

BEFORE THE MARYLAND STATE BOARD OF ELECTIONS

RICHARD WILLIAM RAMSEY DARLING,

Complainant,

v.

PRINCE GEORGE'S COUNTY BOARD OF
ELECTIONS,

Respondent.

FINAL DETERMINATION

Statement of the Case

On November 9, 2004, the Complainant filed with Linda H. Lamone, the State Administrator of Elections, an administrative complaint against the Prince George's County Board of Elections ("Board") and requested a hearing on the record. The Complainant alleged that the Respondent rejected his provisional ballot application because he was improperly removed from the Prince George's County voter registration list. The Complainant requested that the Board be directed to reinstate him on the voter registration list and explain the record management procedure that resulted in his removal from the voter registration list.

On November 18, 2004, the Board filed a Response to Administrative Complaint ("Response"). In the Response, the Board acknowledged that the Complainant had been improperly removed. The Board reported that the Complainant's voter registration had been

reinstated and that his provisional ballot had been fully counted. The Complainant subsequently withdrew his request for a hearing and maintained his request for a final determination.

This administrative procedure is governed by Chapter 33.01.05 of the Code of Maryland Regulations (COMAR). The purpose of the administrative complaint procedure is to provide a fair hearing, if requested, and a speedy determination outside of the judicial system for an individual who asserts that an election official has violated the Election Law Article as it relates to provisional ballots or believes that there is or has been a violation of Title III of the Help America Vote Act of 2002.

Findings of Fact

Having considered the information submitted on the record, I find, by preponderance of the evidence, the following facts:

1. The Complainant, Richard William Ramsay Darling, was born on June 5, 1954.
2. The Complainant registered to vote in Prince George's County on July 29, 1999, and was assigned to Prince George's County Precinct 21-9.
3. The Board received notice that Richard Lewis Darling, a registered voter in Prince George's County, died on January 26, 2003. Mr. Richard L. Darling was born on January 19, 1924.
4. After receiving notice of Richard Lewis Ramsey's death, the Board, on April 7, 2003, erroneously removed the Complainant from active status in the County's voter registration system.

5. The Complainant went to Prince George's County Precinct 21-9 on November 2, 2004.
6. The Complainant's name was not listed on the precinct register in Precinct 21-9, and the Complainant was issued and cast a provisional ballot.
7. In verifying the eligibility of individuals who cast provisional ballots, the Board determined that the Complainant was incorrectly removed from active status in the County's voter registration system.
8. The Board reinstated the Complainant to active status in the County's voter registration system.
9. The Board reviewed the Complainant's provisional ballot application and accepted the application.
10. The Complainant's provisional ballot was canvassed with all other fully accepted provisional ballots.
11. The Complainant has received credit for voting in the 2004 General Election.

Conclusions of Law

1. Section 3-601.1 of the Election Law Article of the Annotated Code of Maryland authorizes an Election Director to correct a clerical error in a voter registration record. The removal of the Complainant was a clerical error, and the Election Director for the Board was authorized to correct the error pursuant to § 3-601.1 and reinstate the Complainant to active status in the voter registration system.
2. Section 9-405(b) of the Election Law Article states that an individual is eligible to cast a provisional ballot if the individual declares that the individual is a registered

voter in the State and is eligible to vote in that election and the individual's name does not appear on the precinct register. The Complainant was properly issued a provisional ballot on Election Day, since his name did not appear on the precinct register.

3. Section 11-303(e) of the Election Law Article states that an individual is qualified to vote the provisional ballot cast if the local board determines that the individual is registered in the State and, based on the address given on the provisional ballot application, the individual resides in the precinct in which the individual seeks to vote. The Complainant was qualified to vote the provisional ballot cast because he was registered to vote in Maryland and, based on the address provided on the provisional ballot application, resided in the precinct in which he sought to vote.
4. Section 11-303(d) of the Election Law Article requires a local board to reject a provisional ballot if the local board determines that the individual who cast the provisional ballot is not qualified to vote that provisional ballot. Since the Complainant was qualified to vote a provisional ballot, the Board properly accepted the Complainant's provisional ballot.

Order

It is my determination that the Complainant has not established a violation of Title III of the Help America Vote Act or the Election Law Article as it relates to provisional voting. The corrective action taken by the Prince George's County Board of Elections reinstated the Complainant to active status, and his provisional ballot application was accepted and counted. Although no violation has been established, it is critical that each local board of elections take

extreme care when removing voters from its voter registration system, since an improper removal can result in the disenfranchisement of a voter.

It is therefore **ORDERED** that:

1. The Complainant's complaint, filed on November 9, 2004, be **DISMISSED**; and
2. The name of Richard Lewis Darling (date of birth 1/19/1924) be removed from the voter registration system for Prince George's County.

Date

Linda H. Lamone
State Administrator

Appeal Rights

This is a final determination of the State Board of Elections and, under Regulation 33.01.05.08 of the Code of Maryland Regulations, may not be appealed in any State or federal court.