

ASSISTANT ATTORNEY GENERAL'S REPORT

October 26, 2022

1. *In re Petition for Emergency Remedy by the Maryland State Board of Elections*, C-15-CV-22-003258 (Cir. Ct. for Montgomery County). On September 2, 2022, SBE filed a petition in the Circuit Court for Montgomery County pursuant to § 8-103(b) of the Election Law Article seeking an emergency remedy for the anticipated amount of incoming mail-in ballots for the 2022 Gubernatorial General Election. The petition sought a court order permitting mail-in ballots to be canvassed and tabulated beginning October 1, 2022 at 8:00 a.m. On September 14, 2022, Delegate Daniel Cox, current Republican nominee for the 2022 gubernatorial election, moved to intervene and oppose the petition. The Court held a contested hearing on September 20, 2022. Three days later, the Court issued a written opinion and order granting SBE's motion and permitting the early canvass.

On September 27, 2022, Delegate Cox appealed the ruling to the Court of Special Appeals and moved that court to stay the circuit court's judgment. SBE opposed the stay. The next day, September 28, 2022, SBE petitioned the Court of Appeals to issue a writ of certiorari to bypass review in the Court of Special Appeals, hear the matter, and decide it on an expedited basis. The Court of Special Appeals denied Delegate Cox's request for a stay of the circuit court's order on September 29, 2022. The Court of Appeals then granted SBE's petition on September 30, 2022.

After oral argument on the morning of October 7, 2022, the Court of Appeals issued an order affirming the judgment of the Montgomery County Circuit Court in all aspects. An opinion will follow in the coming weeks.

2. *Baltimore Transit Equity Coalition v. Baltimore City Board of Elections*, 24-C-22-003681 (Cir. Ct. for Baltimore City). On August 24, 2022, an organization seeking to place a petition question on the Baltimore City ballot filed a complaint in the Baltimore City Circuit Court challenging the Baltimore City Board of Election's determination that the question petition failed to obtain the requisite number of signatures. On August 31, 2022, the local board filed a motion to dismiss or, in the alternative, a motion for summary judgment. The parties appeared for a hearing before the circuit court on September 7, 2022. After the hearing, the circuit court granted summary judgment in favor of the local board, ruling that the plaintiff-organization failed to provide sufficient evidence that any disqualified signatures were disqualified improperly.

On September 30, 2022, the plaintiff-organization filed a notice of appeal in the Circuit Court for Baltimore City. OAG moved to dismiss the appeal as untimely on October 12, 2022.

3. *Gibson, et al. v. Frederick County*, 1:22-CV-01642-GLR (D. Md.) On July 5, 2022, Lois Ann Gibson and plaintiff-organizations filed suit against Maryland state entities seeking injunctive relief. The complaint alleges that 22 jurisdictions in Maryland engaged in a RICO conspiracy with a Chicago non-profit organization to fund election fraud. The suit seeks a preliminary injunction enjoining the destruction of records of the 2020 Presidential Election. Under federal law, the records of the 2020 election were to be retained until September 3, 2022.

Before any defendants were served, the federal court denied plaintiffs' request for an *ex parte* temporary restraining order to preserve the election records.

Plaintiffs thereafter served SBE process on August 27, 2022. On September 19, 2022, SBE filed a motion to dismiss the complaint for failure to state a claim. Calvert, Washington, Montgomery, Wicomico, and Anne Arundel Counties, and the Maryland Office of the State Prosecutor have filed similar motions.

On October 11, 2022, the court granted the plaintiff's uncontested request for an extension of time to file a reply to the motions to dismiss. Plaintiff's reply is due to the court by November 7, 2022.

4. *Johnson v. Hogan*, 8:22-CV-02250-TDC (D. Md.) On September 7, 2022, Thomas P. Johnson filed a complaint challenging the constitutionality of Election Law § 5-706. Mr. Johnson ran during the 2022 Gubernatorial Primary for a seat on the circuit court bench in Montgomery County. He lost that race. Mr. Johnson then sought to file a certificate of candidacy as a write-in candidate for that same office for the general election but was informed by SBE staff that he was ineligible to run pursuant to Election Law § 5-607(b)(2). The law prohibits anyone who has lost a primary election from running in the following general election as a write-in candidate.

The complaint alleges that § 5-706 unconstitutionally prevents Mr. Johnson from campaigning as a write-in candidate. It seeks injunctive relief allowing Mr. Johnson to file a certificate of candidacy as a write-in candidate.

The Office of the Attorney General filed a motion opposing injunctive relief on behalf of Governor Hogan, the sole named defendant, on September 21, 2022. Mr. Johnson filed a response to the OAG opposition on September 23, 2022. The court conducted a

hearing on the matter on October 4, 2022. Thereafter, on October 13, 2022, the federal district court issued an order denying Mr. Johnson injunctive relief.

5. *WinRed, Inc. v. Ellison, et al.*, No. 22-cv-1238 (8th Cir). On July 7, 2021, WinRed, Inc. – a federal PAC created to assist Republican Party candidates – filed a lawsuit against the Attorneys General of Connecticut, New York, Maryland, and Minnesota (the “State AGs”), seeking a declaration that State consumer protection statutes and regulations are preempted by federal law, to the extent that these State laws are being enforced to regulate the use of pre-checked recurring contribution boxes for solicitations for federal offices. WinRed had received letters from the defendants requesting information and documents regarding its use of pre-checked boxes in that context. (It is now public that ActBlue – the PAC formed to assist Democratic Party candidates – has received a similar request from the same State AGs, but has not joined this lawsuit.) On July 27, 2021, WinRed filed a motion for preliminary injunction against enforcement of subpoenas served by the State AGs. On July 29, 2021, the State AGs moved to dismiss the complaint. Oral argument on both motions took place on November 2, 2021. On January 26, 2022, the Court issued an order denying Plaintiff’s motion for preliminary injunction and granting the defendants’ motion to dismiss, and dismissed the Complaint. WinRed has appealed the dismissal to the U.S. Court of Appeals for the Eighth Circuit. On March 25, 2022, WinRed filed its opening brief. The Appellees’ response was filed in late April. WinRed filed its reply brief on May 25, 2022.

The case was argued and submitted on October 18, 2022.

Announcements & Important Meetings

Welcome

Diane Zagorski has joined the Candidacy and Campaign Finance Division as the Audit Manager. She previously worked at Howard County as the Bureau Chief of Tax Revenue and was the point person for the public financing program.

Election Directors' Meetings

We hosted election directors' meetings on October 6 and 20. The October 20 meeting included a briefing coordinated by the Maryland Department of Emergency Management. We received a threat briefing from the Maryland Coordination and Analysis Center, National Weather Service, and Maryland Department of Health. Summaries of these meetings will be distributed with a County Bulletin.

Legislative Briefings

On September 29, we briefed the House Ways and Means Committee on the permanent mail-in list, the timing of return of mail-in ballots, consolidation of polling places, and the usage of ballot marking devices. On October 11, we briefed the General Assembly's Administrative, Executive and Legislative Review Committee on regulations effective in 2022. Both committees requested follow up information, and we are compiling that information.

2022 Primary Election

Earlier this month, we posted a written [report of the 2022 Primary Election](#). It includes highlights and data from the primary election and considerations for future elections.

Mail-in Voting Data - Web Delivery

At last month's meeting, we were asked to provide data on voters who received their ballots via web delivery. The table below shows the requested data

	UOCAVA Voters	Other Voters	Total
Requests for web delivery of ballots	2,314	57,362	59,676
Web delivered ballots returned for counting	745	25,064	25,809
Percentage returned for counting	32.2%	43.7%	43.2%
Web delivered ballots accepted	671	24,694	25,365
Percentage of web delivered ballots accepted	98.5%	90.1%	98.3%
Web delivered ballots rejected	74	370	444
Percentage of web delivered ballots rejected	1.5%	9.9%	1.7%

The return rate for web delivered ballots is lower than the return rate for all ballots (64.6%), and the acceptance rate is lower than the acceptance rate for all ballots (99%). The most common rejection reasons for web delivered ballots was the same as all ballots - the voted ballot was not timely mailed or received. 70 ballots (94.6%) delivered to UOCAVA voters via web delivery and 283 ballots (46.5%) delivered to other voters via web delivery were not timely. Overall, 81.5% of rejected ballots were rejected

because they were not timely. 68 ballots (18.4%) delivered to other voters via web delivery were rejected because the voter did not sign and return the required oath.

2022 General Election Preparation

Pre-Election Meetings with Local Board Counsel and Political Parties & Gubernatorial Campaigns

Before each election, we host meetings with counsel to the local boards of elections and the political parties and their gubernatorial campaigns. We hosted two meetings with counsel to the local boards to discuss the status of election-related litigation, changes from the primary election, election activities, and potential issues. The final meeting is scheduled for next week. The meeting with the political parties occurred on October 6. The topics of discussion were litigation venues, electioneering, mail-in ballots, canvassing and unofficial results.

Election Judge Recruitment

We continue to work with non-profit organizations to provide lists of potential election judges to the local boards. The efforts have been successful enough that some boards have reported that they do not need any more lists because they have enough judges to conduct the election. We have provided over 8,000 applicants to the local boards.

Election Judge Training

The new statewide online “refresher” training was developed to assist counties train returning judges. The original module for new judges and a video reference library about equipment is also available.

Voter Education

Seven press releases have been issued since the last State Board meeting. The team members assisting with the voter education campaign do a good job covering a specific topic in each release and always include a wide range of information and data links for the upcoming election. The digital campaign began the week of September 23, and the traditional media campaign starts this week. Our limited funding also allows for an abbreviated TV and radio presence that will begin on November 3 and appear through November 8. Both campaigns will continue through election day.

To date, Google Search continues to drive the highest engagement and has seen a significant increase in click-through rate to the site over the past week. The campaign has driven 27,483 users and 47,041 pageviews to the [Voter Resources \(or MD Votes 2022\) landing page](#). Campaign ads have garnered more than 4.5 million impressions. In particular, social ads have reached more than 1.1 million users. Messages in traditional media (print, TV and radio) started the week of October 17.

Call Center

The call center is supporting SBE and eleven local election offices. They are handling approximately 1,500 calls per day during the week of October 17 and expect 2,000 per day starting the week of October 24. From August 1 to October 18, they have managed 22,771 calls. SBE staff and the call center's management team meet weekly to review upcoming deadlines and any expected or unexpected spikes in call volume.

Voter Registration

October 18 is the advance deadline to register to vote or to make an address change. Individuals who submitted their information by this date will have their information in the polbooks when they arrive to vote. On September 22, the voter registration team will pull information from MDVOTERS for the electronic pollbooks.

On October 17, we sent postcards to 731,558 individuals who are in MVA's database and appear eligible to vote but are not. The postcards have the dates and times for early voting and election day and include a link where individuals can look up their voting locations. These individuals and individuals who are not registered to vote can register or make changes to their registration during early voting or on election day.

Mail-in Voting

As of October 17, almost 490,000 ballot packets have been mailed by our mail vendor. We will continue twice-weekly data pulls to our vendor until October 28, after which the local boards will have to fulfill requests.

As of October 19, over 75,000 ballots have been sent by web delivery.

Eleven local boards have already started or plan to start counting ballots before election day. These local boards are Baltimore City and Allegany, Baltimore, Calvert, Frederick, Howard, Montgomery, Prince George's, Saint Mary's, Talbot, and Washington Counties. The remaining local boards plan to start counting mail-in ballots after election day. Results from the pre-election day canvassing will be released after the polls close on election day, and results from post-election day canvassing will be released each day a local board canvasses ballots.

Logic and Accuracy Testing (L&A)

L&A testing is underway across the state, and a number of the local boards have already completed the testing of the voting equipment. This testing verifies that each scanner accurately counts and reports results. Testing of the voting equipment assigned to early voting locations must be completed 14 days before election day, while testing on the voting equipment for election day polling places must be completed ten days prior to election day.

Early Voting Center Signal Testing

The local boards have completed the cellular signal testing of all early voting locations to be used for the upcoming 2022 General Elections. This testing ensures that adequate cellular coverage is available to early voting centers and also provides SBE with an opportunity to review the readings and determine if a different carrier or configuration may be more appropriate for a specific site.

Election Operations Support

Work continues on the Election Operations Support setup and dashboard for the General Election. In addition, SBE's Election Helpdesk is up and being used to enter and manage issues by SBE and many of the local board management and staff. The helpdesk will be active until mid-November.

Voter Registration

Electronic Registration Information Center (ERIC)

Maryland receives ERIC data on a monthly basis. On even-numbered months (February, April, etc.) we receive the In-State Updates, Cross-State, and NCOA (National Change of Address) reports for processing. Odd months we receive In-State Duplicate and Social Security Administration Death files for processing. For more information on ERIC, please visit www.ericstates.org.

Motor Vehicle Administration (MVA) Transactions

During September, MVA collected the following voter registration transactions:

New Registration - 16,523	Residential Address Changes - 23,573
Last Name Changes - 3,687	Political Party - 5,646

Candidacy and Campaign Finance (CCF) Division

Candidacy

The deadline for write-in candidates to file was October 20, 2022 at 5 pm. Write-in candidates do not need to file a certificate of candidacy in person.

Campaign Finance

On October 14, ballot issue committees had to file a campaign finance report. 78% (11 of 14) filed timely.

The Pre-General 2 Campaign Finance Report is due on October 28, 2022. Pre-report notices were sent to the committees in advance of the deadline. Additionally, email reminders will be sent multiple times prior to the deadline.

If there exists a failure to file or late fee, a commission to assume public office will not be issued.

State Public Financing Program

The audit of the public financed gubernatorial committee is ongoing. Currently, the fund has \$7,686,932.33 remaining after the 2022 Primary Election.

County Public Financing Programs

Montgomery County: Currently, 8 candidates are using the program for the General Election. The program disbursed \$163,416 for the 2022 General Election of which \$66,372 was disbursed in September.

Howard County: All five certified candidates are candidates in the general election. The Howard County program disbursed \$188,016 for the 2022 General Election.

Website Activity

In September, the MD Campaign Reporting Information System (MD CRIS) website was visited by 120,209 individuals for an average of 4,006 per day. Additionally, it had 910,176 hits. Each viewer looked at an average of approximately 6.3 page views per day. The Business Contribution Disclosure System (BCDS) website had 804,860 hits, with 44,364 visitors with an average of 17.7 page views per day.

Enforcement

Here are recent enforcement actions:

1. Pope, Jeremiah Citizens for (01013680), 9/29/2022, \$250.00, failure to include authority line.
2. Perez, Tom for Maryland (01013681), 9/28/2022, \$50.00, failure to include sufficient authority line.
3. Stolz, Thomas J. Friends of (01014404), 9/23/2022, \$250, failure to include authority line.
4. Prince George's Property Owners Association Inc PAC (03008454), 9/27/2022, \$250, failure to maintain contribution records
5. Hall, William BJ Citizens For (01013983), 9/22/2022, \$50.00, Failure to include authority line - self reported
6. McKnight, Roger Citizens for (01014406), 9/20/2022, \$50.00, Failure to maintain a campaign bank account
7. Silva, Fernando M. Citizens for (01014611), 9/16/2022, \$50.00, Failure to maintain a campaign bank account
8. Sands, John P Citizens for (01014591), 10/04/2022, \$50.00, Failure to maintain a campaign bank account

9. Fowler, Scott Friends of (01014515), 08/26/2022, \$50.00, Failure to maintain a campaign bank account
10. VanDen Heuvel, Terry Lynn for Judge of the Orphans Court Cecil (01014426), 09/12/2022, \$50.00, Failure to maintain a campaign bank account
11. Jones, Jennifer Friends of (01014326), 09/29/2022, \$50.00, Failure to maintain a campaign bank account
12. Shaffer, Sean Election of (01014218), 09/30/2022, \$50.00, Failure to maintain a campaign bank account
13. Dacey, Karen Friends of (01014214), 09/14/2022, \$50.00, Failure to maintain a campaign bank account
14. Hines-Poole, Yakeisha for Change Movement (01013859), 09/30/2022, \$50.00, Failure to maintain a campaign bank account
15. Myers, Michael S. Citizens for (01014765), 10/04/2022, \$50.00, Failure to maintain a campaign bank account
16. Brown, Michael Voters for (01013859), 10/18/2022, \$50.00, Failure to maintain a campaign bank account
17. Imbraglio, Ronald Friends of (01014751), 09/23/2022, \$50.00, Failure to maintain a campaign bank account
18. Lawrence, Jamie B. Vote for (01014259), 09/19/2022, \$50.00, Failure to maintain a campaign bank account
19. Taylor, Orlando Dell Citizens to Elect (01014658), 10/06/2022, \$50.00, Failure to maintain a campaign bank account
20. Washington, Trance Friends of (01013649), 10/17/2022, \$50.00, Failure to maintain a campaign bank account
21. Coley, Derrick Friends of (01014689), 10/11/2022, \$50.00, Failure to maintain a campaign bank account
22. Ciezkowski, Henry Citizens for (01014563), 10/18/2022, \$100.00, Cash Expenditures in excess of \$25.00
23. McQueeney, John T. Friends (01014081), 09/29/2022, \$50.00, Failure to maintain a campaign bank account

A total of \$1,750 was collected in civil penalties from September 16, 2022 to October 18, 2022.

Voting Systems

New Voting System - 2026 Elections

We are in the project initiation phase for the procurement of a new voting system solution. The goal is to procure and implement a new solution prior to the 2026 Gubernatorial Election Cycle. In the coming weeks, we will formally initiate the project with the Department of Information Technology and submit the required documentation (charter, budget, schedule and other documents) for the project.

Electronic Pollbook

Work on implementing the new electronic pollbooks continues. We are simultaneously in the Planning and the Analysis and Design phases. The project analysis and design phase is on schedule for completion by the fourth quarter of 2022. The procurement of the hardware for the proposed solution is also in progress, and it is anticipated that the hardware will begin to arrive at SBE's warehouse in December 2022.

Project Management Office (PMO)

Central Warehouse

275 dropboxes were deployed from the Central Warehouse for the General election. There is constant monitoring, reporting, and any needed action taken concerning any issues with the dropboxes while at the various locations statewide.

Document and Records Management

The PMO continues its work on the records inventory process and procedures that include updating the records inventory per the requirements from the State for records management.

Large Projects

The PMO is working with other SBE divisions on the initial project requirements for the Candidate and Campaign Finance Division's MDCRIS replacement system and voting system projects that are estimated to be implemented in 2025 and 2026, respectively.

Information Security

As we prepare for the 2022 General Election, we continue to mature our information security program to anticipate, detect and respond to an ever-evolving cyber threat landscape.

These efforts include several ongoing initiatives:

- Updating cybersecurity policies to further define requirements specific to our IT operations and development. These policies are compliant with federal NIST 800-53, NIST Cybersecurity Framework, and Department of Information Technology guidelines.
- Defining detailed technical standards based on these policies and industry best practices to help to secure and defend SBE data and systems.
- Implementing training and managed security services to enhance our capabilities to detect and respond to threats to our systems and the election process.
- Social media defense to help us identify and quickly respond to malicious threats via social media such as impersonation of election officials, voting misinformation, registration scams and threats of violence.
- Undergoing cybersecurity audits and assessments to assure compliance with policies and best practices.
- Conducting regular vulnerability detection to test and improve our cybersecurity posture.
- Implementing industry-standard tools which help our teams detect and respond to cyber vulnerabilities and attacks quickly and effectively.

In light of current global events, we continue to work closely with federal and State partners to maintain increased cybersecurity alert and readiness levels. We had a threat briefing by the Maryland Coordination and Analysis Center on October 20 and will participate in the Multi-State Information Sharing and Analysis Center's election day situational room to track incidents and reports around the country. Our close partnerships with federal, State, and local partners, including Cybersecurity Infrastructure Security Agency, federal Department of Homeland Security, the FBI, and the local boards, continue to provide useful and effective resources and services to support the cybersecurity program.