

State of Maryland

State Board of Elections – August 23, 2018 Meeting

Attendees: David McManus, Chair  
Michael R. Cogan, Member  
Kelley A. Howells, Member  
Malcolm L. Funn, Member  
Linda Lamone, Administrator  
Andrea Trento, Assistant Attorney General  
Donna Duncan, Assistant Deputy, Election Policy  
Keith Ross, Assistant Deputy, Project Management  
Jared DeMarinis, Director, Candidacy and Campaign Finance  
Mary Wagner, Director, Voter Registration  
Erin Perrone, Director, Election Reform and Management  
Sarah Thornton, Technical Writer, Project Management Office  
Tracey Hartman, Director of Special Projects

Also Present: Katherine Berry, Director, Carroll County Board of Elections  
Dale Livingston, Deputy Director, Harford County Board of Elections  
Ralph Watkins, League of Women Voters – Maryland  
Bryan Sears, Daily Record  
Joanna Woodson, #BaltimoreVotes  
Kevin O. Faley, Citizen  
Jessica J. Josephson, Citizen

#### **DECLARATION OF QUORUM PRESENT**

Mr. McManus called the meeting to order at 3:02 pm and stated that there was a quorum of four members present. He reported that Mr. Hogan would not be attending the meeting due to a schedule conflict. Mr. McManus stated that the meeting was being recorded.

#### **RATIFICATION OF MINUTES FROM JULY 2018 MEETING**

Mr. Funn made a motion to ratify the approved minutes from the July 19, 2018 meeting, and Mr. Cogan seconded the motion. The motion passed unanimously.

#### **ADDITIONS TO THE AGENDA**

There were no additions to the agenda.

#### **ADMINISTRATOR'S REPORT**

##### **1. Announcements & Important Meetings**

###### Federal Election Security Funds

The U.S. Election Assistance Commission (EAC) accepted our narrative and budget for the federal funds to enhance election security. Included in the board meeting folder was a copy of the narrative and budget we submitted. These reports are also posted on the EAC's website.

###### Maryland's Anti-Terrorism Advisory Council

On July 25th, Nikki Charlson and Linda Lamone attended the council's quarterly meeting. The council is made up of federal, State and local governmental entities involved in anti-terrorism activities. These entities include the U.S. Attorney's Office, the Department of Homeland Security, the armed forces, the Maryland Emergency

Management Agency, Maryland Transit Authority, and local law enforcement agencies. During this meeting, Nikki explained how State and local election officials protect election systems and data.

#### South Carolina Election Officials' Conference

On August 7th, Nikki attended the South Carolina's statewide election officials conference and presented how Maryland conducts its post-election ballot tabulation audit. In the next two to four years, South Carolina will likely transition from an electronic voting system to a paper-based voting system, and the State Election Director wanted State and local election officials to learn how we implemented our post-election ballot tabulation audit.

#### Department of Homeland Security's (DHS) National Table Top Exercise (TTX)

On August 13th, State and local election officials participated in a national table top exercise with election officials from over 20 other states. DHS lead the exercise via a video conference call, and we participated from the Anne Arundel County Board of Elections' facility. Various scenarios were presented to each state, and federal officials and State and local election officials answered defined questions. The level of participation by the federal government was impressive and demonstrated their commitment to supporting election officials.

### **2. Election Reform and Management**

#### Statewide Table Top Exercise (TTX)

On August 16th, State and local election officials participated in a statewide table top exercise. Using the model developed by the Belfer Center for Science and International Affairs at Harvard's Kennedy School of Government, participants responded to many scenarios in a short period of time and practiced their responses to particular situations. There were nearly 100 participants, including Directors, Deputy Directors and Information Technology staff from the local boards of elections, staff from the State Board of Elections, and vendors.

Katie Berry, the Election Director for the Carroll County Board of Elections, was a participant in the TTX and shared her experience with the board. Ms. Berry expressed that she learned a lot and felt that it was a very positive experience. She stated that certain scenarios have prompted her and her local board to put new practices into place in order to mitigate risks and potential issues. She also felt that the TTX provided an opportunity for participants to gain a better understanding and appreciation for other roles, since they were not in their real-life role for the TTX.

#### Ballot Duplication Software

In response to a question from Ms. Howells regarding Runbeck's ballot duplication software, Ms. Perrone stated that we will not pursue it for the General Election and will look into it again for the 2020 election.

### **3. Voter Registration**

#### Welcome

Nikia Wilbon-Turner will be joining the MDVOTERS team on Wednesday, August 29th. Nikia will be replacing Stacey Johnson as MDVOTERS System Administrator. Nikia comes to SBE from Maryland's Juvenile Services.

### MVA Electronic Records Update

SBE worked with MVA to manage the receipt of the 80,000+ MVA transactions that had not been forwarded when they occurred. The transfer of data and corresponding signatures to the MDVOTERS (statewide voter registration database) took around seventy-five hours to complete.

Since some of the transactions may have occurred as long as fifteen months ago, there was deep concern that “newer” data might be overwritten. Permitting only restricted access by limited SBE and LBE users to the data, a sampling of the records were reviewed and processed to assess the danger/feasibility of allowing normal processing by the LBEs. The outcome was that each record required a thorough examination of history prior to processing and it increased the normal processing time eight- to ten-fold. From the sampling, it was believed that the probability of errors in processing these records by any user greatly increased.

MDVOTERS system development time is completely allocated to pre-designated tasks. However, because of possible errors and the time required for processing, a request was made to the system developers to perform a review and compare the MVA data to existing data. Although time was lost for development of other parts of the system, the initial comparison reduced the number of records that needed to be processed from 80,000+ to 47,061. A subsequent examination reduced the number that needed to be processed down to 30,915 records. Those 30,000 records will be released gradually to the LBEs for processing. A remaining 16,146 records, which do not have a name and address match, and which have been updated in some manner in the past sixteen months, will require special processing to avoid errors. These records will be processed by SBE, with the assistance of a few select LBE processors. The backlog of data will require considerable time but will be processed prior to the close of registration for the general election.

### MDVOTERS

SBE hosted the annual Joint Application Development (JAD) meeting to discuss and prioritize issues and enhancements regarding candidacy, voter registration and the upcoming agency election management system (AEMS) for the upcoming year. There will be quarterly releases and the schedule for the timing of those releases will be forthcoming.

### MVA Transactions

During the month of July 2018, MVA collected the following voter registration transactions:

New Registration - 17,457	Residential Address Changes - 28,683
Last name changes - 3,094	Political Party Changes - 4,567

### Non-Citizens

Removal of non-citizens - 17

Removal of non-citizens who voted - 2

Removal of non-citizens who voted multiple times - 6

Removal of non-citizens with no voter history - 9

Non-citizens forwarded to the Office of the State Prosecutor - 17

Total referred from January 2018 to date: 55

### Electronic Registration Information Center (ERIC)

Since joining ERIC in 2012, the total number of voter registration records impacted is:

- Cross State Report (another member state has newer information than MD): 299,817
- Potential Duplicates: 9,008
- In-State Updates (more recent information at MVA): 283,893
- Deceased (according to the Social Security Administration): 53,662
- NCOA (USPS National Change of Address program): 795,418

## **4. Candidacy and Campaign Finance (CCF) Division**

### Candidacy

August 6th was the deadline for filing the certificate of candidacy for the non-principal political parties and petition candidates.

Tuesday, August 28th is the deadline for a candidate to decline the nomination before the General Election. If a nominee declines the nomination, the central committee of that political party has until Friday, September 7 to fill the vacancy.

### Campaign Finance

On August 28th, the 2018 Pre-General 1 Report is due for all gubernatorial election participating political committees. Currently, the CCF Division has over 2,300 participating political committees in the gubernatorial election. Notices of the due date of the report have been sent to the chair, treasurer, and candidates for those committees. Failure to file timely will result in a fine of \$10 per day up to \$500. The late fee must be paid with campaign funds.

As of July 31, 2018, Montgomery County disbursed \$4,097,761 to qualified candidates for the Primary Election. 23 candidates qualified for the program. A total of 5 candidates (2 District, 2 At-large, and 1 County executive) received the maximum disbursement of public funds. There are 9 candidates in the program for the General Election. 2 candidates are not eligible for disbursements because they are unopposed. As of July 31, 2018, Montgomery County disbursed \$287,704 to qualified candidates for the General Election.

### Campaign Finance Enforcement

The following committees had an authority line violation and paid a civil penalty as noted:

- Friends of Michele Gregory- \$50.00 on 7/19/2018
- Ivory Smith – Democratic Central Committee Candidate (Wicomico)- \$50.00 on 7/19/2018
- Matthew Davidson – Democratic Central Committee Candidate (Wicomico)- \$50.00 on 7/27/2018
- Friends of Tessa Hill-Aston- \$250.00 on 7/31/2018
- Jake Burdett – Democratic Central Committee Candidate (Wicomico) \$50.00 on 7/31/2018
- Friends of Janet Siddiqui- \$250.00 civil penalty on 7/18/2018
- Friends of Julian Ivey- \$250.00 on 8/15/2018
- Friends of Aaron Axe- \$250.00 on 8/1/2018
- Crystal Jones – Democratic Central Committee Candidate- \$50 on 7/31/2018

## 5. Project Management Office (PMO)

### Inventory: Excess Equipment Disposal

The PMO continued to work with the Department of General Services (DGS) and the State's contract recycler to dispose of the TS-R6 voting system and other legacy equipment and supplies. To date, all of the 18,940 TS-R6 units have been picked up by the recycler. In addition, the recycler did pick up the 300 TSX units. SBE continued to work with DGS to auction different types of equipment to include cart shelves, printers, monitors, power cords,

After making several attempts to sell the TS-R6 black cases, it was determined that the 17,240 cases will be sent to trash using the State's trash contractor.

### Inventory System Updates

Officially, the FY2018 Inventory Audit period has ended. The statewide FY2018 inventory audit compliance is currently at 96.68%. SBE will continue to work with the local boards to reconcile the outstanding issues in preparation for the annual reporting due to the Department of General Services in September. SBE did submit the required reporting for August.

### Other

SBE has continued its work with the Worcester County Board of Elections and Worcester County concerning the financial concerns as it pertains to the replaced equipment. The uncleaned equipment, that is still located at the SBE Central Warehouse, will be disposed of according to DGS' disposal requirements.

## 6. Voting Systems

### Post-Election Maintenance

After the certification of results and the completion of recounts, the election equipment was released. The local boards are now conducting the required post-election maintenance on the equipment, paying special attention to any equipment reported as having issues during early voting and on Election Day. In addition, SBE assisted the local boards by examining machine logs to identify issues that may not have been noted.

If any unit requires repair, ES&S will perform that repair. Scanners and ExpressVote ballot marking units are repaired at the local boards' warehouses, and pollbooks are repaired by ES&S at ES&S' warehouse in Bowie. All post-election maintenance should be complete by mid-September.

### Electronic Pollbooks

SBE continues to work with ES&S on the pollbook software. While there is not a planned software release between now and the general election in November, we are keen to ensure any changes are included in the next release in 2019.

### Comprehensive Audit

The voting systems team continues to gather data for the 2018 Primary Election post-election comprehensive audit. This includes verifying the opening times for all the polling places and identifying the number of "offline" provisional ballots that were issued. This follows the post-election audit and verification that took place last month.

### Training

The training databases for both the voting equipment and the pollbooks have been created, largely by the regional managers. These databases are used for training election judges, technicians and other temporary staff.

## **ASSISTANT ATTORNEY GENERAL'S REPORT**

Mr. Andrea Trento presented the following report:

1. *Benisek v. Lamone*, No. 1:13-cv-03233 (U.S. District Court, D. Md.). No change from the last update. This case involves claims that the State's congressional districting map is an unconstitutional political gerrymander. Oral argument took place on March 28, 2018. On June 18, 2018, the Supreme Court affirmed the denial of the preliminary injunction entered by the three-judge district court, holding that the court below did not abuse its discretion in concluding that the balance of the equities and the public interest both weighed in favor of the denial. The Court did not discuss the merits of the case. After remand, the parties submitted supplemental briefing on the impact of *Gill v. Whitford*, No. 16-1161, slip op. (June 18, 2018) and other late-term Supreme Court rulings on the issues in this case. Summary Judgments motions are currently pending and fully briefed. Plaintiffs are seeking an accelerated trial schedule so that the matter may be presented to the Supreme Court sufficiently in advance of the 2020 elections.
2. *Fusaro v. Davitt et al.*, No: 1:17-cv-03582 (U.S. District Court, D. Md.). No change from the last update. Plaintiff Dennis Fusaro has 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. The State defendants moved to dismiss the complaint in January, and their reply in support of that motion was filed February 23, 2018. The motion is fully briefed and awaiting ruling by the Court.
3. *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.
4. *Claudia Barber v. Maryland Board of Elections*, No. C-02-CV-17-001691 (Cir. Ct. Anne Arundel Cnty.) On January 25, Ms. Barber appealed from the Circuit Court's January 11 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. Ms. Barber's opening appeal brief was filed in late May, and Appellees' brief was filed August 6, 2018. Ms. Barber's reply brief was due August 27, and the case is scheduled for argument in February 2019.

5. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). No change 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 June 4, 2018, the district court denied our motion to dismiss, concluded that it is plausible that voter registration lists have to be provided under the NVRA, but also concluded that it was unclear whether the "database" that Judicial Watch sought was the same thing as the voter registration "list." The court issued a scheduling order and the case is currently moving into the discovery part of the litigation.
6. *Egbuonu v. Lamone*, No. CAL18-26458 (Cir. Ct. for Prince George's Cnty.). On July 25, 2018, four Prince George's County voters filed a petition for judicial review of the State Board's acceptance and processing of the nomination of April Ademiluyi by the Libertarian Party for the contest for Circuit Judge of Prince George's County, alleging that the nomination was not made in accordance with the Libertarian Party of Maryland's constitution and therefore was not proper under Maryland law. The Petition names the State Board, the State Administrator, the Libertarian Party of Maryland and two of its officer, and Ms. Ademiluyi as defendants, and seeks an injunction requiring the State Board to remove Ms. Ademiluyi from the general election ballot. On August 15, petitioners filed a motion for temporary restraining order and preliminary injunction, and the court scheduled a hearing for August 24 on the motion for preliminary injunction (without entering the requested TRO). On August 22, the State Respondents filed an opposition to the motion on statute of limitations/laches grounds.
7. *The Washington Post, et al. v. McManus, et al.*, No. 1:18-cv-02527 (U.S. District Court, D. Md.). This case presents a 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"). Specifically, the plaintiffs challenge the constitutionality of the Act's imposition of disclosure obligations on newspaper publishers that accept online political ads, its use of terms in defining those obligations that are allegedly vague and overbroad, and its empowerment of the Attorney General to pursue injunctive remedies for violations of the Act. The plaintiffs also contend that the Act is preempted by the federal Communications Decency Act. The plaintiffs filed their complaint along with a motion for preliminary injunction on August 17, 2018, naming the individual members of the State Board, the State Administrator, and the Attorney General as defendants. On August 20, 2018, the Court entered a scheduling order requiring Defendants to submit their opposition to the motion on September 4 and Plaintiffs to submit their reply on September 17, and setting a hearing on the motion for October 10, 2018.

Mr. McManus requested that Mr. Trento circulate new lawsuits to the board members and Mr. Trento agreed.

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**RATIFICATION OF 2018 PRIMARY ELECTION, HOUSE OF DELEGATES, LD 16 RECOUNT RESULTS CERTIFICATION**

Ms. Duncan presented the results from the recount for the House of Delegates, Legislative District 16 in Montgomery County for the 2018 Primary Election. Ms. Duncan asked the board to ratify the recount results, which were circulated and voted on previously by the board via email, and sign the documentation. She noted that while the votes changed, the winner did not change.

Mr. Cogan made a motion to ratify the recount results for the House of Delegates, Legislative District 16 in Montgomery County, and Ms. Howells seconded the motion. The motion passed unanimously.

**APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES**

Mr. DeMarinis presented requests from 36 campaign committees to waive late fees incurred by the committees. The committees requesting a waiver of late filing fees are listed below:

1. Briggs, Raymond Citizens for
2. Butcher, Sidney A. Friends of
3. Cason, Deborah for Education
4. Chao, Sean Citizens for
5. Colbert, Ronald Committee to Elect
6. Cooke, Frank Friends of
7. Costello, Eric for Baltimore
8. Egan, John W. Citizens for
9. Fisher, Arlene B. Committee, Citizen to Elect
10. Greene, Ryan C. Citizens for
11. Hall, Libby (Elizabeth) Citizens to Elect
12. Hamilton, Timothy for BOE3
13. Harris, Marcus Citizens for
14. Hawks, John for Council
15. Hernandez, George for Delegate
16. Hodge, Gary V. Citizens for
17. Kasecamp, Terry Lynn Citizens for
18. KIDL PAC
19. Lynch, Mark S. Friends of
20. Manufactured Housing Institute Of Maryland-PAC
21. Marsh, Kathryn At Lee Committee for
22. McGee, Jim Friends of
23. Melcavage, (Peter) for Council
24. Mirabile, Russ NO TAX Friends of
25. Montgomery Women - Leadership & Political Action Committee
26. Newcomb Jr., James A. for Caroline BOE
27. Nickerson, Colin (Daniel) Citizens for
28. OMarr, Jamie Carroll for
29. Perry, Darryl Friends of
30. Patterson, Scott for States Attorney
31. Scott, Makeda 4 Board of Education
32. Szeliga, Kathy Friends Of
33. Tinus, Edward J. Friends of
34. Wells, (Robert) for BOE
35. Witherspoon Antwine, Candace Friends of
36. Wentworth, Nicholas Citizens for

Included in the State Board meeting folder, for the Board's information, was a list 14 campaign committees who were denied a waiver of late filing fees. The committees denied a waiver of late filing fees are listed below:

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|--|---|
| 1. Ali, Saqib Friends of                               | 8. Gifford, Norman Friends to Elect       |
| 2. Bishop, John, Committee to Elect                    | 9. Joseph, Denise District 9 Citizens for |
| 3. Bowser, Alan Friends of                             | 10. Malikidogo-Fludd, Kenge for County    |
| 4. Bury, Betsy Friends of                              | Council District 5                        |
| 5. Conaway, Frank M. Jr. "Baby Bear,"<br>Committee for | 11. Reeder, Percy Citizens for            |
| 6. Cooper, Tyrone for the People                       | 12. Robinson, Barbara A. Friends of       |
| 7. Geary, Dan Friends of                               | 13. Vandenberghe, John for Registrar      |
|  | 14. Washington, Eric Friends of           |

Ms. Howells made a motion to approve the 36 waiver requests, and Mr. Funn seconded the motion. The motion passed unanimously.

**APPROVAL OF REQUESTS FOR CONFIDENTIALITY AND ALTERNATIVE ADDRESSES**

Mr. DeMarinis presented requests from three voters to designate certain information confidential and protected from public disclosure. The three voters are sitting judges.

Mr. DeMarinis also presented for informational purposes only one request for an address change. He stated that SBE is waiting for the appropriate documents to be submitted and anticipates a large number of similar requests. Mr. Cogan recommended that Mr. DeMarinis work with the requesters to create a consolidated list of requests, and Mr. DeMarinis agreed to do so.

Mr. Cogan made a motion to grant the confidentiality requests from the three sitting judges, and Ms. Howells seconded the motion. The motion passed unanimously.

**APPROVAL OF POLLING PLACE CHANGES FOR 2018 GENERAL ELECTION**

*Approval of Washington County Request*

Ms. Duncan presented a request from the Washington County Board of Elections for two polling place changes for the 2018 General Election. District 25-1 and District 27-1 were temporarily moved for the 2018 Primary Election due to renovations and Washington County would like to move them back to their original locations. Washington County is requesting approval to move District 25-1 back to Bethel Gardens' and District 27-1 back to Fountaindale Elementary School for the 2018 General Election.

Ms. Duncan requested that the State Board approve Washington County's request for the polling place changes. Mr. Funn made a motion to approve Washington County's request for the polling place changes for the general election, and Mr. Cogan seconded the motion. The motion passed unanimously.

**USE OF BALLOT MARKING DEVICES – REQUEST FOR ADDITIONAL DEVICES**

*Approval of Carroll County Request*

Ms. Duncan presented a request from the Carroll County Board of Elections for a second ballot marking device (BMD) at early voting center 1 (EVC1), Westminster Senior Activities Center. They saw high usage of the BMD during the 2018 Primary Election and believe a second BMD will be essential in mitigating long wait times for voters in the General Election.

Ms. Howells made a motion to approve the Carroll County Board of Elections' request to deploy a second ballot marking device to EVC1, and Mr. Cogan seconded the motion. The motion passed unanimously.

## **APPROVAL OF PROPOSED CAMPAIGN FINANCE REGULATIONS**

Mr. McManus stated that the board has not had adequate time to review the proposed Campaign Finance Regulations, so they might not be comfortable with approving all of the regulations today, but they can begin the conversation.

Mr. McManus stated that the Board would review, discuss, and vote on each proposed regulation individually, rather than voting on the proposed regulations as a single motion.

Mr. DeMarinis proposed changes to the following Campaign Finance Regulations in the Code of Maryland Regulations (COMAR):

### **COMAR 33.13.01 (Definitions)**

Mr. DeMarinis explained that the proposed regulation amends the definition of "donation" to include the compliance account of a political action committee. This definition conforms to the statute.

Mr. Cogan made a motion to approve the proposed changes to COMAR 33.13.01, and Mr. Funn seconded the motion. The motion passed unanimously.

### **COMAR 33.13.07 (Authority Line Requirements; Electronic Media)**

Mr. DeMarinis stated that the proposed regulations amend the requirements for an electronic media advertisement to include the definition of a qualifying paid digital communication and other clarifying changes to comply with the recently passed legislation. It expands the authority line requirements for online campaign material to participating organizations and other persons required to register with the State Board. The proposed regulations change the authority line requirements for campaign material where it would not be legible to read to current technological standards, such as the use of an icon or an overlay rather than a click-through. The proposed regulations would prohibit data collection from the viewer of an authority line.

Additionally, the proposed regulation clarifies that the use of bots may not conceal or misrepresent the identity of the political committee responsible for distributed campaign material.

In response to a question from Mr. McManus, Mr. DeMarinis stated that the state legislature directed the State Board to formulate a regulation on authority line requirements. Mr. DeMarinis stated that he spoke to the industry and they currently do not collect data on views of authority lines and they have no objection to incorporating that into the regulation. This regulation would essentially protect the viewers of the authority lines from having their personal information collected.

Mr. McManus asked why we are prohibiting something that is not occurring and Mr. DeMarinis said he thinks that micro-targeting with new technology could lead to this type

of data collection, so this regulation would be a preventative measure. He believes it would be beneficial to have this in writing as a regulation so that Maryland voters know they can look at authority lines without having their data collected.

Mr. McManus inquired if the General Assembly authorized the State Board to act in the manner proposed in the regulations. Mr. DeMarinis stated the General Assembly expressly authorized the Board to act and with the passage of recent legislation, the General Assembly wanted voters to feel secure and confident regarding political ads, and this regulation is another method of achieving that.

Mr. Cogan expressed concern that the board would be interfering with how entities run their campaigns if they prohibit the collection of authority line views. Mr. DeMarinis clarified that the collection of the number of views is permissible because this is anonymous data and the regulation only prohibits the collection of viewers' personal identifying information.

Mr. McManus inquired if the proposed regulations would impose additional requirements for the committees. Mr. DeMarinis stated that there are no separate authority line requirements that we're imposing on these types of ads.

Mr. McManus questioned if the pending lawsuit would impact the enforcement of the statute or strike down the law. Mr. DeMarinis stated the lawsuit has no bearing on the authority line requirements for political committees. Mr. Trento said he would discuss the matter in closed session.

Mr. Cogan inquired about the length of the regulatory process. Ms. Perrone stated that the period for public comment is 30 days after it is published. Mr. Cogan and Mr. McManus recognized that the regulatory process would not be complete before the 2018 General Election, but if the board gives its approval, the public can have a sense of the board's stance and feel more comfortable proceeding before the regulation is effective.

Mr. DeMarinis agreed to remove the data collection prohibition from the regulation, given the board's concerns about this piece.

Mr. McManus made a motion to approve the proposed changes to COMAR 33.13.07 with the removal of the data collection prohibition, and Mr. Cogan seconded the motion. The motion passed unanimously.

#### COMAR 33.13.10 (Prohibitions)

Mr. DeMarinis stated that the proposed regulation amends the current regulation to conform ownership of a video lottery operation license with Election Law Article §13-226(e). This would conform ownership to the 80 percent standard, rather than the identical ownership, which is aligned with the statute.

Mr. Funn made a motion to approve the proposed changes to COMAR 33.13.10, and Ms. Howells seconded the motion. The motion passed unanimously.

#### COMAR 33.13.15 (Political Action Committees)

Mr. DeMarinis explained that the proposed regulation on mergers and acquisitions of political action committees codifies current State Board policy on the attribution of contributions between merged or acquired political action committees. It would create a safe harbor for merged political committees that exceed the contribution limit.

In response to a question from Mr. McManus, Mr. DeMarinis stated that this policy is not currently in writing, but it is board policy based on the one instance in which it has come up.

In response to a question from Mr. McManus, Mr. DeMarinis stated that he believes this regulation is an interpretation of the transfer limits in the statute. He also clarified, in response to a question from Mr. McManus regarding the circumvention of the transfer limits, that this would be a matter for the state prosecutor.

Mr. Funn made a motion to approve the proposed changes to COMAR 33.13.15, and Mr. Cogan seconded the motion. The motion passed unanimously.

#### COMAR 33.13.17 (Participating Organizations)

Mr. DeMarinis stated that in 2017, the General Assembly changed the reporting requirements for a participating organization. The participating organization shall file a registration notice with the State Board within 48 hours of making a contribution, donation, or political disbursement of more than \$6,000 cumulatively in an election cycle. These proposed regulations reflect the statutory changes.

Mr. McManus made a motion to approve the proposed changes to COMAR 33.13.17, and Mr. Cogan seconded the motion. The motion passed unanimously.

#### COMAR 33.13.19 (Expenditures and Disbursements)

Mr. DeMarinis stated that the proposed regulations detail how political committees treat the receipt of a poll, mailing list, or voter access file. The proposed regulations set up a tiered approach on the value of a poll based upon the date of receipt of the information. It is similar to how the Federal Election Commission values polling information. Additionally, a frequently asked question by committees has been on how to value email or mailing lists. The valuation of the list will be based on industry standards for purchasing similar lists. Finally, the regulations clarify that the purchase of a voter file from a political party is not considered a transfer or a contribution to the political party.

In response to a question from Mr. Cogan, Mr. DeMarinis clarified that if a central committee obtains a voter registration list and provides it to the political campaigns, the campaigns are required to show the list as an expenditure because they would need to purchase the list, and it would not be considered a transfer. Mr. Cogan wanted to know if additional burdens were placed on the committees with this regulation. Mr. DeMarinis stated no additional burdens have been imposed on the political campaigns or central committees.

In response to a question from Mr. McManus, Mr. DeMarinis stated that polls, mailing lists, or voter access files are considered in-kind contributions under this regulation if the committee doesn't pay for them. Mr. DeMarinis believes that the legislature would consider these to be in-kind contributions and that appropriate regulations should be put into place, given that the statute refers to "other things of value."

In response to a question from Mr. McManus, Mr. DeMarinis stated that the numbers within this regulation come from the Federal Election Commission.

Mr. McManus stated that the proposed regulations might be better addressed by the General Assembly rather the State Board. Ms. Lamone and Ms. Duncan communicated that Mr. DeMarinis receives frequent questions on these topics and so he is attempting to put into regulations the advice that he is consistently giving.

Mr. Cogan inquired about the standard set in the proposed regulations. Mr. DeMarinis indicated that industry standards do exist for the valuation of these contributions. Mr. DeMarinis offered examples currently used to determine the values, such as receiving office space as an in-kind contribution. Currently, Mr. DeMarinis has been advising people to research fair-market values to determine the value of these contributions. Additionally, the values reported would be on the campaign finance report.

While the board still has some questions, Mr. Cogan expressed that he believes it is better to give campaigns clear guidance when possible and that he is inclined to let this regulation go forward for public comment.

Mr. Cogan made a motion to approve the proposed changes to COMAR 33.13.19, and Mr. Funn seconded the motion. The motion passed unanimously.

#### COMAR 33.13.20 (Contributions by Employee Membership and Membership Entities)

Mr. DeMarinis explained that House Bill 1498 of the 2017 General Assembly Legislative Session changed the definition of a contribution to exclude certain activities by an employee membership entity and a membership entity. The proposed regulation clarifies and defines the activities not considered to be contributions by those entities. It would allow entities to pay for solicitations and set up payroll deduction programs without using hard contribution dollars. This regulation mirrors the regulations that have been passed for business entities.

In response to a question from Mr. Cogan, Mr. DeMarinis stated that "hard dollars" refer to a regular donation, and "soft dollars" refer to administrative accounts or compliance accounts that are unlimited and can only be used for certain purposes.

Mr. McManus made a motion to approve the proposed changes to COMAR 33.13.20, and Mr. Cogan seconded the motion. The motion passed unanimously.

#### COMAR 33.13.21 (Online Platforms)

Mr. DeMarinis stated that in 2018, the General Assembly passed the Online Electioneering Transparency and Accountability Act. The Act requires disclosure regarding campaign material on online platforms from the online platforms. The proposed regulations establish the responsibilities for the purchaser of the political advertisement, the online platform, and any other intermediaries used in the placement of the advertisement before reaching a publicly facing website. This includes the requirements for the public database of all political committees.

The proposed regulations define an ad network and clearly state the civil and criminal penalties for noncompliance. Additionally, the proposed regulations establish a safe harbor provision for online platforms to rely on the information provided by the purchaser, as well as a method for refusal to accept political advertisements.

Mr. DeMarinis explained that he worked closely with the industry when developing these regulations, so they are well aware of the guidelines. Online platforms, ad networks, the trade associations for these industries, broadcasters, and press have all been made aware of this.

Mr. McManus inquired who Mr. DeMarinis has been speaking with for the regulation. Mr. DeMarinis stated that he spoke with online platforms and ad network trade associations, as well as contacts at Google, Facebook, MCI, Comcast, the Broadcasters Association, DAA (Digital Advertising Alliance), IAB (Interactive Advertising Bureau), and many others. Mr. DeMarinis stated that he decided with whom to speak based on who was involved in the legislation process and then he reached out to their contacts.

Mr. DeMarinis said the General Assembly expressed that they would like these regulations in place by the 2018 General Election. He has spoken with Rebecca Snyder, a plaintiff in the lawsuit, so the Press Association has been made well aware.

Mr. McManus inquired if the plaintiffs agree or disagree with the regulations. Mr. DeMarinis stated that he does not know if the plaintiffs agree or disagree with these regulations, but he has talked to them about how to implement them and was even invited to one of their conferences to talk about implementation. Mr. McManus conveyed that it is important to reach out to all stakeholders, including smaller businesses, to get a more varied perspective. Mr. DeMarinis stated that the trade association represents them all, so competing interests are represented, and that these regulations will go out for public comment, so while he might not be able to reach every stakeholder at this phase, they will have an opportunity to weigh in during the public comment phase.

Mr. McManus noted that the General Assembly did not include a safe harbor provision in the statute, and expressed concern that it might exceed the board's regulatory authority to include this provision. Also, Mr. McManus stated that he did not see civil or criminal penalties in the statute and Mr. DeMarinis explained that they are included in the general provisions of the Election Law Article. Mr. McManus said he does not feel the board can presume that the legislature wants civil or criminal penalties without a statutory directive. Mr. DeMarinis stated that under the law, any violation under this title (§16-604 and §16-

603) are criminal penalties for any provision in the title, so the General Assembly was aware of this. Mr. DeMarinis stated the penalty provision for the removal of the ad was to limit the impact of foreign actors attempting to influence Maryland elections, since fines would not be an effective deterrent. Mr. DeMarinis again stated that the civil and criminal penalties in Title 13 have always been there and the proposed regulations would ensure that the stakeholders know the penalties.

In response to a question from Ms. Howells, Mr. DeMarinis stated that “qualifying paid digital communication” is defined in the statute as any electronic communication that is campaign material, is placed or promoted on an online platform, is disseminated to 500 or more individuals, and does not propose commercial transaction.

Mr. Cogan expressed concern that this regulation is listing specific infractions, rather than relying on the general provision. Mr. Trento stated that he understands Mr. Cogan’s concern and would like to discuss it in closed session.

Mr. McManus stated that he was not inclined to approve the proposed changes to COMAR 33.13.21 at present, as he still has some concerns. Ms. Howells also expressed that she would like more time to review this regulation. Mr. DeMarinis and the State Board agreed to table this regulation until the next board meeting.

#### **COMAR 33.13.22 (Legal Expenses)**

Mr. DeMarinis stated that the proposed regulation on legal expenses clarifies the reporting obligations for a political committee engaging in fundraising efforts for a recount challenge or defense.

Mr. McManus made a motion to approve the proposed changes to COMAR 33.13.22, and Mr. Cogan seconded the motion. The motion passed unanimously.

#### **OLD BUSINESS**

There was no old business.

#### **NEW BUSINESS**

There was no new business.

#### **DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

There were no campaign contributions to report.

#### **SCHEDULE NEXT MEETING**

The next meeting is scheduled for October 4, 2018, at 2:00 pm.

#### **CLOSED MEETING**

Mr. McManus requested a motion to close the board meeting under General Provisions Article, §3-305(b)(1), which permits closing a meeting to discuss a personnel matter that affects specific individuals, and §3-305(b)(7), which permits closing a meeting to obtain legal advice about the matter being discussed in closed session. Meeting in closed session allows the members of the State Board to discuss compensation of employees over whom the State Board has salary setting authority, and discuss legal advice on pending lawsuits.

Mr. Cogan made a motion to convene in closed session, and Ms. Howells seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(1), (7) of Section 3-305 of the Open Meetings Act to discuss compensation for three individuals employed by a local board of elections, and to discuss legal advice on pending lawsuits.

The closed session began at 5:00 pm. In addition to the board members present at the open meeting, the following individuals were present at the closed session: Ms. Duncan, Mr. Trento, and Ms. Thornton.

*Personnel Action*

Ms. Duncan presented one-time step adjustments for three employees of local boards of elections. Mr. Cogan made a motion to accept the requested one-time step adjustment for the three employees, and Mr. Funn seconded the motion. The motion passed unanimously.

*Campaign Finance Regulations*

Mr. Trento addressed legal questions asked by Mr. Cogan regarding the proposed Campaign Finance Regulations. There was a discussion on COMAR 33.13.21 and Mr. Trento stated that he would discuss remaining concerns with Mr. DeMarinis. No action was taken.

*Online Electioneering Transparency and Accountability Act*

Mr. Trento relayed the facts of *The Washington Post, et al. v. McManus, et al.* case. Mr. Trento agreed to circulate relevant documentation to the board. No action was taken.

*Candidate Nomination for Circuit Judge of Prince George's County*

Mr. Trento relayed the facts of the *Egbuonu v. Lamone* case and reiterated that a hearing will take place on August 24<sup>th</sup>. No action was taken.

The closed meeting adjourned at 5:17 pm.

**ADJOURNMENT**

Mr. Funn made a motion to adjourn the open meeting, and Ms. Howells seconded the motion. The motion passed unanimously. Mr. McManus adjourned the meeting at 4:55 pm.