

State of Maryland 
State Board of Elections – April 24, 2018 Meeting

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member (by phone)
Kelley A. Howells, Member (by phone)
Malcolm L. Funn, Member
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy, Election Policy
Paul Aumayr, Director, Voting System
Natasha Walker, Project Manager, Election Management System
Jared DeMarinis, Director, Candidacy and Campaign Finance
Cortnee Bryant, Deputy Director, Election Reform and Management
Janet Smith, Voter Registration Division

Present – In Person:
Senator Cheryl Kagan, State Senator (District 17)

Present – By Phone:
Jim Shalleck, President, Montgomery County Board of Elections
Mary Ann Keeffe, Secretary, Montgomery County Board of Elections
Alexander Vincent, Member, Montgomery County Board of Elections
David Naimon, Member, Montgomery County Board of Elections
Jacqueline Phillips, Substitute Member, Montgomery County Board of Elections
Alan Banov, Substitute Member, Montgomery County Board of Elections
Margaret Jurgensen, Election Director, Montgomery County Board of Elections
Kevin Karpinski, Counsel, Montgomery County Board of Elections
Christine Rzeszut, Montgomery County Board of Elections

DECLARATION OF QUORUM PRESENT

Mr. McManus called the special meeting to order at 3:00 pm and stated that there was a quorum present. He stated that the meeting was being recorded.

MONTGOMERY COUNTY REQUEST TO CHANGE POLLING PLACE FOR PRECINCT 4-30 FROM RICHARD MONTGOMERY HIGH SCHOOL TO B'NAI ISRAEL CONGREGATION

Ms. Duncan explained the process that the local boards of elections and SBE performed to prepare the ballots for the 2018 Primary Election. Because the Montgomery County Board of Elections was unable to find a polling place for precinct 4-30, Ms. Duncan explained that the Montgomery County Board of Elections approved the Richard Montgomery High School as the polling place for precincts 4-30 and 4-5.

Ms. Walker explained how the voting system handles two precincts in the same voting location (also known as a “consolidated precinct”). Although the content of the ballot is the same, the ballots for precinct 4-5 will be a different ballot style than the ballots for precinct 4-30. A different ballot style is required to enable election officials to provide election results for precinct 4-5 and results for precinct 4-30. Ms. Walker explained that moving the polling place for precinct 4-30 would require “deconsolidating” the precinct, regenerating and reproofing the ballots for Montgomery County, redefining the ballots in the election management system, reloading ballot styles into the voter registration database and recreating all other election specific files for Montgomery County. The process of pulling absentee ballots is scheduled for April 25, 2018.

Ms. Walker explained the impact of a workaround proposed by the Montgomery County Board of Elections. This workaround would not require changes to the ballots or election management system but would require manually creating a separate precinct in the electronic pollbook database.

Ms. Walker explained that the ballots and ballot data for the 2018 Primary Election have been sent to the vendor that prints early voting and election day ballots, the vendor that prints absentee and provisional ballots, the vendor that performs the post-election ballot tabulation audit, *The Baltimore Sun* for the news feed, and to Kenway Chen who programs the online ballot delivery system. Changing the ballots now would require creating, proofing, and replacing the Montgomery County ballots and files already distributed.

Ms. Duncan stated that SBE staff does not recommend changing the polling place for Montgomery County precinct 4-30 for the 2018 Primary Election.

Public Comment – Senator Kagan, District 17

Senator Kagan thanked the members of the State Board of Elections and Montgomery County Board of Elections for their service and distributed a handout. She stated that she initially raised concerns about the voting location for precinct 4-30 on March 23, 2018, before the deadline to finalize polling places, and received confirmation on March 23, 2018, that B'nai Israel Congregation agreed to serve as the polling place for precinct 4-30. Senator Kagan stated that 31.9% of the voters in precinct 4-30 are senior citizens, and many of these voters do not drive. The location of Richard Montgomery High School would require most of the voters in precinct 4-30 to drive on either I-270 or Rockville Pike to get to Richard Montgomery High School, both of which are bad options for these voters.

Senator Kagan stated that she understood that there are burdens and technical challenges associated with making this change, but the Montgomery County Board of Elections voted unanimously to make this change and not suppress voter turnout. Senator Kagan requested that the members of the State Board of Elections defer to the Montgomery County Board of Elections' local decision or alternatively, return to precinct 4-30's prior polling place (St. Elizabeth's) for the 2018 General Election.

Public Comment – Jim Shalleck, President, Montgomery County Board of Elections

Mr. Shalleck reported that the members of the Montgomery County Board of Elections felt very strongly that this change would serve the voters and that voters deserve this change. Mr. Shalleck referred to a map showing the boundaries of precinct 4-30, the location of residential areas in precinct 4-30, and the location of St. Elizabeth's, B'nai Israel Congregation, and Richard Montgomery High School. Since the population of precinct 4-30 is centered around B'nai Israel Congregation, Mr. Shalleck stated that the B'nai Israel Congregation is a better polling place than Richard Montgomery High School and cited Election Law Article, 2-303(f) that the State Board approves a polling place change if the local boards declares an emergency. Mr. Shalleck stated that an emergency exists because B'nai Israel Congregation is a better voting location, especially for voters in wheelchairs.

Public Comment –David Naimon, Member, Montgomery County Board of Elections

Mr. Naimon explained that the members of the Montgomery County Board of Elections were not happy about assigning Richard Montgomery High School as the voting location for voters in precinct 4-30 because the high school is not located close to where the voters in precinct 4-30

live. He stated that two housing complexes for senior citizens are connected via a walkway to B'nai Israel Congregation and other housing complexes are closely located and he is not aware of anyone in the community who opposes the move to B'nai Israel Congregation. Mr. Naimon explained his belief that, when staff is inconvenienced, we pay them overtime, but when voters are inconvenienced, we may lose their participation. Mr. Naimon cited Election Law Article, §10-101(a)(2), which requires that a voting location be as conveniently as practicable to voters in that precinct.

Discussion

In response to questions from Mr. McManus, Ms. Rzeszut explained that staff of the Montgomery County Board of Elections had extensive conversations with administrators at B'nai Israel Congregation but their concerns about security and disruption caused by electioneering led them to decline to serve as a polling place. Ms. Rzeszut stated that, after conversations with Senator Kagan, B'nai Israel Congregation agreed to serve as a polling place. The agreement is not in writing but Ms. Rzeszut has emails finalizing the agreement. Mr. Banov added that the rabbi for B'nai Israel Congregation acknowledged serving as a polling place in the upcoming election. Ms. Rzeszut stated that the Montgomery County Board of Elections agreed to pay costs associated with a security guard and that there are no other special conditions to this agreement. In response to a question from Mr. McManus about why B'nai Israel Congregation changed its mind, Senator Kagan stated that she had spoken with the Board Chair and other board members.

In response to questions from Mr. Cogan, Ms. Walker explained that this change introduces too many risks at this time. Regenerating, reproofing, and reissuing new ballots to the various vendors could cause version control issues, and the workaround solution proposed by the Montgomery County Board of Elections has never been done before. Senator Kagan confirmed that the board of B'nai Israel Congregation has approved serving as a polling place.

In response to questions from Ms. Howells, Ms. Walker stated that regenerating and reproofing ballots could not be accomplished in one day. The workaround proposal would not require any changes now but would require manual changes to the automated process currently in place for the electronic pollbooks and changes during the pre-election Logic and Accuracy testing on the ExpressVote ballot marking devices. Ms. Howells asked whether the Montgomery County Board of Elections is willing to take this risk, to which Mr. Shalleck responded that the unanimous vote showed that the board was. In response to a question from Ms. Howells, Ms. Walker stated that there are no technical issues with moving the polling place for precinct 4-30 for the 2018 General Election.

Ms. Keeffe stated that, while moving polling places between a primary and general election is generally avoided, there are no qualms with moving polling places in this case. Ms. Keeffe stated that, although she did not know about the proposed workaround, she is worried about that solution after listening to Ms. Walker. Mr. Shalleck stated that he wants to serve voters and locate the polling place at B'nai Israel Congregation.

Mr. Funn asked whether the Montgomery County Board of Elections was aware of the issues of moving the voting location for precinct 4-30 before deciding to move it. Ms. Jurgensen explained that she shared the technical issues involving the ballot styles and that the proposed workaround was developed after the board decided to move the polling place. Mr. Funn stated that election officials need to look at security issues as well as the needs of voters and asked whether the Montgomery County Board of Elections had discussed promoting absentee ballots to the voters in precinct 4-30. Ms. Jurgensen stated that the Montgomery County Board of Elections has a robust

nursing home and assisted living program and includes an absentee ballot application with every specimen ballot and in the special mailing sent to voters in precinct 4-30.

In response to questions from Mr. Hogan, Ms. Walker explained how the proposed workaround would work and that it would allow voters in precincts 4-5 and 4-30 to vote in both voting locations without a manually changing the pollbook data for those precincts. Mr. Hogan asked the members of the Montgomery County Board of Elections whether the board was willing to incur any and all expenses related to this change, to which Mr. Shalleck said yes but the exact cost is not known.

Mr. Hogan stated that SBE staff did everything correctly and met all of the defined deadlines and he is disappointed that this issue was not addressed months ago. Mr. Hogan respects the suggestion to promote absentee voting but stated that senior citizens like to vote in person and want to vote locally. Mr. Hogan stated that the State Board's role is to conduct fair, secure, and accurate elections and maximize voter turnout. While he believes that the State Board should defer to the local boards, the State Board is not a rubber stamp and that while this is not a traditional "emergency" but an action that limits turnout is an "election emergency." Mr. Hogan apologized for the amount of work involved in making this change but stated his support for moving the polling place for precinct 4-30 to B'nai Israel Congregation but only if the Montgomery County Board of Elections agrees to pay all costs.

Mr. McManus thanked everyone for their participation and acknowledged no one caused the current situation. The State Board was unable to act at its April 12, 2018, meeting because the Montgomery County Board of Elections had not yet voted to move the polling place for precinct 4-30. He stated that this is not an emergency because Richard Montgomery High School is available and while he does not want to minimize the impact on voters, Mr. McManus stated his concern about the impact of the changes at this late date and appreciated Senator Kagan's suggestion to move the polling place for the 2018 General Election.

Ms. Howells agreed with Mr. McManus' comments and is weighing the risks we know (voters may be discouraged from voting) versus the risks we do not know. Ms. Howells supports Senator Kagan's suggestion. Mr. Cogan stated that he would be voting against the proposal for the same reason.

In response to a question from Ms. Phillips, Ms. Jurgensen asked what "any" would include, to which Mr. Hogan responded that it would include any expenses, including overtime, costs to expedite services, etc. Ms. Walker stated that the proposed workaround would be less costly and that SBE could send Montgomery County Board of Elections an invoice after the election. Mr. Shalleck, Mr. Naimon, and Mr. Vincent expressed their concern with agreeing with the proposal without knowing the cost, to which Mr. Hogan explained that the Montgomery County Board of Elections was asking the State Board to do the same – approve without knowing the cost. In response to a question as to whether the Montgomery County Board of Elections would be required to pay costs if Richard Montgomery High School was not available, Ms. Walker explained that the costs are associated with deconsolidating the precinct and moving one of the two precincts, but not moving both precincts.

Senator Kagan expressed her appreciation for the discussion and concluded with: (1) deadlines are deadlines but she engaged the Montgomery County Board of Elections before the deadline; (2) a request that any motion include extra outreach to voters in precinct 4-30; (3) a request that the motion include the polling place for the 2018 General Election and require distributing

information about the polling place for the 2018 General Election at the polling place for the 2018 Primary Election; and (4) a request that the polling place for precinct 4-30 be moved for the 2018 General Election to St. Elizabeth's or B'nai Israel Congregation. Mr. McManus stated that SBE would support outreach events, and Senator Kagan assured Mr. McManus that voters in precinct 4-30 will be unhappy and turnout will be decreased.

Mr. Hogan made a motion to approve moving Montgomery County precinct 4-30 from Richard Montgomery High School to B'nai Israel Congregation for the 2018 Primary Election with the understanding that the Montgomery County Board of Elections would be responsible any additional expenses incurred because of this change, and Mr. Funn seconded the motion. The motion failed with a vote of 2-3.

In response to a question from Mr. Hogan, Mr. Shalleck stated that the Montgomery County Board of Elections would consider at its May 21st meeting moving the polling place for precinct 4-30 to another location for the 2018 General Election. Senator Kagan requested that the Montgomery County Board of Elections distribute to voters assigned to precinct 4-30 a handout explaining where their polling place for the 2018 General Election will be.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the open meeting, and Mr. Funn seconded the motion. The motion passed unanimously. Mr. McManus adjourned the meeting at 4:35 pm.