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**Montgomery County  
Board of Elections**  
Post Office Box 4333  
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June 20, 2016

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Senator Joan Carter Conway  
Chair  
Education, Health and Environmental Affairs Committee  
Maryland State Senate  
Miller Senate Office Building  
2 West Wing  
11 Bladen Street  
Annapolis, Maryland 21401-1991

Re: Clarification of testimony before the Committee on June 14, 2016

Dear Senator Conway:

Thank you for the opportunity to appear before the Committee to discuss our experiences in Montgomery County during the Primary Election cycle. During the hearing, there were questions raised regarding the certification process of the election results in Montgomery County. For purposes of completeness and clarification and to ensure that the Committee is fully aware of the sequence of events leading to our certification, I am writing this letter to provide you with additional information on the certification of the election results.

The sequence of events to our final certification were complicated by the additional 162 absentee ballots that were discovered to have been placed in the wrong container after our initial certification on May 11, 2016, of approximately 246,000 votes. Absentee ballots processed and accepted by our Board of Canvassers were determined not to have been scanned and tabulated. These additional ballots required the input of 163 additional votes into our certification because two ballots were discovered to have been stuck together when previously scanned. The discovery that these ballots had been placed in the wrong container is a testament to the thorough, diligent and pain-staking efforts of our Staff. My answers to questions about the certification did not relate the entire process but only summarized the final certification. This letter will detail the process.

To begin with, the State Board of Elections informed our Elections Director that the full Board of Canvassers did not have to meet and vote to certify the correction to the results but that only the President (Republican Member) and Secretary (Democratic Member) needed to execute the correction to the certification documents which were forwarded to the State Board of Elections.

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The State Board of Elections certifies the election results for the entire State. Historically, I was informed by our Board Counsel, this certification process has always followed this procedure. Further, our Election Director informed me, the State Board of Elections added the requirement that the local Board of Canvassers had to meet to discuss the Staff's audit of the election results.

Our Board of Canvassers completed its canvassing of ballots on Friday, May 6, 2016. On May 11, 2016, our Board of Canvassers met in open session to discuss the Staff's audit of the results as required by the State Board of Elections. Myself, as President, and the Secretary of the Board of Canvassers had already signed the certification documents. Our Election Director provided a report, among other things, of Election Day, absentee, and provisional ballot Staff audits. On the record, it was also reported to the Board and the public that the certification documents had been signed by the President and Secretary. Because this Board of Canvassers meeting is now required to discuss the audits (but not vote on the certification), to me, this fulfills the certification process requirement and completes the certification. The signing of the certification documents, in my opinion, alone does not complete our Board's certification requirements as directed by the State Board of Elections without the Board meeting to review the audits. My answers to Senators Kagan and Zucker reflected this position that the Board "certified" the results after the completion of our public meeting. In hindsight, my answers were confusing without the full explanation contained herein.

On Thursday, May 12, 2016, I received a telephone call from our Election Director who advised me about the unscanned absentee ballots. I was further advised that she conferred with the State Board of Elections about this discrepancy with our previously certified results. The State Board of Elections advised her, I was informed, that only the President and Secretary had to sign new certification documents and forward them to the State Board of Elections. The State Board of Elections further advised her that our full Board of Canvassers did not have to reconvene for this purpose. However, the Election Director and I both agreed that on May 16, 2016, when there was a previously scheduled public Board of Elections meeting, that we would also convene a full public Board of Canvassers meeting to publicly discuss the uncounted absentee ballots and the process used to recertify our results to the State Board of Elections. I believed this was required to fulfill the State directive that the Staff audits had to be reviewed by our Board of Canvassers. The Election Director later notified our Secretary of this discrepancy.

On May 13, 2016, I and our Secretary executed the new certification documents which included the scanning of the additional absentee ballots. We did not meet. We each went separately to our Board's office to execute the documents.

On May 16, 2016, the next business day, our Board of Elections had its public monthly meeting. As part of that meeting, the Board of Canvassers (Election Board Members are the same as the Board of Canvassers Members and are sworn in to both Boards by the County Clerk or her Deputy) met. On the public record, our Election Director described the error concerning the number of absentee ballots originally counted and how it was discovered, the directive she received from the State Board of Elections on how to proceed, that a new certification document had been executed by the President and Secretary. This was a fully transparent discussion on the record. The full Board did not vote because they were informed that the State Board of Elections did not require it. One Member of our Board objected to this procedure and stated that the full Board of Canvassers should have been notified when the discrepancy was discovered. However, the State Board of Elections did not require such

notification. No request for a full Board vote was made by any Member. We relied on the Election Director's representations of the directive she got from the State Board of Elections.

Again, to me, the May 16, 2016, Board of Canvassers meeting (mandated by the State Board of Elections to discuss Staff audits but not to vote) completes our certification process and that, in my opinion, is an excellent requirement because it allows the public to hear about the results of the vote, audits by Staff, and the certification process. I would not close our certification process without this public meeting. That is why, in my mind, I answered Senators Kagan and Zucker that the Board of Canvassers publicly certified our results. If this was incomplete or confusing, I am sorry. However, I firmly believed and continue to believe our Board acted properly and within all of the directives of the State Board of Elections.

We certified an election of approximately 246,000 votes, then upon diligent review Staff discovered that 163 canvassed ballots had not been scanned (163 votes – two ballots were stuck together), the State Board of Elections immediately was notified, we followed their directive on how to proceed, and informed the public in a timely manner.

Sorry for this long letter but I thought it important to outline in detail for you the process of our vote certification. Nothing is more important in a democracy than the right to vote and then a fair, public, impartial, and correct counting and reporting of the vote. I appreciate your oversight and welcome any further inquiry or questions.

Sincerely,



Jim Shalleck, President,  
Montgomery County Board of Elections

JS/lm

cc:

Senator Paul G. Pinsky, Vice Chair  
Senator Gail H. Bates  
Senator Cheryl C. Kagan  
Senator Shirley Nathan-Pulliam  
Senator James C. Rosapepe  
Senator Johnny Ray Salling  
Senator Bryan W. Simonaire  
Senator Stephen M. Waugh  
Senator Ronald N. Young  
Senator Craig J. Zucker