



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF INVESTIGATIONS**

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October 2, 2012

Honorable Bill Haslam, Governor
Members of the General Assembly
Honorable Tre Hargett, Secretary of State
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have completed our review of selected records and practices of the Shelby County Election Commission (SCEC), as requested by Tennessee Secretary of State Tre Hargett. The review was requested due to “a troubling pattern of errors” over the past 10 years by the commission. Most recently brought to light were significant and widely publicized balloting and other errors during early voting in the 2012 state primary and county general election in Shelby County. This review focused on the period January 1, 2012, through July 31, 2012. However, when the examination warranted, this scope was expanded. Our investigation was limited to a review of the redistricting activities leading up to and during the 2012 elections.

Background

The United States (US) Census Bureau conducts a census every 10 years. The census bureau separates the US population into “blocks,” which are clearly defined geographic areas, and the population of each block is quantified. The various county election commissions group these blocks together to create voting precincts.

The 2010 census reflected national population changes, which required that county, state, and federal legislative district boundaries within the state and within Shelby County be redrawn. The county commission districts and the precinct lines are often redrawn at the same time. This process is commonly known as “redistricting.” SCEC used a computerized system for voter registration and a geographic information system (GIS) to draw lines and assign voters to their respective precincts and districts.

Review Summary

Our review identified no discernible evidence of intentional misconduct or other actions intended to affect or influence the election process or election outcomes in Shelby County. It appears that poor judgment and mistakes were the most likely causes of the ballot errors and SCEC staff did not identify or correct the errors in a timely manner. We identified the following conditions:

- The administrator directed all of SCEC's redistricting efforts toward an unapproved plan and failed to develop an alternative plan.
- The administrator stopped redistricting work for approximately four weeks. These four weeks could have been spent redistricting based upon existing district lines or another alternate plan.
- The SCEC board of commissioners did not exercise adequate oversight or supervision over the administrator or the redistricting process to ensure the commission conducted a reliable and accurate election.
- Information system staff failed to identify and correct inaccuracies in a reasonable and timely manner without extensive assistance from a private citizen, Secretary of State personnel, and a consultant.
- SCEC relied primarily upon technical resources (geographic information system software, aerial maps, etc.) for redistricting and did not include field work such as driving streets to verify addresses¹.

Significant Issues Noted

- **Shelby County Commission failed to approve district lines prior to the 2012 elections**

Relative to the 2012 elections, Section 5-1-111, *Tennessee Code Annotated*, required that by January 1, 2012, county legislative bodies in Tennessee should "change the boundaries of districts or redistrict a county entirely if necessary to apportion the county legislative body so that the members represent substantially equal populations." Several plans were proposed by the Shelby County Commission and, according to officials of

¹ The scope of this review did not include a thorough review of the voter registration and GIS software used.

SCEC, the plan known as 2J was expected to be approved by the county commission at some point. However, the county commission failed to approve any of the proposed redistricting plans prior to the elections held in August 2012.

- **SCEC redistricting based upon proposed 2J plan**

Redistricting was a major portion of daily operations of the SCEC. The Shelby County Administrator of Elections, Richard Holden, was responsible for this process in Shelby County². In preparation for redistricting, Mr. Holden created a detailed 50-step project management plan for redistricting which assigned expected dates of completion for each step by the SCEC. The SCEC's information system department, under the supervision of Dennis Boyce, was responsible for managing the voter registration and GIS system, including but not limited to, inputting data and drawing lines.

Mr. Holden stated he directed SCEC employees to begin the redistricting process in January based upon the proposed 2J plan. Mr. Holden stated he did not have a back-up plan in the event that the proposed 2J plan was not approved. In interviews with a Comptroller investigator, Mr. Holden stated he put "all his eggs in one basket" and assumed 2J would be approved in time to prepare for the August election. Mr. Holden acknowledged that a viable alternative or back-up plan would have been to redistrict Shelby County based upon the existing 2011 county district lines, but told investigators he did not want to do work that would have to be redone.

Mr. Holden stated he stopped the redistricting process at step 39 of the project management plan in mid-May 2012,³ because the county commission had not approved 2J or any other plan at that time. Although the redistricting project was behind schedule when he halted the work on it, Mr. Holden did not initiate redistricting based upon the existing county district lines, but continued to wait for the county commission to approve the 2J plan.

- **SCEC board failed to exercise adequate oversight over SCEC administrator**

Based upon a review of the minutes and interviews of the commissioners, the board relied entirely upon Mr. Holden to ensure the redistricting was completed accurately and timely. Members of the SCEC board of commissioners stated that Mr. Holden did not consult with them regarding his decision to rely solely on the 2J plan, and that they did not inquire about a back-up plan. Each commissioner indicated he/she was unaware of

² Section 2-12-116, *Tennessee Code Annotated*

³ Mr. Holden was unsure of the exact date, but was certain it was between May 15 and May 20.

the enormity of the redistricting process and did not recognize the potential looming problems.

- **State Election Coordinator urges SCEC to complete redistricting**

During a presentation at a conference of the Tennessee Association of County Election Officials held June 4-5, 2012, at which Mr. Holden was present, Shelby County was identified as the only county in Tennessee in which the county commission had not approved county district lines. According to the Tennessee Secretary of State Division of Elections (SOS) personnel, conversations with Mr. Holden subsequent to this presentation alerted them to the fact that Shelby County had not completed redistricting. State Election Coordinator Mark Goins stated he informed Mr. Holden shortly after this conference that it was imperative that SCEC resume their redistricting efforts and that the ballots for military personnel be out by June 18.

- **SCEC Board of Commissioners orders redistricting to resume**

During an SCEC board of commissioners meeting on June 13, 2012, the board directed Mr. Holden to resume redistricting, using the 2011 district lines. Mr. Holden stated that some of the work performed during the previous redistricting efforts (steps 1-12 of the project management plan) did not have to be replicated and redistricting began the next day at step 13. At this point, SCEC staff had only five days before military ballots were due, while the original plan allowed for 47 days. Similarly, SCEC staff had only 29 days until early voting started, while the original plan allowed 72 days for this process.

- **SCEC work to consolidate precincts**

In the original redistricting plan begun in January, Mr. Holden included the consolidation of smaller precincts into larger precincts. He indicated that his primary purpose for these consolidations was to reduce related costs, including those associated with staff required at polling sites and transporting voting equipment, as well as to eliminate any non-ADA compliant polling sites, and to replace polling sites no longer available. Mr. Holden included several of these consolidations in the redistricting efforts resumed on June 14, although he acknowledged some were not essential to preparing for the election and added additional work and unnecessary delay to a process that was already critically behind schedule.

- **Military Ballots**

Preparation of military ballots was not reliant on the completion of redistricting. All military ballots sent through the US Postal Service were mailed before the midnight June 18 deadline, and some of the military ballots transmitted by e-mail were sent before the midnight deadline. Mr. Holden stated that most of the ballots sent via e-mail were sent between midnight and 2:30 a.m.⁴

- **SCEC failed to properly align precinct and population block boundaries**

Tennessee participated in the Block Boundary Suggestion Program prior to the 2010 census. This Census Bureau program attempted to align newly created block lines with existing boundaries such as city limits and voting precincts. The proposed precinct lines drawn by the information systems department and submitted by SCEC to the Comptroller's Office of Local Government (OLG)⁵ in February 2010 had improperly divided blocks. OLG notified SCEC that the improperly split block data may not be accepted by the Census Bureau. OLG then forwarded the data to the Census Bureau with a request that it be considered. Ultimately, the Census Bureau rejected some of the proposed precinct lines. It is noteworthy that Shelby County was the only Tennessee county that submitted proposed precincts which improperly split blocks.

Although the requirement that precinct lines align with block lines is one of the primary tenets of redistricting, during the 2012 redistricting efforts, SCEC staff again established precinct lines across block lines. OLG received SCEC's 2012 redistricting data on July 13, 2012, the first day of early voting. Similar to 2010, OLG noted instances of precinct lines improperly splitting population blocks. SCEC was notified of these discrepancies the following day. OLG worked with SCEC and by July 18 had corrected all improper precinct lines. Mr. Boyce and his staff was apparently not aware of these easily avoidable and detectible errors until notified by OLG.

- **Early voting discrepancies**

Early voting began on July 13, 2012. SCEC staff became aware that ballot errors existed when several voters complained that they received incorrect ballots. However, SCEC failed to identify these errors or determine whether additional discrepancies existed. Instead, a private citizen analyzed various election data, including voter participation data on SCEC's website, and identified multiple voters who had voted in the wrong election.

⁴ 78 military ballots were sent before Midnight and 108 were sent between Midnight and 2:30 a.m.

⁵ The Office of Local Government is the liaison between the Census Bureau and the State of Tennessee.

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The SOS became aware of the numerous inaccuracies and by July 21, SOS staff confirmed that SCEC had multiple ballot errors. Again, SCEC staff did not immediately identify the errors.

On July 23, 2012, OLG staff trained SOS personnel to use mapping software to identify inaccuracies in assigned ballots. Using this software, SOS staff discovered additional ballot errors of which SCEC staff was unaware. With the assistance of the State Office of Information Resources (OIR), all Shelby County voters were mapped and significant discrepancies were found. No discernible pattern to the errors was evident. Some of the errors involved voters living near a district or precinct boundary, while others involved voters who lived in the middle of a district.

Between July 23 and July 25, 2012, OIR and SOS worked to identify errors, such as eligible voters listed in incorrect districts or elections, and forwarded this information to SCEC for correction.

- **Administrator Holden's claim that OLG lost data**

In a letter to Mark Goins dated August 15, 2012, Richard Holden claimed that OLG lost precinct data submitted by SCEC (in 2010) and failed to provide the most recent precinct information to the state legislature for inclusion in the legislature's redistricting process. As noted previously, OLG personnel stated that SCEC data was rejected by the Census Bureau in 2010 because some precinct lines improperly split population blocks.

Conclusion

The primary responsibility of the SCEC is to conduct elections in Shelby County, yet SCEC has demonstrated an inability to conduct elections without significant inaccuracies, including those identified in the 2012 elections.

Our review identified no discernible evidence of intentional misconduct or other actions intended to affect or influence the election process or election outcomes in Shelby County. It appears that poor judgment and mistakes were the most likely causes of the ballot errors and that SCEC staff did not identify or correct the ballot errors in a timely manner.

We identified the following conditions:

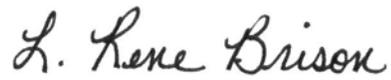
- The administrator directed all of SCEC's redistricting efforts toward the 2J plan and failed to develop an alternative plan. As a result, the time available for the redistricting process was limited.
- The administrator stopped redistricting work for approximately four weeks (mid-May until mid-June). These four weeks of inactivity could have been spent redistricting based upon existing district lines or another alternate plan, which may have reduced the ballot error rate.
- The SCEC board of commissioners did not exercise adequate oversight or supervision over the administrator or the redistricting process to ensure the commission conducted a reliable and accurate election.
 - The commissioners did not consider the possibility that the 2J plan would not be approved.
 - The commissioners did not suggest or instruct the administrator to prepare an alternative plan in case the 2J plan was not approved.
 - The commissioners were not cognizant of the potential problems created by the lack of an alternative redistricting plan and the subsequent late start of the process.
- Information system staff failed to identify and correct inaccuracies in a reasonable and timely manner without extensive assistance from a private citizen, SOS personnel, and a consultant.
- SCEC relied primarily upon technical resources (GIS software, aerial maps, etc.) for redistricting, despite guidance from SOS to combine technical resources with field work, such as traveling in a vehicle to inspect divided roads and new subdivisions.⁶

⁶ It should be noted that the scope of this review did not include a thorough review of the voter registration and GIS software used.

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As a result of the issues that arose during the 2012 elections, on August 29, 2012, the SCEC board of commissioners placed Mr. Holden on leave without pay and a six-month probation.

Very truly yours,

A handwritten signature in cursive script that reads "R. Rene Brison".

Rene Brison, CPA, CFE, Assistant Director
Division of Investigations

LRB/RAD