

State of Maryland 

State Board of Elections – September 8, 2016 Meeting

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Bobbie S. Mack, Member
Jeff Darsie, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy for Election Policy
Paul Aumayr, Director, Voting Systems
Erin Perrone, Director, Election Reform and Management
Mary Cramer Wagner, Director, Voter Registration and Petitions

Also Present: Ralph Watkins, League of Women Voters
Holly Joseph, Montgomery County citizen
Lou Ann Blake, National Federation of the Blind
Mark Riccobono, National Federation of the Blind
Cheryl Fogelhatch, National Federation of the Blind
Beth Braun, National Federation of the Blind
Chris Danielson, National Federation of the Blind
Ken Capone, People on the Go
Alyssa Fieo, Disability Rights Maryland
Tracy Wright, Disability Rights Maryland
Sharon Krevor-Weisbaum, Brown Goldstein Levy

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 4:02 pm and confirmed that a quorum was present. He stated that the meeting was being recorded.

NEW BUSINESS

Mr. Cogan reviewed the Baltimore City Board of Elections' table on election judge recruitment and training and asked that SBE staff follow up with the Baltimore City Board of Elections as to why the number of recruited election judges is less than in the 2016 Primary Election.

CLOSED MEETING

Mr. McManus requested a motion to close the board meeting under General Provisions Article, §3-305(b)(7), which permits closing a meeting to consult with counsel to obtain legal advice on a legal matter. This exemption enables the Board, its counsel, and staff to request legal advice regarding instructions in the election judge's manual and preserve the attorney-client privilege.

Mr. Cogan made a motion to convene in closed session, and Mr. Hogan seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions (b)(7) of Section 3-305(b)(7) of the Open Meetings Act to consult with counsel and preserve the attorney-client privilege. The open meeting recessed at 4:04 pm.

In addition to the board members present at the open meeting, Mr. Darsie, Ms. Charlson, and Ms. Perrone were present. During the closed session, Mr. Darsie provided legal advice on limiting the use of the ballot marking device and current instructions in the election judges' manual. No action was taken. The closed meeting adjourned at 4:19 pm.

The open meeting resumed at 4:22 pm.

RATIFICATION OF MINUTES FROM AUGUST 25, 2016, MEETING

This agenda item was deferred.

2016 GENERAL ELECTION – USE OF BALLOT MARKING DEVICE

Mr. McManus stated that the members of the State Board of Elections previously adopted language for election judges related to the use of the ballot marking device. The members received feedback from members of the disability rights community and scheduled this meeting to hear their comments.

Mark Riccobono, President of the National Federation of the Blind (NFB), offered the NFB's assistance to help Maryland be a model for accessibility and requested that the option to use the ballot marking device be offered to all voters. According to NFB's 2016 Primary Election survey of 60 voters (63% of whom were blind), 45% of respondents were not offered the ballot marking device. One blind voter was offered a magnifier but was not told about the ballot marking device, and in another precinct, the ballot marking device was not set up until a blind voter arrived to vote. Mr. Riccobono stated that the right to vote privately and independently is a fundamental right, and the State of Maryland has a higher obligation to take affirmative steps to let all voters know about its availability because the voting system is new.

Mr. Riccobono stated that informing voters could be done in a way that does not result in many voters using the ballot marking device to make their ballot selections. He suggested, "If you need help marking or reading a paper ballot, there is an accessible way to mark your ballot." Mr. McManus and Ms. Mack both stated that this is an additional task for the election judges. In response to a question, Mr. Riccobono stated his support for a minimum number of users but stated that the current minimum of two is too low and does not protect against a voter with a disability from having a segregated ballot.

There was a discussion about what types of accessibility information SBE and NFB provide. SBE includes on its website accessibility information, and the local boards of elections include in specimen ballots a statement that there is an accessible way to vote. While the NFB does provide accessibility information, this puts the burden on the voter to learn the options and the NFB's reach is limited to its membership.

Ken Capone, Public Policy Director for People on the Go, stated that all voters must be offered information about the ballot marking device. Because there is no education about the voting system, Mr. Capone noted that voters are not aware of the accessible ways to mark a ballot. He questioned the purpose of the Help America Vote Act's requirement that there be an accessible way to vote in each precinct if the voters are not told about it.

Alyssa Fieo of Disability Rights Maryland provided written comments and an accessibility checklist from the Kentucky State Board of Elections. She noted that the Help America Vote Act requirement that there be an accessible way to vote means that it must be ready for use, not just present in the building. Ms. Fieo stated that Kentucky's checklist requiring pollworkers to offer

the accessible machine to every voter is consistent with the notice requirement in the Americans with Disabilities Act and the spirit of the Help America Vote Act. She said that, after using the ballot marking device in the primary election, she does not think that the navigation issues are that serious. Her organization did not receive complaints about the device.

Tracy Wright of Disability Rights Maryland noted that voters without visual disabilities feel uncomfortable asking to use the ballot marking device. She said that many voters may benefit from the ballot marking device and voters must be given information.

In response to a question, Ms. Fieo stated that the two voter minimum is a State law requirement and it is impermissible under the Americans with Disabilities Act to offer the ballot marking device only to voters “who look like they need it.” Ms. Fieo noted that the “marking and reading” language suggestion by Mr. Riccobono does not address all voters with disabilities.

Sharon Krevor-Weisbaum of Brown Goldstein Levy and counsel to NFB stated that not providing information about a private and independent way to mark a ballot violates the notice requirement of Title 2 of the Americans with Disabilities Act. She noted that the U.S. Department of Justice filed a “statement of interest” in litigation concerning whether New York City provided adequate notice of emergency preparedness information. In response to a question, Ms. Krevor-Weisbaum stated that the language being discussed offered meaningful notice but needed to be inclusive of all voters that cannot use paper ballots.

Mr. McManus stated that the two voter minimum is not an Americans with Disabilities Act issue but is a State law issue and is justified based on the difficulties with navigation. Requiring election judges to make an affirmative statement has an administrative impact.

Mr. Cogan made a motion to amend the instructions approved at the August 25, 2016, meeting to include an instruction that election judges say to each voter “If needed, there is an accessible way to read or mark your ballot.” and affix this language at each check-in station, and Mr. Hogan seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS (continued)

Ms. Howells distributed a letter from Jaime Vazquez, a member of the Prince George’s County Board of Elections, with his concerns with the current Spanish translation of the ballot questions for the 2016 General Election. Ms. Howells highlighted his comments about the translation of “At Large Member.” According to Mr. Vazquez’s letter, the language on the ballot translates “at large member” as “member without any specific charge/office/responsibility.” Ms. Howells offered translations of “at large” by the U.S. Election Assistance Commission’s Glossary of Key Election Terms: English/Spanish and Google Translate, and both use a different translation.

Ms. Duncan explained that the Montgomery County Board of Elections, the only jurisdiction in the State required to provide election materials in Spanish, developed a glossary of terms and received input from State and county elected officials and community organizations. SBE has used for many years this glossary of terms when translating ballots into Spanish. When translating election materials into Spanish, SBE and the Montgomery County Board of Elections use the Central American dialect.

In response to a question, Ms. Charlson stated that SBE would be sending the ballot files to the ballot printers on September 9, 2016. Mr. McManus stated that, because of the timing, the translation would not be changed for the 2016 General Election ballots but different translation standards could be considered in future elections.

Ms. Howells also shared information from a member of the Prince George's County Board of Elections about the ballot duplication process in the 2016 Primary Election. This board member reported that ballots issued by the online ballot delivery system were the wrong ballot style. Ms. Charlson said that she would follow up with the Prince George's County Board of Elections and request more information.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Howells stated that she purchased two tickets costing \$96 in total to a luncheon hosted by the Maryland Federation of Republican Women and two tickets costing \$150 in total to a dinner hosted by the Republican Committee of Prince George's County.

CONFIRM NEXT MEETING

The next meeting is scheduled for Wednesday, September 14, 2016, at 1 pm.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the meeting, and Ms. Howells seconded the motion. The motion passed unanimously.

Mr. McManus adjourned the open meeting at 6:22 pm.