

Title 33 STATE BOARD OF ELECTIONS
Subtitle 19 SAME DAY REGISTRATION AND ADDRESS CHANGES
Chapter 02 Public Notice

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 3-305(d) and (e), Annotated Code of Maryland

.01 Minimum Requirements

[A. State Board. Before the close of registration for each election, the State Administrator shall send a pre-election mailing to each pre-qualified voter, which shall either:

- (1) Include the correct polling place for the pre-qualified voter's address; or
- (2) Instruct the pre-qualified voter how to find the individual's correct polling place.

B. Local Board.] A local board shall include in each specimen ballot information about how a voter can change the voter's address during early voting.

This proposed regulation removes the requirement that the State Board send a pre-election mailing to each pre-qualified voter. (A "pre-qualified voter" is an individual who appears eligible to vote but is not yet registered.) This postcard lets the pre-qualified voter know where he or she can take advantage of the same day registration process. Without this regulation, the State Board is still required under Election Law Article, §3-306(d)(1) to take "appropriate measures" to notify potential registrants of the current polling place for their residence address.

We contracted with the Maryland Correctional Enterprises (MCE) to print and mail the required postcard. Last week, MCE notified us that they had reduced their workforce in response to COVID-19 and could not produce the postcards in the required timeframe.

We are looking for another vendor to produce and mail the postcards in the required timeframe. If we cannot find another printer or the circumstances related to this election change before the date the postcard is mailed, we would like the flexibility to not send this postcard.

If this emergency change is approved and we do not send the postcards, we would take "appropriate measures" to notify potential registrants of where they can take advantage of the same day registration process. These measures could include posting information on SBE's and the local boards' websites, social media messaging, press releases, and sharing information with voter advocacy organizations and political campaigns.

This change is being proposed as an emergency change. This means that the repeal of 33.19.02.01A would be effective for the special general election for the 7th Congressional Election (April 28, 2020) and the presidential primary election (June 2, 2020). After these elections, the requirement for the mailing would be required.

The Governor's Proclamation dated March 17, 2020, required that the State Board of Elections submit a plan to conduct the Presidential Primary Election. This draft plan for the 2020 Presidential Primary Election is based on advice from the Office of the Attorney General and the Maryland Department of Health.

1. Send ballots to all eligible voters
2. During early voting, voters can drop off ballots **or** vote in person at early voting centers.
3. On election day (6/2/2020), voters can only drop off ballots at designated locations.

ASSISTANT ATTORNEY GENERAL'S REPORT

March 25, 2020

1. *Fusaro v. Davitt et al.*, No: 1:17-cv-03582 (U.S. District Court, D. Md.). No changes from the last update. 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 parties have since conducted discovery and briefed dispositive summary judgment motions, and are awaiting a ruling from the Court.

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. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). No changes from the last update. 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. On September 13, 2019, the parties filed simultaneous briefs on that remaining issue, and on September 20, 2019, filed simultaneous response briefs. The issue is fully briefed and awaiting determination by the Court.

4. *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.). No changes from the last update. 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. Oral argument was held on October 30, 2019, and on December 6, 2019, the Court issued an opinion affirming the entry of the preliminary injunction. We are currently discussing resolution of the case with the plaintiffs.

5. *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. On July 11, 2019, the district court dismissed the plaintiffs' claims, and plaintiffs appealed. Oral argument took place on January 29, 2020. On March 3, 2020, the Fourth Circuit affirmed the lower court's dismissal of the Complaint.

6. *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. Plaintiffs 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.” On September 3, 2019, defendants filed a motion to dismiss the complaint, and on September 20, 2019, plaintiffs filed a motion for a preliminary injunction, seeking relief in time for the November 2020 election. The Court heard argument on plaintiffs’ motion on January 17, 2020. On February 7, 2020, the plaintiffs moved for leave to submit additional evidence in support of their motion, arising from the alleged experiences of voters in the February 4, 2020 special primary election for the 7th Congressional District. On February 10, 2020, the court granted the plaintiffs’ motion for leave to submit additional evidence, denied the defendants’ motion to dismiss, and denied the plaintiffs’ motion for preliminary injunction. On February 24, 2020, the Court entered a scheduling order governing the discovery period for the case, and setting a July 31, 2020 deadline for the filing of dispositive motions. The parties have exchanged initial disclosures and are in discovery.

7. *Hewes v. Alabama Sec’y of State et al.*, No. 1:19-cv-09158-JMF (U.S. District Court, S.D.N.Y.). No changes from the last update. On October 3, 2019, plaintiff Henry F. Hewes, a putative candidate for the Democratic nomination for President for the 2020 election, sued the unnamed Secretaries of State of 43 states, (including Maryland), alleging that state-imposed limitations on ballot access for federal presidential candidates violate the First and Fourteenth Amendments to the U.S. Constitution. Plaintiff seeks an order compelling the defendants to place the name of the plaintiff and any other candidate who has registered with the Federal Election Commission on the primary ballots of the states named as defendants. The Defendants jointly filed a motion to dismiss asserting common arguments for dismissal on December 19, 2019. On January 23, 2020, the plaintiff filed an amended complaint, and the defendants thereafter renewed their joint motion to dismiss.

8. *Chong Su Yi v. Hogan*, Nos. 464985-V, 466396-V (Cir. Ct. Montgomery Cty.), *on appeal at* Nos. CSA-REG-1435-2019, CSA-REG-1437-2019 (Md. Ct. Sp. App.). On around March 28, 2019, plaintiff Chong Su Yi filed two complaints in the Circuit Court for Montgomery County challenging the results of Maryland’s 2018 elections, naming Governor Larry Hogan as defendant. Specifically, Mr. Chong appears to be arguing that the results are invalid because of the use of religious facilities as polling places, that the State’s use of “scanners” to tabulate ballots is unconstitutional and/or not permitted by federal law, and that the State’s identification of candidates’

party affiliations on the general election ballot is not permitted by State law. On January 13 and 21, 2020, respectively, the circuit dismissed plaintiff's complaints. Plaintiff appealed from one of the dismissals, and on March 3, 2020 the Court of Special Appeals dismissed that appeal.

9. *Public Interest Legal Foundation, Inc. v. Lamone*, No. 1:19-cv-03564-ELH (D. Md.). On March 19, plaintiff Public Interest Legal Foundation, Inc., filed a lawsuit against the State Administrator, the members of the State Board, and Erin Dennis, seeking access to Maryland's list of registered voters pursuant to the public inspection provisions of the National Voter Registration Act. Plaintiff alleges that the District Court's published decision in *Judicial Watch, supra*, entitles them to access, and that the issue left outstanding by the court in that case does not implicate their request since they are not seeking individuals' dates of birth as part of the information provided for each voter on the list. Plaintiffs filed a motion for summary judgment simultaneously with their complaint. On January 17, 2020, defendants answered the Complaint. On January 24, 2020, defendants moved for a stay of the proceedings pending the resolution of the *Judicial Watch* matter and any appeals therefrom, due to the similarity of the issues between the cases. The parties are awaiting ruling from the Court on that motion.

10. *In the Matter of Seth Wilson*, No. C-02-CV-20-000664 (Cir. Ct. A.A. Cty.). On February 26, 2020, Seth Wilson, First Vice Chairman of the Washington County Republican Party, filed a petition for judicial review of the content and layout of the ballot, pursuant to section 9-209 of the Election Law Article of the Maryland Code. Upon filing, the petition was rejected as defective by the clerk of the Court and deemed "not a valid pleading or paper." On February 28, 2020, the State Board filed a motion to dismiss the petition and stated that it would commence the printing of ballots after 5:00 pm on Monday, March 2, 2020. This filing, too, was rejected on the ground that there was no valid petition to move against. On March 9, 2020, petitioner filed a memorandum in support of his petition, which the Court accepted as a valid petition, alleging that the ballots certified by the State Board for voters in Hagerstown, Maryland, were contrary to law, because (among other things) the non-partisan contests for Mayor and City Council members of Hagerstown, Maryland, were included on the Republican Primary ballots and/or not properly identified on that ballot as non-partisan contests, and because the party affiliations of candidates in those contests were not listed. The parties have since reached agreement regarding a notice that will be provided to voters in board of elections mailings and at polling places that the contests for Mayor and City Council of Hagerstown are non-partisan contests, and that the candidates for these contests are the same on every ballot and are listed without their individual party affiliations.

Anyone registered to vote in Maryland can vote by absentee ballot, which lets you vote in an election without going to a polling place. If you are a military voter stationed outside of Maryland or live outside of the U.S., go to fvap.gov to fill out the Federal Post Card Application.

You can register to vote in Maryland online at elections.maryland.gov/voting/absentee.html or at your local election office (see attached list).

How to ask for an absentee ballot

- Fill out this form and get it to your local election office before the deadline, or ask for your absentee ballot online at elections.maryland.gov/voting/absentee.html.

How will you receive your absentee ballot?

- On this form, you choose how you want to receive your ballot: through U.S. Mail, fax, or we will send you an email with a link so you can print your ballot.
- You can also pick it up in person, or have someone pick it up:
 - If you want someone to pick up your ballot for you, you need to provide a *Designation of Agent* form. Get this form at your local election office or online at elections.maryland.gov/voting/absentee.html.
 - The person who picks up your ballot must be at least 18 years old and cannot be a candidate on your ballot. You can also have this person return your voted ballot to your local election office. This person must sign a form to show that he or she handled the ballot properly.

Deadlines for returning this form

Your deadline depends on how you send in this form, and on how you want to receive your ballot.

Special General Election – 7th Congressional District: Since this election will be conducted by mail, we will mail you a ballot. You only need to complete this form if you have a different mailing address, or if you want this ballot by fax or print it from a link.

- If you want your local election office to fax you a ballot:
 - Make sure this form is in our office by 8 pm on Tuesday, April 21, 2020.
 - Or send us this form by email or fax by 11:59 pm.
- If you want to print your ballot from a link:
 - Make sure this form is in our office by 5 pm on Friday, April 24, 2020.
 - Or send us this form by email or fax by 11:59 pm.

Presidential Primary Election

- If you want your local election office to mail or fax you a ballot:
 - Make sure this form is in our office by 8 pm on Tuesday, May 26, 2020.
 - Or send us this form by email or fax by 11:59 pm.
- If you want to print your ballot from a link:
 - Make sure this form is in our office by 5 pm on Friday, May 29, 2020.
 - Or send us this form by email or fax by 11:59 pm.

Presidential General Election

- If you want your local election office to mail or fax you a ballot:
 - Make sure this form is in our office by 8 pm on Tuesday, October 27, 2020.
 - Or send us this form by email or fax by 11:59 pm.
- If you want to print your ballot from a link:
 - Make sure this form is in our office by 5 pm on Friday, October 30, 2020.
 - Or send us this form by email or fax by 11:59 pm.

You can ask for this form in large type.

Maryland Application for an Absentee Ballot

Register to Vote

1

You must be registered to vote an absentee ballot. If you are not registered to vote in Maryland and want to register, contact your local election office listed on the attached sheet or go to elections.maryland.gov.

Print your name.
Use black or blue ink.

2

Last name _____ Jr Sr II III IV
First name _____ Middle name or initial _____

Election

3

I want an absentee ballot for

Special General Election for the 7th Congressional District – If you live in the 7th Congressional District, we will mail you a ballot for the special general election. Fill out Section 6 – Internet Delivery or Fax if you want your ballot mailed to a different address, or if you want your ballot by fax or internet delivery instead of mail.

Presidential Primary Presidential General Both Elections

Party Affiliation:

Democrat Republican Bread and Roses Other: Specify _____

About you

4

Email Address _____

Birthdate | M | M | / | D | D | / | Y | Y | Y | Y | Phone | | | | - | | | | | | | | | | | | | |

Your current address

Print your current residential address.

DO NOT write a temporary address used for school, work, or travel. If you want to get your ballot by U.S. Mail, you can put that address in Section 6.

5

Address _____ Apt. number _____

City/Town _____ State _____ Zip Code | | | | | | | | | | | | | |

When did you move here? | M | M | / | D | D | / | Y | Y | Y | Y | If you do not remember the exact date, give the month and year.

How do you want to receive your ballot?

If you choose internet delivery, we will send you an email with a link to your ballot about three weeks before the election. You must print your ballot and return it to your local election office. If you do not see an email from the State Board of Elections, check your spam folder.

Note: A fax or internet ballot you have printed yourself cannot be read by our scanners. Election workers will use the information on your ballot to mark an official ballot for you. The official ballot will be machine counted with other ballots.

If you do not have a Maryland Driver's License or ID card, provide the last 4 digits of your social security number.

6

Choose one:

U.S. MAIL

I want my ballot for the **SPECIAL GENERAL ELECTION – 7TH CONGRESSIONAL DISTRICT** mailed to the address below

Address _____ Apt. number _____

City/Town _____ State _____ Zip Code _____

I want my ballot for the **PRESIDENTIAL PRIMARY ELECTION** mailed to:

Same as above The address below

Address _____ Apt. number _____

City/Town _____ State _____ Zip Code _____

I want my ballot for the **PRESIDENTIAL GENERAL ELECTION** mailed to:

Same as above The address below

Address _____ Apt. number _____

City/Town _____ State _____ Zip Code _____

INTERNET DELIVERY We will email you an internet link to open your ballot and print it yourself.

Email address _____

Maryland Driver's License or ID Card Number | | | | - | | | | | | | | | | | | | |

Issue Date | M | M | / | D | D | / | Y | Y | Y | Y |

Last 4 digits of Social Security number XXX-XX- - | | | | | | | | | | | | | |

FAX fax number | | | | - | | | | | | | | | | | | | |

Signature

(required)

Anyone can help you fill out this form except

- A candidate on your ballot
- Your employer or an agent of your employer
- An officer or agent from your union

7

Voter's Signature (required)

X

Today's Date | M | M | / | D | D | / | Y | Y | Y | Y |

Assistance Signature (required if you had help)

Under penalty of perjury, I hereby certify that this voter needed help with this form because he or she has a disability or is unable to read or write. The voter authorized me to complete this form. If the voter could not sign this form, I printed the voter's name and wrote my initials.

sign: _____

print: _____

Maryland State Board of Elections

State Board of Elections

P.O. Box 6486, Annapolis, MD
21401-0486 **800-222-8683**
MD Relay Service 800-735-2258
elections.maryland.gov

Local Election Offices

Allegheny County

701 Kelly Rd., Ste. 231
Cumberland, MD 21502
301-777-5931
301-777-2430 (fax)
elections@alleghenygov.org

Anne Arundel County

P.O. Box 490
Glen Burnie, MD 21060
410-222-6600
410-222-6824 (fax)
elections@aacounty.org

Baltimore City

Benton Office Bldg.
417 E. Fayette St., Rm. 129
Baltimore, MD 21202-3432
410-396-5550
410-727-1775 (fax)
410-783-7394 (fax)
election.judge@baltimorecity.gov

Baltimore County

11112 Gilroy Rd., Ste. 104
Hunt Valley, MD 21031
410-887-5700
410-832-8493 (fax)
elections@baltimorecountymd.gov

Calvert County

30 Duke St., Lower Level
P.O. Box 798
Prince Frederick, MD 20678
410-535-2214
410-535-5009 (fax)
elections@calvertcountymd.gov

Caroline County

Health & Public Services Bldg.
403 S. Seventh St., Ste. 247
Denton, MD 21629-1378
410-479-8145
410-479-5736 (fax)
election@carolinemd.org

Carroll County

300 S. Center St., Rm. 212
Westminster, MD 21157
410-386-2080
410-876-3925 (fax)
ccboe@carrollcountymd.gov

Cecil County

200 Chesapeake Blvd.
Ste. 1900
Elkton, MD 21921-6395
410-996-5310
888-979-8183 (fax)
voting@ccgov.org

Charles County

P.O. Box 908
La Plata, MD 20646-0908
301-934-8972
301-870-3167
301-934-6487 (fax)
elections@charlescountymd.gov

Dorchester County

501 Court Ln., Rm. 105
P.O. Box 414
Cambridge, MD 21613-0414
410-228-2560
410-228-9635 (fax)
brittanym.phillips@maryland.gov

Frederick County

340 A Montevue Ln.
Frederick, MD 21702
301-600-8683
301-600-2344 (fax)
electionboard@
frederickcountymd.gov

Garrett County

2008 Maryland Hwy, Ste. 1
Mountain Lake Park, MD 21550
301-334-6985
301-334-6988 (fax)
sfratz@garrettcounty.org

Harford County

133 Industry Ln.
Forest Hill, MD 21050-1621
410-638-3565
410-638-3310 (fax)
elections@harfordcountymd.gov

Howard County

9770 Patuxent Woods Dr. Ste. 200
Columbia, MD 21046
410-313-5820
410-313-5833 (fax)
tiffany.ferrell1@maryland.gov

Kent County

135 Dixon Dr.
Chestertown, MD 21620
410-778-0038
410-778-0265 (fax)
cheemoandia.blake@maryland.gov

Montgomery County

P.O. Box 10159
Rockville, MD 20849-0159
240-777-8550
TDD 800-735-2258
240-777-8560 (fax)
absentee@
montgomerycountymd.gov

Prince George's County

1100 Mercantile Ln., Ste. 115A
Largo, MD 20774
301-341-7300
TDD 301-726-3352
301-341-7399 (fax)
election@co.pg.md.us

Queen Anne's County

110 Vincit St., Ste. 102
Centreville, MD 21617
410-758-0832
410-758-1119 (fax)
qac.elections@maryland.gov

St. Mary's County

P.O. Box 197
Leonardtown, MD 20650
301-475-4200 ext. *1625
301-475-4077 (fax)
wendy.adkins@stmarysmc.com

Somerset County

P.O. Box 96
Princess Anne, MD 21853
410-651-0767
410-651-5130 (fax)
elections@somersetmd.us

Talbot County

P.O. Box 353
Easton, MD 21601-0353
410-770-8099
410-770-8078 (fax)
jeri.cook@maryland.gov

Washington County

35 W. Washington St.
Rm 101
Hagerstown, MD 21740
240-313-2050
240-313-2062 (fax)
washco.elections@maryland.gov

Wicomico County

P.O. Box 4091
Salisbury, MD 21803-4091
410-548-4830
410-548-4849 (fax)
wicomico.elections@maryland.gov

Worcester County

201 Belt St., Ste. C
Snow Hill, MD 21863-1300
410-632-1320
410-632-3031 (fax)
teresa.riggins@maryland.gov

To: Maryland Board of Elections

Date: March 20, 2020

Re: Emergency Protocol for Re-Scheduled June 2, 2020 Maryland Primary

Issue: Develop viable framework for Maryland’s re-scheduled June 2, 2020 primary so that it adheres to CDC’s Coronavirus guidelines without leading to voter disenfranchisement.

Proposed Solution: Expand mail-in voting and early voting capabilities to preserve limited but necessary in-person voting to ensure all Marylanders are able to safely participate in the 2020 election.

I. BACKGROUND

a. What is the current law?

The Maryland Code gives the Governor authority to postpone or make changes to an election or primary in times of emergency. MD Code Ann. § 8-103(a) (Emergencies) provides “In the event of a state of emergency, declared by the Governor in accordance with the provisions of law, that interferes with the electoral process, the emergency proclamation may 1) provide for the postponement, until a specific date, of the election in part or all of the State; 2) specify alternate voting locations; or 3) specify alternate voting systems.”

On March 17, 2020, Governor Larry Hogan announced that Maryland would be moving its primary from April 28 to June 2 in response to the Covid-19 (“Coronavirus”). The announcement came via a proclamation postponing the Primary throughout the state, and calling on the State Board of Elections to prepare and submit, in consultation with the Department of Health and Mental Hygiene, a comprehensive plan no later than April 3rd for how the Primary would be conducted.

b. What are other states doing that are facing this issue?

The following states have postponed their primaries:

- **Georgia:** Presidential primary that was originally scheduled for Tuesday, March 24 is now planned for Tuesday, May 19. Early voting temporarily stopped but is scheduled to resume from April 27 through May 15.
- **Louisiana:** Presidential primary that was originally scheduled for Tuesday, April 4, is now planned for June 20. Louisiana was the first state to move its primary.

- **Wyoming:** Primary scheduled for April 4; state has cancelled the in-person portion. Voters may still vote via ballot pickup and drop off on March 28 and April 4.
- **Kentucky:** Presidential primary that was originally scheduled for May 19 is now planned for June 23.
- **Ohio:** Presidential Primary was postponed on Monday, March 16, the day before the election. Ohio's Secretary of State announced the primary date would be postponed to June 2, but the State legislature is expected to convene to make a final determination.

While other states scramble to develop solutions, it is clear that Maryland is not alone in this challenge, nor is there any one-size fits all approach. However, Maryland will have an opportunity to lead in this space by developing and executing a thoughtful, balanced solution.

c. Potential Solutions

Currently, voters in Maryland can vote in one of three ways: 1) in-person on Election Day; 2) in-person during early voting; or 3) through absentee voting by mailing in their ballot. To maintain social distancing, the state will have to find ways to increase reliance on the second and third options to ensure that in-person voting on Election Day occurs with as few participants as possible. Above all else, that will mean ensuring that as many people as possible vote before Election Day and without going to in-person polling locations. But as Maryland weighs how to proceed with its re-scheduled primary, it must balance all three options in order to maximize voter turnout while adhering to the CDC's guidelines.

d. Limitations of Vote-By-Mail

While expanding mail-in voting capabilities is important, it will be critical to do so as a means of preserving in-person voting options for those voters unable to participate by mail, not exclusively as a replacement. Examining states that have turned to a mail-dominant format shows its successes but also why its limitations require Maryland to preserve some degree of in-person voting.

There are currently four states have gone to mail-dominant election systems:

- Colorado (CRS §1-5-401)
- Oregon (ORS §254.465)
- Washington (Rev. Code of Wash. 29A.40.010)
- Hawaii, beginning with the 2020 primary election (Hawaii Stat. §11-101)

While these states have developed working mail-dominant solutions, several points are important to note. First, and most important, all the states with vote-by-mail systems still include some options for in-person voting. In Colorado for example, voters can still choose to both register and vote in person on Election Day at one of the state's voter service and polling centers. While

these states have prioritized pushing voters to mail-in voting, they have not done so at the complete exclusion of in-person voting. Oregon, Washington, and Hawaii also maintain some in-person voting options on Election Day.

Second, each of these states built out their mail-dominant capabilities over a number of years, not overnight, and certainly not during the midst of a public health crisis that would only limit their capacity for transition. For example, Colorado held its first election by mail in 2018, five years after the state initially passed legislation calling for the change. Washington, which has had an expansive vote-by-mail system in place for nearly a decade, still encountered glitches relating to significant backlogs on voter registration in its 2019 statewide elections. So while it is important for Maryland to expand its vote by mail system, it would be irresponsible to do so at the exclusion of some in-person voting options.

Lastly, the states with mail-dominant elections have populations that are quite different from Maryland. They are therefore less susceptible to some of the issues that could arise from forcing all Marylanders to vote by mail. For example, vote-by-mail initiatives in states like Utah and Arizona exacerbated historic concerns about disenfranchisement for those states' expansive Hispanic and Native American communities who had limited access to post offices. Maryland's African-American population, accounting for 29% of the state, is dramatically larger than Colorado (4%), Hawaii (2%), Oregon (2%), and Washington (4%).¹ With much of the African-American community qualifying as low-income, similar concerns about accessibility to a mail-in system exist. Preserving some degree of in-person voting options will therefore be essential to avoid disenfranchisement.

II. PROPOSED SOLUTION

To address the complications imposed by the current public health crisis, while also protecting all Marylanders' right to vote, the State should adopt a blended solution that dramatically expands reliance on mail-in voting while also preserving the ability of residents to vote in-person.

- 1. Expanded Mail-in Ballots:** The State should mail ballots to all registered voters with pre-paid return envelopes. Maryland already has no-excuse absentee ballots. The goal is to push, in this emergency environment, for sending a ballot to every registered voter, instead of making voters affirmatively apply for an absentee ballot.
 - *Potential issue:* Dramatically increased number of absentee ballots circulated to voters as well as overwhelming traffic to the State's online registration portal.
 - *Proposed solution:* The State would likely need to identify a vendor to facilitate this unless the Board of Elections has the capacity to handle.

¹ Kaiser Family Foundation, State Health Facts (online at <https://www.kff.org/other/state-indicator/distribution-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>).

The State would also need to reinforce the capacity of its online voter registration portal.

- *Potential issue:* Voters that do not have a driver's license or internet access in order to register to vote online.
 - *Proposed solution:* Send absentee ballot request forms to voters without a driver's license. This could be accomplished by scheduling drop-offs in community locations like senior centers or public housing locations.
- *Potential issue:* The current absentee ballot request form is needlessly long and complicated.
 - *Proposed solution:* Immediately expedite a request for a simplified version of the current absentee ballot application.
- *Potential issue:* Mail-in ballots have historically disenfranchised voters when untrained election officials erroneously determined a ballot-signature did not match a signature that a state had on file.
 - *Proposed solution:* Mail-in ballots that have a signature that appears not to match a signature on file should be reviewed by three election officials. Only if all three find beyond a reasonable doubt that the signature does not match should the ballot be set aside, and in those cases, the voter should be contacted and given ten days to confirm that it is their lawful ballot.
- *Potential issue:* Confusion surrounding deadlines for accepting mail-in ballots.
 - *Proposed solution:* Ballots should be accepted as long as they are postmarked by Election Day.

2. **In-person drop-off locations:** Voters may be uncomfortable submitting their ballot through the mail. To address this, the State should create drop-off locations with ballot boxes where completed ballots can be submitted with minimal contact between voters and locations and staff. These would be open during the entirety of the early vote period, and would need fewer staff—only enough to regularly disinfect ballot drop-off boxes.

- *Potential issue:* Lack of awareness of ballot drop-off locations.
 - *Proposed solution:* Because this would be the first opportunity this will require the State to invest in an awareness campaign about the possibility for dropping off ballots and providing information on ballot box locations. To begin with, there should be a ballot box at every current polling location (or alternative locations subject to the changes in locations at senior centers).

sterilizing surfaces after each voter comes through. This will also require dedicated funding for large amounts of sanitary materials (sanitizer, wipes, latex gloves, masks, etc.) for volunteers.

- *Potential issue:* There is also the problem of a number of existing polling places either being run from senior centers or using elderly election monitoring judges.
 - *Proposed solution:* Move all polling locations that are currently scheduled for senior locations to schools or universities that will either still be closed, or need to close for Election Day. There should also be a concerted effort by the State to recruit volunteers from the hundreds of thousands of college students and other young people that are currently home from school. This will require added training to be made available to a likely influx of first time judges.

- *Potential Issue:* Campaigns sending volunteers to polls.
 - *Proposed Solution:* The state should require that only approved election monitoring judges, board of election staff, and/or poll staff are allowed at polling sites. This will help in limiting interaction with voters at poll sites. There should also be a review of the current electioneering guidelines to determine whether campaign staff should need to locate themselves even farther from polling locations.

Finally, while these measures have been developed with the stated goal of preserving Marylanders safety as well as their right to vote, they should be reviewed by State health experts prior to the election and implemented in close consultation with the States Department of Health and Mental Hygiene.

III. CONCLUSION

The current public health crisis will require us all to adapt and make sacrifices. Indeed it already has. But preserving Marylanders' access to the ballot is a critical part of our response to this crisis. The proposed solutions outlined above strike the best balance of maintaining social distancing while also making sure all Marylanders are able to vote. Their successful implementation will ensure that the Maryland that emerges once this crisis passes is stronger than before.

STATE OF MARYLAND



Proclamation

Renewal of Declaration of State of Emergency and
Existence of Catastrophic Health Emergency — COVID-19

WHEREAS, on March 5, 2020, a state of emergency and catastrophic health emergency was, pursuant to the Maryland Constitution and Laws of Maryland, including but not limited to Title 14 of the Public Safety Article, and in an effort to control and prevent the spread of COVID-19, proclaimed within the entire State of Maryland;

WHEREAS, the emergency conditions, state of emergency, and catastrophic health emergency continue to exist;

WHEREAS, the state of emergency and catastrophic health emergency interferes with the electoral process; and

WHEREAS, it is necessary and desirable for a comprehensive plan to be prepared regarding the electoral process in connection with the 2020 Primary Election, and considering steps to be taken to prevent or reduce the harmful consequences to the electoral process, during and following the state of emergency and catastrophic health emergency;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE MARYLAND CONSTITUTION AND THE LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE AND TITLE 8 OF THE ELECTION LAW ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, HEREBY DECLARE THAT A STATE OF EMERGENCY AND CATASTROPHIC HEALTH EMERGENCY CONTINUES TO EXIST WITHIN THE ENTIRE STATE OF MARYLAND, RENEW THE MARCH 5, 2020, PROCLAMATION, AND FURTHER PROVIDE AND ORDER, EFFECTIVE IMMEDIATELY:

I. Primary Election.

A. The Primary Election of April 28, 2020, is hereby postponed to June 2, 2020, in all of the State.

B. Comprehensive Plan for Primary Election.

- i. No later than April 3, 2020, the State Board of Elections shall, in consultation with the Maryland Department of Health, prepare and submit to the Governor a Comprehensive Plan for the conduct of the Primary Election.
- ii. The Comprehensive Plan shall minimize injury and damage from the COVID-19 public health catastrophe, and save lives, while, to the fullest extent possible given the interference in the electoral process from the state of emergency and catastrophic health emergency, inspire public confidence and trust in the conduct of the Primary Election by reasonably assuring under the circumstances that:
 1. all persons served by the election system are treated fairly and equitably;
 2. all qualified persons may register to vote and that those who are not qualified do not vote;
 3. those who administer elections are well-trained, that they serve both those who vote and those who seek votes, and that they put the public interest ahead of partisan interests;
 4. full information on elections is provided to the public, including disclosure of campaign receipts and expenditures;
 5. citizen convenience is emphasized as is feasible and does not endanger the public health, welfare, or safety;
 6. security and integrity are maintained in the casting of ballots, canvass of votes, and reporting of election results;
 7. the prevention of fraud and corruption is diligently pursued; and
 8. any offenses that occur are prosecuted.

- II. In the Special General Election to fill the vacancy in the office of the Representative of Congress for the Seventh Congressional District of Maryland of April 28, 2020, the State Board of Elections shall utilize, as an alternate voting system, voting by mail.
- III. All other statutory and regulatory dates and time periods relating to the Primary Election or Special General Election may be additionally postponed in the discretion of the State Board of Elections to conform to this Order.
- IV. The State Board of Elections shall have the authority to designate any of its employees or the State employees of any local board of elections as “emergency” and “essential” State employees or personnel for the purpose of performing duties necessary to conduct the Primary Election or Special General Election.
- V. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.



Given Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 17th day of March, 2020.

Lawrence J. Hogan, Jr.
Governor

ATTEST:

John C. Wobensmith
Secretary of State

March 18, 2020

The Honorable Larry Hogan
Governor, State of Maryland
100 State Circle
Annapolis, MD 21401

Members, Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401
cc: Linda H. Lamone, State Administrator

Dear Governor Hogan and Members of the Board:

We are encouraged to learn that as the state grapples with challenges of the COVID-19 virus, you are adopting emergency measures to protect public health and every Marylander's right to vote in the upcoming 2020 Presidential Primary and 7th Congressional District Special General Election.

While the state has taken rapid action to delay the upcoming Primary Election and to conduct the 7th Congressional District Special Election by mail, helping to minimize any risk of transmission, we remain concerned about the safety of poll workers, voters, and the public at large. We expect that even with a delayed Primary Election, at the very least, many Marylanders will be reluctant to participate in-person. Poll workers -- the majority of whom are seniors, an at-risk group -- will continue to decline working during the delayed election, leaving our polls understaffed during a time when jurisdictions throughout the state continue to have difficulty recruiting and retaining poll workers. This will cause a variety of problems for Maryland voters: polling places opening late, no one knowledgeable to assist with use of voting machines, and more.

We are also concerned at the possibility of disenfranchising thousands of eligible voters during the 7th Congressional District Special General Election. With both elections only being a few weeks away, we need to continue taking action to ensure all eligible voters are able to exercise their right to vote without putting their health at risk during this critical time.

In response to the growing public health crisis in Maryland and throughout the country, we urge Governor Hogan, with the assistance of the Board, to consider alternatives that alleviate risk and fosters collaboration with voting rights advocates, helping to ensure the election process is equitable, accessible, and secure. We ask that you consider our recommendations:

- **Establish a Voting Rights Task Force:** It is crucial for the State Board of Elections to consult with voting rights advocates, including those representing the rights of voters with disabilities, in addition to public health officials and local election officials, as they consider changes to Maryland's voting processes - specifically the 7th Congressional District all-mail election. Input from trusted voting rights advocates will help ensure these elections are conducted in an equitable and accessible way that does not disenfranchise Maryland voters.

- **7th Congressional District Special Election:** While we understand that in-person voting is not possible for this election, we are troubled that eligible voters will no longer be able to take advantage of same-day registration. We're even more concerned that voters with disabilities, limited English and other barriers will have no clear route for seeking assistance. Putting a Task Force to work collaboratively with the State Board of Elections would ensure that we are looking at ways to ensure no voter is disenfranchised. This includes implementing a process to extend the registration and absentee request deadline to as close as election day as possible, temporarily waiving the identification restrictions for those voters who may not have state ID's, and allowing for provisional voting. We should also work collaboratively to ensure inactive voters are contacted and provided with an opportunity to receive an absentee ballot as well as develop a clear process for resolving absentee ballots issues.
- **Adequate Funding for Public Outreach:** We encourage you to provide adequate funding to ensure voters in the 7th Congressional District are informed of changes to the election, provided with clear instructions on how to check and update their addresses and how to submit and track their ballot, as well as where to call with questions and problems that may arise. Funding should also be made available to ensure the public is aware of delayed 2020 Primary Election, and election changes if also conducted by mail.
- **Conduct Delayed Primary Election by Mail:** While already delayed, we ask that you consider automatic absentee voting during the delayed Primary Election -- mailing absentee ballots to all registered voters. If this route is taken, the State Board of Elections would be able to work with this Task Force to ensure that the infrastructure and processes being implemented is one where voters are not disenfranchised during the receipt, verification, and tallying of a larger volume of mail-in ballots. Vote Centers: If adopted, voting centers should be made available during the delayed Primary Election, while implementing best practices recommended by healthcare professionals to ensure the process is safe and equitable. These centers should be accessible to all voters and function similar to early vote locations, ensuring eligible voters are able to take advantage of same-day registration and that those in need of assistance or experiencing issues receiving their absentee ballot -- such as ballots being sent to old/inaccurate address, voters not receiving a ballot, or voters receiving the wrong ballot -- are able to get the help they need. There should be a sufficient number of vote centers made available throughout the state, open throughout early voting period and on Election Day.

Marylanders expect and deserve to have their say at the polls to choose their representatives. We hope that you will take these recommendations into consideration and that you will consult with voting rights advocates as you move forward with the 2020 Presidential Primary and 7th Congressional District Special Election. Thank you all for your leadership during this challenging time. We look forward to working with you all.

Sincerely,

Joanne Antoine, Executive Director, **Common Cause Maryland**
 Lois Hybl & Richard Willson, Co-Presidents, **League of Women Voters of Maryland**
 Emily Scarr, Director, **Maryland PIRG**
 Dana Vickers Shelley, Executive Director, **ACLU of Maryland**

March 25, 2020

Thank you to Andrea W. Trento for meeting with us. We have included a few points from our conversation that we hope will be conveyed to the State Board of Elections as they work on finalizing their plan.

- We continue to be concerned about the lack of outreach being done to confirm inactive voters. An advance mailing, providing both active and inactive voters with information about upcoming elections, would provide SBE with an opportunity to confirm inactive voters as well as help with overall voter education.
- A sufficient amount of voting centers should be made available during both the Special General Election and Primary Election, providing eligible voters with the opportunity to use same-day registration and address issues with ballot – registered voter who did not receive an absentee ballot or received the incorrect ballot. Vote centers are also critical for voters who need to use the Ballot Marking Devices and those voters with limited English proficiency.
- We understand the concerns regarding staffing voting centers. We are willing to collaborate with the State Board of Elections to recruit individuals to staff the polls. Making numerous voting centers available during the primary election might minimize traffic compared to limited centers that may become overly crowded.
- We urge Governor Hogan to work with State Board of Elections to make funding available for outreach including social media, email, and PSA announcements on TV and radio. We are also committed to doing all that we can to help with outreach efforts.
- While there may not be time or capacity to create a Task Force, we hope we can keep an open line of communication as messaging for outreach is being finalized so we can offer suggestions as well as strategically augment what the state and local boards plan to do in regard to voter outreach. Immediate messaging should include the need to verify, and if necessary, update voter registration status.
- While it looks like State Board of Elections may already be working to extend the voter registration deadline, we ask that you consider making that date as close to April 28th as possible and that additional forms of identification be temporarily made available online for those seeking to register to vote or request an absentee ballot.
- While we understand the need to limit interactions to avoid spreading of COVID-19, we urge you all to consider making vote centers available on June 2nd.

Sincerely,

Joanne Antoine, Executive Director, **Common Cause Maryland**
Lois Hybl & Richard Willson, Co-Presidents, **League of Women Voters of Maryland**
Emily Scarr, Director, **Maryland PIRG**
Dana Vickers Shelley, Executive Director, **ACLU of Maryland**