

Brief Answers to charges in the August 5th Shelby County Election

September 28, 2010

Charges made:

1. There have been numerous recorded incidences of “vote swap.” Selecting one candidate and screen Showing another candidate chosen.

This problem has been long alleged. No actual evidence has been validated. The vote can always be corrected on the machine by the voter. The voter touches the box for the incorrect name to remove the vote, then touches the box for the correct name. The summary page also allows the voter to review and correct any mistaken votes and is designed to prevent such occurrences. Improper selection by the voter is typically found to be responsible. The voter is prompted to review multiple times, and therefore, by selecting the “Cast Ballot” button twice, is acknowledging that the ballot being cast reflects the intended choices. Every reported instance is tested by a voting machine technician who checks the machine calibration and operation.

2. Another distinct problem involved “party identifiers” being erroneously placed next to candidate names on the electronic voting screens.

Judges and school board members run as non-partisan candidates in Shelby County. We believe the voters who reported this problem were really looking at court clerk races, which are partisan. No judicial or school board candidate had a partisan label with his or her name.

3. Election Day August 5th the SCEC admitted that a human error occurred which included the Electronic Poll Book data.

Of the 5,390 voters who were the maximum possible affect by the incorrect data, 2023 filled out manual forms and were allowed to vote on the machines. The Shelby County Election Commission has agreed that it was possible that during the very early period, 7:00 to 7:30 a.m., some voters may have walked away from the polls. The Election Commission immediately informed the press and the public of the issue, outlining what voters might experience, and encouraging them to vote. By 8:00 a.m., all officers were made aware of the problem and briefed on the solution (Officers were instructed to look up the voter on the Electronic Poll Book and then to check a printout of people who had actually voted in July. An accurate printout of all early voters was at each site before the polls opened. If the voter was not on that list, he or she filled out a paper application and voted as usual). Based on call volume records at the Operations Center, the issue was largely resolved early in the morning.

4. The SCEC actually potentially loaded a 2008 into the EPB.

Verifiable records indicate that this allegation is entirely false. The database loaded was from those that had early voted in the May election. Election ID# 921 is May 2010 and Election ID# 922 is for August 2010. The ID# was not changed from 921 to 922 prior to loading the database in the EPBs.

5. Voters’ reluctance to try and vote after being told that they already cast a vote in the General Election was magnified by the arrest of two individuals who were charged with voting twice in the 2006 election (once in early voting and once in the general).

The county election commission does not instigate, investigate, or control the timing of investigations or arrests into possible voter fraud, arrests, or prosecution.

6. Poll watchers for the Democratic nominees allege inconsistent and improper voting tallies. The requested turnout tallies retrieved voter tallies subsequently given by the SCEC were inconsistent. The inconsistent voter tallies are unexplainable because the final voter count taken after the last voter has voted each day should be the actual count released from the SCEC. In some instances, the count was off by as much as thirty (30) votes. Upon information and belief, a consistent pattern of widespread

inconsistencies occurred at the twenty satellite locations throughout Shelby County over an approximate two-week period and these inconsistencies are so pervasive as to make the results of the August 5th election incurably uncertain.

Poll watchers receive a verbal number range to judge turnout. Often times the EV official estimates the number of voters rather than checking the machines. At the end of each day of early voting, staff reconciles ballot applications with the votes cast during the day. They do not get specific turnout numbers at the Early Voting sites and it is impossible for the County Election Commission to determine what information has been given to candidates or campaigns at polling locations each day. Daily numbers are distributed as a service ONLY and are always represented as unofficial. No information given by Poll staff is official and no data becomes official until having been reviewed by independent auditors and certified by the Election Commission after the election.

7. According to SCEC records, the Participating Voters List includes 176,119 voters who participated in the August 2010 election. Statement of Votes Cast lists 182,921 votes.

The Participating Voter List was incomplete as stated at the time the 176,119 report was demanded by the plaintiffs. Voter history update was NOT COMPLETE and the number is not correct. The number of 182,921 is not the number of VOTES cast, it is the number of CARDS cast. There were 3,455 more cards cast than voters. 179,466 voters cast votes. Paper ballots for Absentee, Military and Overseas voters were 1 to 3 pages each. The number “cards cast” counts each of those pages. Therefore, there were 3,596 more cards cast than voters. The vote totals were accurately reported to the public on election night. Paper tapes with totals were printed at all sites and for the early voting machines. The CPA auditing firms confirmed they all matched during certification.

8. Errors were also committed with the provisional ballots. Provisional ballot information was entered manually by different staff members at different times.

The provisional ballot were counted in public view in accordance with state election laws. This is not improper nor a change from normal counting procedures in counties our size.

9. Shelby County Election Commission has not endeavored to assure that the poll tapes have been signed. However, there were original signatures on many of the poll tapes in the trash bags. No explanation has been provided as to why the SCEC would make “extras” of poll tapes.

1,250 officials signed tapes during the training process and the tapes were kept until election certification completion. Plaintiffs have been able to photograph tapes that were produced at sites for poll watchers. These tapes (COPIES) are produced and used as a service to poll-watchers at the polling sites after polls close. They are not used for vote tally or certification and therefore, no practice is in place insuring retrieval. Those that are returned are held until the certification process has concluded, at which time they are destroyed. Election officials are instructed to sign the tapes at the sites. Of the 1,250 officials, most followed instructions. One set is filed with the Secretary of State and one set with the County Clerk. One set is attached to the certificate of results and kept by the auditors.

10. On August 17, 2010, employees of the SCEC were stopped from taking computers to their cars. **Employees were to be given use of County surplus computers to take home, partly for personal use and partly so they could work from home if necessary. Those computers had been surplus for some time and any information on them is years old. They do not have any current data and are part of an Adopt a PC program. This program was implemented by a previous administration and is not unique to the Shelby County Election Commission. Shelby County Government also utilizes this program. However, the program was stopped and employees do not have computers as a result of the allegations made by the plaintiffs.**

11. Many of the voting machines that were used in the election were not sealed

All votes are contained on the memory cards. Memory cards are removed from the voting machines election night and read into the central tabulator election night. They are then secured under lock and key by the CPA auditing firms. Voting machines used to record votes for the election are carefully sealed, seal numbers are then recorded and checked by officials (from each party) on election morning. Voting machines used in the election are sealed after polls close by the election officials at the site. After the memory cards are removed, the machines used for voting do not hold election data and no longer need seals. They are sealed none the less by officials properly following instructions.

12. Multiple voting machines were returned to the SCEC on August 12, 2010, a week after the election. It takes days to pickup and return 1198 machines from 236 precincts. The law, 2-9-107, says the machines should be picked up within 24 hours or “as soon thereafter as practical” to be returned to their storage place. The machines have no votes or election data after election night.

Early Voting and Election Day Problems

13. Several new polling sites authorized by the SCEC.

At the Feb. 25th election commission meeting, candidates for the May primaries and independent candidates for the August 5 election were certified. During the same meeting, the final precinct consolidations and precinct splits were approved. All candidates became aware of their certification as candidates and should have paid attention to the precinct changes at that time. New registration cards were mailed to all voters whose precincts had changed, over 100,000, several weeks before the May election. Also, ads were run in newspapers of general circulation, with maps for added information.

14. Several polling sites opened later than when they were scheduled to open on August 5th. The election commission addressed such reports throughout election day. According to records, the precincts where the problem was reported were up and running on or close to the correct time and officers and inspectors are prepared to sign affidavits to that effect. In a county the size of Shelby, it is not unusual to have a small number of precincts that do not open promptly at 7:00 AM Shelby County relies on third party site superintendents that are outside of the control of Election officials. The machines that reportedly were not working were not voting machines but the Electronic Poll Books.

15. Questions regarding Databases-

First, relational databases use primary keys to manage the information in individual segments (tables) of the DB but use the relationships between various elements across different tables to tie things together; and, this is where the parties in question fail in their assumptions about the candidate records in the database. The actual ballot shows that the relationships across the DB are correct as the candidates are correctly listed on the ballot and on the reports. Second, the county does not stop doing work against the database during early voting or even during regular voting; it must continue to use the system and to manage its elections. Thus, the database continues to be used throughout the election process, including during early voting. Early voting values are not included in the database until after completion of voting.

16. “No Count” Databases were alleged to be used to swap votes between candidates. “No Count” races are special races that are used for creating separate ballots for each party that does not already have a race associated with the party. It can also be used for races known in GEMS as “acclimation races.” There is nothing improper about these races, they are a standard feature in the GEMS software system when purchased from the vendor.

17. Questions regarding use of “Multiple Databases”- **In reference to multiple databases, there is one database used for aggregating and reporting the election. The audit log shows the import of information into that database from other data sources. This is a standard and common practice in systems. Audit principles are maintained through the ability to track and audit those imports.**

18. Questions regarding Cordova 09- (Claim that # of Voters increased from 19 to 619)- **This claim is entirely false and is a misinterpretation of the data. Throughout the process of discovery by the plaintiffs, they were made aware that some information they were receiving was incomplete. Post election processes, including Voter history updates, take days by Election Commission staff to reconcile and prepare for audit and certification. Certified records show that 619 voters cast votes on election day in Cordova 09 and the Participating Voter List (PVL) is public record and available for review.**

CLAIM # 3 ABOVE IS THE ONLY VALIDATEDE ISSUE.