

1. Announcements & Important Meetings

National Conference of State Legislatures - Legislative Summit

From August 5th - 8th, Mary Cramer Wagner attended the National Conference of State Legislatures' Legislative Summit in Nashville, Tennessee. Seminar topics covered the 2020 Census and redistricting, cybersecurity in elections and rank choice voting. Voter registration topics included revisiting "motor voter" and the National Voter Registration Act (NVRA), automatic registration, and the challenges for the elderly, individuals with disabilities, and Native Americans face in registering and casting a ballot.

Election GEO Summit

On August 14th, Nikia Wilbon-Turner attended the Elections GEO Summit (converting addresses into geographic coordinates) in Washington, D.C. The summit was filled with information on the future of GIS, examples of best practices and a lengthy presentation on a Geo-enabled pilot program which included Kansas, Minnesota, Nebraska, Pennsylvania, Kentucky, and West Virginia.

2. Election Reform and Management

Comprehensive Audit: Reports from 2018 Elections and Planning for 2020 Elections

Tracey Hartman has completed the comprehensive audit of the 2018 elections. All local boards have responded to the preliminary reports and all responses from SBE have been issued. Moving forward to the comprehensive audit of the 2020 elections, Ms. Hartman and other SBE staff members will review the guidelines and feedback from local boards during the 2018 process, identify ways to improve the audit process, review what is being audited, how often, and the methods for collecting and reporting data.

Post-Election Automated Audit - 2020 Elections

At its meeting on August 14th, the Board of Public Works approved a contract with The Clear Ballot Group to perform the post-election automated audit of the 2020 elections, with an option to exercise the contract for the 2022 elections. The contract for the 2020 election cycle starts on October 1, 2019.

New Social Media Account

We are happy to welcome the Carroll County Board of Elections to Twitter. Cortnee Bryant is working with the Carroll County Board of Elections and representatives from Twitter to get the new account verified.

2020 Election Judges' Manual

The Election Judge Workgroup has completed its review of chapters 5 through 9 of the Election Judges' Manual. Chapters 10 through 13 and the election judge forms are being revised and will be reviewed with the workgroup in the coming weeks. Chapters 1 through 4 have been submitted to the Assistant Attorney General for his review.

Ballot Stubs

The topic of ballot stubs will be discussed at the in-person Election Directors' meeting scheduled for 10 am on August 22nd. A summary of the discussion will be provided at the State Board meeting.

Ballot Marking Device Statement - Review by University of Baltimore

The new ballot marking device statement was submitted for review to Dr. Kathryn Summers at the

University of Baltimore. She replied that the statement is “so much better” and “this will make it easier to choose the BMD, which is really more usable for folks with lower literacy skills.”

3. Voter Registration

MDVOTERS

A Joint Application Design (JAD) session was held to discuss enhancements to the Geographic Information Systems (GIS) module in MDVOTERS. Currently, Carroll, Howard and Wicomico County Boards of Elections are working with their counties' GIS departments to identify any additional enhancements.

MVA Transactions

During the month of July, MVA collected the following voter registration transactions:

New Registration - 11,153	Residential Address Changes - 24,195
Last name changes - 3,189	Political Party Changes - 6,346

Non-Citizens - July 2019 Information

Submitted to the Office of the State Prosecutor - 10

Removal of non-citizens - 10

Removal of non-citizens who voted - 2

Removal of non-citizens who voted multiple times - 0

Non-citizens reported by Immigration & Customs Enforcement - 0

Change in status from Office of the State Prosecutor - 0

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

Currently, 29 candidates have filed at SBE for the 2020 election cycle. SBE has filed 11 Baltimore City Candidates.

Campaign Finance

The CCF division is still working with numerous political committees to reconcile discrepancies between the bank and cash on hand balances found during the audit. This is a time intensive endeavor depending on how long the political committees have been active. Most political committees welcome our assistance in resolving these issues.

Enforcement Actions

The CCF Division received the payments for the following civil penalties:

1. The committee for Henderson, Tonya (Watonia) for Circuit Court Clerk paid a civil penalty of \$100.00 on July 17, 2019, for making a cash disbursement greater than \$25.00.
2. The committee for Bardack, Paul, for Working Families and Seniors paid a civil penalty of \$850.00 on August 9, 2019, for failing to maintain account books and records and record contributions and expenditures.

5. Project Management office (PMO)

Inventory Management

August 15th and September 15th are the due dates for the Department of General Services (DGS) annual reports. The August 15th first reporting requirement was submitted to DGS.

SBE continues to dispose of equipment via the State's disposal process that included auctioning, recycling, transferring, or trashing the items.

Additional Space and Painting and Carpeting Projects

The PMO continued its coordination, logistics, and scheduling of work with the additional office space working with the Department of General Services (DGS) and the landlord.

The construction of the new space is complete with the major remaining tasks are the delivery and installation of the cubicle system and the standalone furniture ordered from the Maryland Correctional Enterprise. Those items will be delivered and installed on September 6th. The landlord will then arrange for the City of Annapolis to come out and conduct the Use and Occupancy permit inspection.

The painting and carpeting project was delayed due to issues employees encountered with the fumes. SBE is working with DGS and the landlord to resolve the issues so that the project can resume. DGS had an air quality test performed by a contractor. When the project resumes, the painting and carpeting work will take place at night as opposed to during the day. In addition, a number of other steps are being taken to ensure there is minimal impact on employees.

The upgraded alarm and monitoring systems installations are complete. The upgraded installation of the access pad system is near complete.

Procurements

The PMO continued to work on several procurements. The pre-proposal conference for the Election Project and Other Staffing Task Order Request for Proposal (TORFP) will be held on August 23rd. Procurement work also took place for additional precinct voting booths, privacy sleeves, black carts and the initiation of the new pollbook project for 2022.

6. Voting System

Electronic Pollbooks

SBE continues to work with ES&S on the software update for the implementation of same day registration on election day. We expect to have a testable version of the updated software in September 2019. SBE is in the process of finalizing a statewide test plan for the new software release. The test is expected to begin the first full week of October 2019.

At the August 14th meeting of the Board of Public Works, SBE presented for approval the procurement of 410 Seiko MP-A40 printers. These printers will be used with the electronic pollbook to print the voter authority cards and are being procured to provide an adequate amount of printers to the LBEs for the upcoming 2020 elections. The procurement for the printers was approved.

Voting System Upgrade

SBE continues the planning process for a possible software and firmware upgrade that will include all components of the voting system. SBE is working with ES&S to schedule an on-site demonstration of the updated software utilizing the proposed computer hardware in September 2019. The Voting System Testing Laboratory continues to test the voting system software for federal certification. ES&S continues to report that certification is expected by October 31, 2019.

At the August 14th meeting of the Board of Public Works, SBE presented for approval a voting system contract modification. The modification allows for the procurement of additional voting equipment in preparation for the 2020 elections and funding for the potential upgrade of the voting system software. The contract modification was approved.

Title 33
STATE BOARD OF ELECTIONS
Subtitle 11 ABSENTEE BALLOTS
Chapter 01 Definitions; General Provisions

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-303, 9-305, 9-306, 11-301, 11-302, and 11-304,
Annotated Code of Maryland

.01 Definitions.

A. – B. (text unchanged)

(1) – (7) (text unchanged)

(8) *“Absentee ballot bag” means the bag designated by the State Administrator for the collection of absentee ballots at an early voting center or polling place.*

Title 33
STATE BOARD OF ELECTIONS
Subtitle 11 ABSENTEE BALLOTS
Chapter 03 Issuance and Return

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-303, 9-305, 9-306, 9-310, 11-301,
11-302, and 11-304, Annotated Code of Maryland

.06 Return of Ballot.

A. –D. (text unchanged)

E. Ballots Returned at an Early Voting Center or Polling Place. Whenever an absentee ballot is received at an early voting center or polling place, a chief judge or designee shall:

(1) Instruct the voter to put the voted absentee ballot into the absentee ballot bag;

(2) Ensure the security of the absentee ballot bag; and

(3) Return the absentee ballot bag to the local board of elections at the end of voting hours each day of early voting and on election day.

.08 When Ballots Are Timely.

A. (text unchanged)

B. In General. An absentee ballot is considered to have been timely received only if:

(1) The ballot is received by the local board office before the polls close on election day;

(2) *The ballot is received by a polling place before the polls close at that polling place on election day; or*

[(2)] (3) (text unchanged)

(a) – (b) (text unchanged)

(i) - (ii) (text unchanged)

C. (text unchanged)

STATE BOARD OF ELECTIONS

P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

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Patrick J. Hogan, Vice Chairman
Michael R. Cogan
Malcolm L. Funn
Kellew Howells



Linda H. Lamone
Administrator

Nikki Charlson
Deputy Administrator

Memorandum

To: State Board Members
From: Erin Perrone
Date: July 31, 2019
Re: Proposed Regulations – Subtitle 02

At the next board meeting, I will propose new regulations to Subtitle 02 – Meetings and Training. The proposed new regulations reflect a law enacted by the 2019 General Assembly under Election Law Article §10-401 through 405 under a new subtitle, “Subtitle 4. Election Day Page Program.” The program allows 14 and 15 year-old persons to work in a polling place on election day and earn service learning credits for their service.

In collaboration with the Election Judge Workgroup and Dr. Gilberto Zelaya from Montgomery County, the proposed new regulations were drafted. The proposed new regulations will be addressed in a new chapter (04) called *Election Day Page Program* in Subtitle 02 – Meetings and Training.

The proposed new regulations to 33.02 are attached, and this memo summarizes the new regulations.

.01 Definitions (33.02.04.01)

This new regulation defines the term “page” and “program” as described in Election Law Article §10-401.

.02 Purpose (33.02.04.02)

This new regulation describes the purpose of the program as described in Election Law Article §10-402.

.03 Administrator to Develop and Issue (33.02.04.03)

This new regulation details that the State Administrator shall develop and issue a training manual, instruction sheets, curriculum, and an oath and commission for the local boards to implement the program as described in Election Law Article §10-402.

.04 Local Board Participation (33.02.04.04)

This new regulation explains that a local board has the option to participate in the program, notification requirements, and a waiver process as described in Election Law Article §10-403.

July 31, 2019

.05 Program Requirements (33.02.04.05)

This new regulation describes the steps that a local board shall take to implement the program as described in Election Law Article §10-403

.06 Qualifications (33.02.04.06)

This new regulation explains the qualifications an individual shall meet to qualify as a page in the program as described in Election Law Article §10-404.

.07 Responsibilities (33.02.04.07)

This new regulation lists some responsibilities as described in Election Law Article §10-404 and §10-505.

.08 Prohibitions (33.02.04.08)

This new regulation lists some of activities that are prohibited as described in Election Law Article §10-404.

If you have any questions about this proposed text before the board meeting, please do not hesitate to contact me. I will, of course, be available at the board meeting to answer any questions.

Enclosures: Proposed Regulations

Title 33
STATE BOARD OF ELECTIONS
Subtitle 02 MEETINGS AND TRAINING
Chapter 04 Election Day Page Program

Authority: Election Law Article, §§ 2-102(b)(4) and 2-202(b), and 10-401(c), Annotated Code of Maryland

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Page" means a student selected by a local board participating in the program to assist the local board and election judges in performing duties in a polling place on election day.

(2) "Program" means the election day page program.

.02 Purpose.

The purpose of the program is to provide assistance to election judges in the polling places on election day.

.03 Administrator to Develop and Issue.

The State Administrator shall develop and issue for local boards:

A. A page's training manual;

B. Instruction sheets summarizing certain procedures relating to the program;

C. The curriculum for training pages; and

D. A combined oath and commission.

.04 Local Board Participation.

A. Participation. A local board is not required to participate in the program.

B. Notice of Participation. If a local board decides to participate in the program, the local board shall:

(1) At least four months prior to election day, notify the State Administrator of its participation in the program; and

(2) Except as provided in §C of this regulation, implement the page training program developed by the State Administrator under COMAR 33.02.04.03.

C. Waiver. A local board may request from the State Administrator a waiver of a program requirement. The State Administrator shall respond to a request for a waiver within five days of receipt of the waiver.

.05 Program Requirements.

A. Local Board Requirement. A local board participating in the program shall:

(1) Ensure each page received the required training before election day;

(2) Encourage individuals at least 16 years old who apply to the program to serve as an election judge in accordance with Election Law Article, § 10-202, Annotated Code of Maryland;

(3) Certify community service hours for those participants that complete their service;

(4) Use the combined oath and commission required by Regulation .03 of this chapter; and

(5) Remove any individual who is unfit or incompetent for the program, at the discretion of the local board, and the individual may not receive community service hours.

B. Collaboration with School Boards. The local board:

(1) Shall work with the local board of education to obtain appropriate access to the local schools to present the program.

(2) Shall inform the local board of education that a student may obtain community service hours for participating in the program, and that any form used by the local board of education or local schools to certify community service hours should include space for the collection of the following information:

- (a) Name of page;*
- (b) Signature of page's parent or guardian;*
- (c) Signature of local school system representative;*
- (d) Number of hours worked;*
- (e) Signature of a chief judge assigned to the same polling place as the page; and*
- (f) Signature of Election Director or designee.*

C. Allow the State Administrator or designee and/or a representative from the local school system to observe the training program.

.06 Qualifications.

To qualify as a page, an individual shall:

- A. Apply to the local board in the individual's county of residence;*
- B. Be at least 14 years old by election day;*
- C. Be able to speak, read, and write the English language;*
- D. Be available to work at least one full 4-hour shift on election day;*
- E. Complete the required training provided by the local board before election day;*
- F. Take and subscribe to a written oath; and*
- G. Be enrolled in a public, private, independent, or religious school or home-schooled.*

.07 Responsibilities.

A page:

- A. May work up to two 4-hour shifts at a polling place on election day;*
- B. Shall serve under the direct supervision of the chief election judges for the assigned polling place; and*
- C. Shall assist election judges with election day duties as directed.*

.08 Prohibitions.

During service on election day, a page may not:

- A. Engage in any partisan activity while serving as a page at a polling place;*
- B. Handle or touch a marked ballot or voting equipment at any time;*
- C. Use electronic devices inside the polling room; and*
- D. Work on election day unless the individual has completed the training provided by the local board.*

James F. Shalleck
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August 20, 2019

Michael R. Cogan, Chairman
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401-0486

RE: Elimination of Ballot Stubs

Dear Chairman Cogan and Members of the State Board of Elections:

The Montgomery County Board of Elections requests that the State Board support the proposed amendments by the Maryland Association of Election Officials to COMAR 33.10.01.17 that would eliminate the requirement for ballot stubs. This change is about improving service to our voters by creating greater efficiency on Election Day. Ballot stubs hinder the ballot issuing process, often cause scanner malfunctions and contribute to long lines at the polling place. Adoption of the proposed change would streamline polling place operations and lead to a more pleasant experience for all voters on Election Day.

This Board recognizes the need for smart regulations to ensure accurate, secure and transparent elections, but the existing regulation requiring ballot stubs does not promote this goal. Instead, the stubs, which only exist due to this regulatory requirement, require election judges to painstakingly remove each ballot. This causes delays in the distribution of ballots to voters. In addition, the ballot stubs create two scanning problems. First, election judges sometimes tear the ballots while attempting to remove the ballot from the ballot stub. Depending upon the severity of the tear, it can impact the timing marks on the ballot and make the ballot unreadable by the scanner. Naturally, this can lead to the voter's frustration after having received and completed his or her ballot, only to be told that the ballot needs to be spoiled and another ballot completed because the scanner will not accept the ballot. Second, the perforation creates paper dust and can contribute to causing the scanners to malfunction.

Of course, the Board will continue to fully execute all legislative, regulatory and State Board policies related to ballot accountability without the ballot stubs.

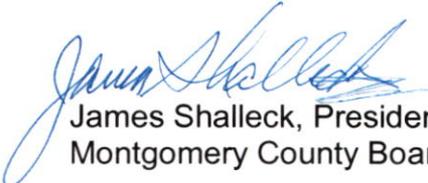
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elections@montgomerycountymd.gov • www.777vote.org

As you may know, in the 2018 General Election, there was a perforation issue with some of the ballots that were delivered to the Montgomery County Board of Elections. With the State's permission, the ballot stubs were removed so that those ballots could be utilized for the General Election. Our election judges observed firsthand the greater efficiency in handing out ballots when the judges did not need to remove the ballots from the ballot stubs. In addition, we experienced no difficulty accounting for each and every ballot without the ballot stubs.

Finally, we request that Director Jurgensen or her designee be provided the opportunity to address the State Board at the next meeting on August 22, 2019 to present the lessons we learned in 2018, including the advantages of eliminating the ballot stubs and alternate ballot packaging.

If you have any questions, feel free to contact me directly or contact Margaret Jurgensen, Election Director at 240.777.8523.

Sincerely,



James Shalleck, President
Montgomery County Board of Elections

Enclosure

cc: Patrick J. Hogan
Kelley A. Howell
Malcolm Funn
William G. Voelp

All members of the MC Board of Elections

July 9, 2019

Erin Perrone
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401-0486

Dear Ms. Perrone,

I am writing on behalf of the Maryland Association of Election Officials Regulation Committee to request a revision to COMAR 33.10.01.17 to remove the requirement for ballot stubs. This requested regulation change is strongly supported by the directors of the local boards of elections¹.

Ballots with stubs are more costly to produce, can lead to lines at the ballot issuing table requiring the employment of additional election judges (to remove the stubs), cause scanning equipment failure² and lead to ballot shortages due to production errors ranging from poor perforations³ to ink splatter on the ballot face, which ruins the ballot.

Once used as a check and balance to ensure voters only cast a properly issued ballot, ballot stubs were long ago replaced by Voter Authority Cards produced by the poll book. After two election cycles using a new, predominantly paper-based system, election directors and LBE staff are of the opinion that ballot stubs have outlived their usefulness in Maryland. This conclusion is also seemly supported by the recent⁴ decision by the State Board to repeal COMAR 33.10.03.21, the only regulation that specified the manner and procedures for ballot stub usage.

With no statutory, regulatory or administrative requirement specifying the process or manner in which ballot stubs should be used, the remaining regulation requiring "each pre-printed ballot shall have an attached, single-perforated stub" is moot and applies an unnecessary administrative and financial burden upon the local board of elections while creating undue hardship for the election judges at the polling places.

-
1. In a June 2019 survey, the Election Directors of 20 LBEs supported modifying the regulation to remove the requirement for ballot stubs. Of the remaining 4 LBEs, 1 director took a neutral stance and 3 LBEs did not respond.
 2. Steamboat, Colorado has resorted to hand counting ballots in part because of issues caused by ballot stubs. "The problem is the perforations lead to this paper dust that can interfere with the functioning of the machines". "One voting system can function with "this stub issue," but the count has to be stopped and cleaned out. If that's not done properly, the machine breaks down and has to be repaired". <https://www.steamboatpilot.com/news/steamboat-annexation-election-postponed-to-june-25/>
 3. In the 2018 Election Cycle, poor perforation of the ballot stub was an issue for several LBEs. This issue went undetected until the ballots were delivered to the LBEs and, in at least one instance, resulted in the last-minute removal of the ballot stubs from 65% of the ballots.
 4. COMAR 33.10.03.21, which specified the manner and procedures for ballot stub usage was repealed effective June 3, 2019.

Recognizing the importance of ballot accounting, this committee, along with the local election directors, request a revision to COMAR 33.10.01.17 that replaces ballot stubs with an alternative ballot accounting method. It is the desire of all involved that this alternative method provides the necessary integrity, while also allowing for the flexibility needed to implement this process at the local level. Attached is suggested language meant to assist with accomplishing this goal.

Should you have any questions or desire additional information, please feel free to contact me directly at 240-777-8520.

Sincerely,

A handwritten signature in black ink that reads "Jessica Newby". The signature is written in a cursive, flowing style with a horizontal line above the first few letters.

Jessica Newby, Committee Chair

Enclosure

.05 Retention and Disposition — Statewide Schedules.

A. Administrator to Develop.

(1) With the assistance of the Records Division and the State Archivist, the State Administrator shall prepare and obtain legal authorization to implement one or more Statewide retention schedules to govern the retention and disposition of all election-related records of the various boards.

(2) These Statewide schedules shall encompass, among other records designated by the State Administrator:

- (a) Voted ballots;
- (b) Unvoted ballots;
- (c) Spoiled ballots;
- (d) Ballot [stubs] **SET HEADER SHEET**;
- (e) Voter authority cards;
- (f) Precinct registers;
- (g) Canvass sheets;
- (h) Certificates of candidacy;
- (i) Campaign finance reports;
- (j) Absentee ballot applications and envelopes;
- (k) Provisional ballot applications and envelopes;
- (l) Petitions for nomination;
- (m) Petitions for referendum;
- (n) Election judges' forms, reports, and logs; and
- (o) Pre-election proofing, testing, and certification documents.

B. Governing Law.

(1) The Statewide schedules shall be developed and implemented in accordance with:

- (a) COMAR 14.18.02; and
- (b) COMAR 14.18.04.

(2) Retention periods shall comply with all applicable federal laws, State laws, and this title.

C. Local Compliance. Each local board shall comply with the Statewide retention schedules established under this regulation.

.17 Ballots — In General.

A. Content and Arrangement. The content and arrangement of all ballots shall comply with Election Law Article, Title 9, Subtitle 2, Annotated Code of Maryland, and this chapter.

B. Printing.

(1) Typesetting, ink color, paper stock, and stock colors shall meet all specifications set by:

- (a) Election Law Article, Annotated Code of Maryland;
- (b) This chapter; and
- (c) The voting system's manufacturer.

(2) Ballots shall be available at least 45 days before the election.

C. Printed Format — Placement of Contests, etc.

(1) If all contests cannot be placed on the front, contests shall be placed on both sides of the page.

(2) If all candidates and ballot questions cannot be placed on the front and back, the contests shall be divided into two or more pages.

(3) Whenever possible, the entire listing of a contest shall be printed on one side of the page.

D. Printed Format — Ballot Notices.

(1) If a ballot has contests printed on the front and back, the front shall contain a notice that other contests are printed on the back.

(2) If the ballot is more than one page, the back of the first page shall contain a notice that there is another page to the ballot.

(3) The last page of any ballot shall contain an end of ballot notice.

E. Write-In Spaces (General Elections). In a general election, write-in spaces shall be provided for each applicable office.

F. Ballot [Stub] **ACCOUNTING.**

(1) Each pre-printed ballot shall [have an attached, single-perforated stub] **BE GROUPED INTO A SET WITH A SPECIFIC, PREDETERMINED COUNT.**

(2) EACH SET SHALL INCLUDE A HEADER SHEET AND BE PACKAGED IN A CONTROLLED MANNER THAT ENSURES THE BALLOTS REMAIN GROUPED.

[(2)] **(3)** Each ballot [stub] **SET HEADER SHEET** shall include:

- (a) The same information that Election Law Article, Annotated Code of Maryland, requires for the ballot heading; and
- (b) Serially numbered to facilitate ballot accounting.

G. Coding of Ballot Styles. Both machine-readable and human-readable coding shall be used to identify different ballot styles.

H. Countability. Ballots shall be both machine-countable and hand-countable.

ASSISTANT ATTORNEY GENERAL'S REPORT

August 22, 2019

1. *Fusaro v. Davitt et al.*, No: 1:17-cv-03582 (U.S. District Court, D. Md.). Plaintiff Dennis Fusaro brought a complaint in federal court alleging that Maryland violates the First and Fourteenth Amendments by limiting access to the voter list to Maryland voters and only for purposes related to the electoral process. On September 4, 2018, the State defendants' motion to dismiss the complaint was granted, and the plaintiff appealed. On July 12, 2019, the Fourth Circuit vacated the dismissal order, and remanded the case for further proceedings. The Fourth Circuit concluded that Mr. Fusaro had pled a cognizable claim under the First Amendment, but that the State would be entitled to a relaxed level of scrutiny as to whether the limitations violate Mr. Fusaro's rights on remand. A conference call with the U.S. District Court has been scheduled for August 27, 2019, to discuss further proceedings in the case.

2. *Johnson v. Prince George's County Board of Elections*, No. CAL16-42799 (Cir. Ct. Prince Georges Cnty.). No change from the last update. This case involves a challenge under the U.S. Constitution and Maryland Constitution and Declaration of Rights to the SBE's alleged failure to provide information and access to voter registration and voting resources to eligible voters detained by the Prince Georges County Department of Correction during the 2016 election. The case had been originally filed in the Circuit Court for Prince Georges County but was removed on the basis of the federal claims asserted by the Plaintiffs. On February 27, 2018, the U.S. District Court for the District of Maryland granted SBE's motion to dismiss the Plaintiffs' federal claims, declined to exercise jurisdiction over the state claims, and remanded the case to the Circuit Court for further proceedings. The parties are awaiting further direction from the court.

3. *Barber v. Maryland Board of Elections*, No. C-02-CV-17-001691 (Cir. Ct. Anne Arundel Cnty.), *on appeal at* No. CSA-REG-2238-2017 (Md. App.) On January 25, 2018 Ms. Barber appealed from the Circuit Court's January 11, 2018 dismissal of her complaint. Ms. Barber sought damages and judicial review of, among other things, the State Board's decision not to issue a declaratory ruling permitting her to use campaign funds to pay for litigation costs she incurred in her unsuccessful attempt to retain her position as an administrative law judge in the District of Columbia. Ms. Barber was ruled ineligible for that position due to her candidacy in 2016 for Judge of the Circuit Court for Prince George's County, Maryland. On July 26, 2019, the Court of Special Appeals affirmed the dismissal of Ms. Barber's complaint.

4. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). This case involves the denial of access to Maryland’s voter registration database. Under Maryland law, access to the voter registration list is limited to Maryland registered voters and only for non-commercial, election-related uses. Judicial Watch—an elections watchdog group located in Tennessee—requested Maryland’s voter registration “database” and was denied because it was not a Maryland registered voter. Judicial Watch filed suit, arguing that the database was required to be disclosed under the federal National Voter Registration Act. On April 24, 2019, Judicial Watch filed a reply in support of its motion for summary judgment. On May 8, 2019, the defendants filed a reply in support of their cross-motion for summary judgment. On August 8, 2019, the District Court awarded summary judgment to the plaintiffs, but requested further briefing on the issue of whether the State Board of Elections should be compelled to produce the dates of birth of voters along with the other voter information available on Maryland’s voter registration lists. The court has asked for a proposed briefing schedule to be submitted by August 22, 2019

5. *The Washington Post, et al. v. McManus, et al.*, No. 1:18-cv-02527 (U.S. District Court, D. Md.), *on appeal at* No. 19-1132 (U.S.C.A., 4th Cir.). This case presents a First Amendment challenge by a coalition of newspaper publishers that maintain an online presence to certain provisions of the recently-passed Online Electioneering Transparency and Accountability Act (the “Act”). On January 4, 2019, the district court granted the plaintiffs’ motion for preliminary injunction on the ground that the plaintiffs’ “as applied” constitutional challenge to the statute was likely to succeed. On February 2, 2019, the defendants appealed that ruling to the Fourth Circuit. On April 12, 2019, the defendants filed their opening appellate brief. On April 19, 2019, the Campaign Legal Center and Brennan Center for Justice filed *amicus curiae* briefs in support of the appellants. On May 31, 2019, the plaintiffs filed their response brief. On June 7, 2019, *amicus curiae* briefs in support of the plaintiffs were filed by the Institute for Free Speech, the National Association of Broadcasters and NCTA – The Internet & Television Association, and the News Media Alliance together with 16 other media organizations. On July 3, 2019, the defendants filed their reply brief. The Court has tentatively scheduled oral argument to take place during the week of October 29, 2019.

6. *Johnston, et al., v. Lamone*, No. 18-cv-3988-ADC (U.S. District Court, D. Md.), *on appeal at* No. 19-1783 (U.S.C.A., 4th Cir.). On December 28, 2018, the Libertarian Party of Maryland (the “Party”) and its Chairman, Robert Johnston, filed a lawsuit alleging that the statutory scheme governing the official recognition of minor parties in Maryland, as applied to the Party, was unconstitutional in at least two ways.

They alleged that the scheme violates their First Amendment speech and association rights by requiring the Party to undertake the petition process to re-obtain formal recognition under State law, when there are already over 22,000 Maryland voters currently registered as Libertarians. They also alleged that the standard by which Maryland verifies petition signatures is unconstitutionally strict, in that it requires the rejection of signatures of known Maryland voters due to technical noncompliance with the statutory standard. Plaintiffs moved for a preliminary injunction, which was denied at a hearing on January 31, 2019. Subsequently, the defendant filed a motion to dismiss. On July 11, 2019, the district court granted the motion dismiss, concluding that the requirement that the Libertarian Party re-petition for recognition did not violate the party's or its members' constitutional rights, and that the challenge to Maryland's signature standard was not ripe in the absence of a filed petition. On July 24, 2019, the plaintiffs filed a notice of appeal, and on August 9, 2019, filed a motion to expedite the appeal. That motion was granted, and the plaintiffs' opening brief is due September 11, 2019.

7. *Phukan v. Maryland State Board of Elections*, No. C-2-CV-19-000192 (Cir. Ct. Anne Arundel Cnty.). On January 23, 2019, Anjali Reed Phukan, who was the Republican nominee for Comptroller in the 2018 election, filed a lawsuit against the State Board of Elections seeking a writ of mandamus directing the State Board of Elections to decertify Comptroller Peter Franchot's campaign committee, an injunction requiring Mr. Franchot and his campaign committee to file corrected campaign finance reports, a declaratory judgment that Ms. Phukan is entitled to examine the documentation supporting any corrected campaign finance reports that Mr. Franchot or his committee files, and a declaratory judgment that Ms. Phukan be issued the oath of office as Comptroller and be awarded back pay and the costs of suit, should Mr. Franchot or his committee fail to file corrected campaign finance reports. On April 15, 2019, the court granted the defendant's motion to dismiss and dismissed the complaint with prejudice. On May 22, 2019, the court denied the plaintiff's motion to vacate the judgment and motion for a new trial. On May 29, 2019, the plaintiff filed a notice for in banc review by the circuit court, and filed her memorandum for in banc review on June 21, 2019. The defendant filed its response memorandum on July 19, 2019. The Court has scheduled argument before the in banc panel for December 30, 2019.

8. *National Federation of the Blind, Inc., et al. v. Lamone et al.*, No. 1:19-CV-02228-ELH (U.S. District Court, D. Md.). On August 1, 2019, the National Federation of the Blind ("NFB"), NFB's Maryland chapter, and three individual plaintiffs filed a lawsuit against the State Administrator and the individual members of the State Board of

Elections alleging that SBE's BMD policy has, in practice, violated the rights of voters with disabilities "to an equal opportunity vote in person by a secret ballot," in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Specifically, plaintiffs allege that the policy relegates voters with disabilities to a "lesser used system" that amounts to "an inferior voting option for those who must use the BMD to vote independently." For that reason, plaintiffs assert that the changes to the policy recently adopted by the State Board are insufficient to remedy the violations they have alleged. Instead, they seek an order requiring the State Board "in all future elections to offer BMDs to every in-person voter as the default method of voting, with paper ballots offered only to those voters who affirmatively opt out of using the BMD or in cases where there are long lines of people waiting to vote." The defendants' response to the Complaint, either by way of answer or motion to dismiss, is currently due August 27, 2019, but defendants have requested a 1-week extension of that deadline (to which plaintiffs have consented) from the Court.

BMD - Exemption

LBES/17 - Prince George's



Alexander, Alisha L.

Thu, Jul 25,
10:33 AM

to me

Erin: Per the discussion on the director's call, I'd like to submit an exemption/waiver regarding where the BMD statement is given to the voter. We'd like to keep it at the check-in table. That process works very well for us.

Thanks!

Alisha