's findings and/or recommendations, all communications between and among the SBE and/or its Agents, SAIC, and Diebold, and all communications regarding the state's implementation or ability to implement the recommendations in the SAIC report.

7. All documents and communications concerning the RABA report, including without limitation all communications with the State Board of Elections concerning RABA's findings and/or recommendations, all communications between and among the SBE and/or its Agents, RABA, and Diebold, and all communications regarding the state's implementation or ability to implement the recommendations in the RABA report.

8. All documents and communications concerning whether the Maryland DRE voting systems comply with State and/or Federal law, including without limitation all communications within the State Board of Elections concerning the legality of the DRE systems, all communications between and among the SBE and/or its Agents and any voting machine manufacturer concerning the legality of the DRE systems, and all documents concerning any requests by the SBE to Diebold to make modifications to Maryland's DRE systems to comply with State or Federal law.

9. All Weekly Summary Complaint Reports issued by Diebold to the SBE, as required by Section 3.4 of Maryland's Request for Proposals, and all documents concerning the SBE's efforts to remedy those complaints.

10. All documents and communications concerning the SBE's ability to equip the Maryland DRE voting systems with a Voter-Verifiable Paper Audit Trail, including without limitation all communications within the State Board of Elections concerning Voter-Verifiable Paper Audit Trails and all communications between and among the SBE and/or its Agents, the Procurement Review Committee, and Diebold concerning Voter-Verifiable Paper Audit Trails.

11. All documents and communications concerning the SBE's discussions and interactions with electronic voting machines vendors other than Diebold, including without limitation VoteHere, Sequoia Voting Systems, and Election Systems & Software, and related entities.

12. All documents and communications concerning the SBE's ability to conduct a recount using the DRE voting systems.

13. All documents and communications concerning the SBE's ability to revert to using optical scan machines, including without limitation all existing contracts and

communications with optical scan machine vendors, all documents describing the SBE's use of optical scan machines in prior elections, all documents concerning the SBE's current use of optical scan machines to count absentee ballots, and all documents concerning the SBE's discussions and interactions with optical scanning machines vendors regarding the 2004 election cycle.

14. All documents and communications concerning contingency planning by the SBE should the Diebold voting equipment be unavailable for use for any reason in the November 2004 general election.

15. All documents and communications concerning the remedies being implemented in other states before the November 2004 general election, including without limitation all documents concerning the SBE's ability to implement each of the conditions that Secretary of State Kevin Shelley placed on the use of electronic voting systems in California before the November 2004 general election.

16. All documents and communications the SBE intends to rely upon to establish that a remedy cannot be implemented before the November 2004 general election.

Dated: May 7, 2004

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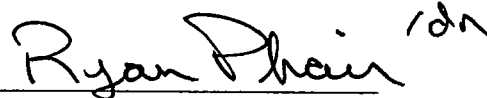
Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and e-mail to all counsel on the attached service list on this 7th day of May, 2004.

 Ryan P. Phair ^{idn}

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