

State of Maryland 

State Board of Elections – November 29, 2018 Meeting

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Malcolm L. Funn, Member
Linda Lamone, Administrator
Andrea Trento, Assistant Attorney General
Nikki Charlson, Deputy Administrator
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
Tracey Hartman, Director of Special Projects
Paul Aumayr, Voting Systems Director
Janey Hegarty, Information Technology Division

Also Present: Katherine Berry, Carroll County Board of Elections
Ralph Watkins, League of Women Voters – Maryland
Rebecca Wilson, SAVE our Votes
Damon Effingham, Common Cause
Brian Witte, Associated Press
Lynn Garland, Citizen
Denisha Gingles, Citizen

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:05 pm and stated that there was a quorum of five present. Mr. McManus stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM OCTOBER 2018 MEETING

Mr. Funn made a motion to ratify the approved minutes from the October 4, 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

Introduction of New Employees

Talaya Dyson joined SBE as the newest member of the PMO team. Ms. Dyson had been with SBE working in the Candidacy and Campaign Finance Division. In her new role, she will be working on inventory, voter registration, and in other areas.

Foreign Delegation Visits

On October 26th, Ms. Lamone, Ms. Duncan, Mr. DeMarinis, Ms. Wagner, Ms. Perrone, and Ms. Hartman met with several dignitaries from various African nations under the auspices of the Department of State's International Visitor Leadership Program to discuss Maryland

electoral process. Over 20 representatives from 15 different nations learned about candidate filings, voter registration, voting, and the auditing of the results.

On November 2nd, Ms. Lamone, Ms. Duncan, Mr. DeMarinis, Ms. Wagner, Ms. Perrone, and Ms. Hartman met with a Thai delegation under the auspices of the Department of State's International Visitor Leadership Program. We spoke about Maryland electoral processes and electing monitoring.

University of Baltimore's Security in the Digital Age Conference

On November 2nd, Ms. Charlson spoke to conference attendees about how we protect election systems and data in Maryland. The other panelist was John Willis, Executive-in-Residence at the University of Baltimore College of Public Affairs, and he discussed election security from a national perspective. The second panel was on social media and the influence of foreign actors on election integrity.

National Federation of the Blind - Maryland Chapter's Statewide Conference

On November 6th, Mr. McManus addressed the statewide conference of the National Federation of the Blind - Maryland.

Mr. McManus stated that the National Federation of the Blind expressed concerns regarding ballot security and ballot secrecy. They were opposed to SBE's policy on ballot marking devices (BMDs), and passively discouraging voters from using the BMDs because of the navigation problems. The policy requires that a minimum of two people use each machine to ensure that a ballot cannot be associated with a particular voter, since the ballots that are printed from the BMD look different than a regular paper ballot marked by hand. SBE provided Mr. McManus with some early statistics from the election concerning the usage of the BMDs. Mr. McManus was able to share this information with the National Federation of the Blind and they were very appreciative. They were also pleased to hear that we think our vendor will be able to fix the navigation issues in time for the 2020 election.

U.S. Department of Homeland Security (DHS) - Engagement Report

Earlier this month, we received from DHS a report of its Hunt and Incident Response Team's engagement. We requested this engagement in response to the information provided by the Federal Bureau of Investigation about the private-equity firm investing in ByteGrid, LLC., the vendor hosting several election systems.

The report states that the team "did not identify any indications that a compromise had occurred on [SBE's] network or [the election systems hosted by ByteGrid]." In other words, DHS did **not** find any evidence that SBE's main network or the systems hosted by ByteGrid have been compromised. A copy of the redacted report was provided in the meeting folder.

While we are pleased by this report, our commitment to secure elections requires that we transition to a new data center. We are taking this decisive action out of an abundance of caution and have started the process to transition to a new data center. We have entered into a contract with a cybersecurity and technology firm to help us transition to a new data center and will be presenting to the Board of Public Works notice of this contract at its meeting next week. This plan will alleviate our concerns with the current ownership of

our hosting vendor and demonstrates our commitment to having the most secure election systems possible.

Upcoming Legislative Audit

This week, we were notified that the Office of the Legislative Auditor (OLA) will begin our audit next week. OLA performs an audit every three years, and this audit will cover the period from October 2015 through today. Nelson Hopkins is the lead fiscal and performance auditor. Another audit team will conduct the IT audit.

2. 2018 General Election Overview

Call Center

SBE, the Baltimore City Board of Elections, and the Anne Arundel, Baltimore, and Prince George's County Boards of Elections again used the services of a call center. The call center started the day before the deadline to register to vote (October 16th) and continued through the Thursday after election day. Representatives of the call center handled 30,944 calls for us. The assistance in responding to the somewhat routine calls is extremely beneficial to the election office staff and allows us to handle the more complex inquiries.

In response to a question from Mr. Hogan, Ms. Wagner explained that most of the phone calls are related to absentee ballot applications and voter registration questions. While many voters are using our website and online tools, many people still prefer to talk to a human.

Ballots

SBE's ballot printer, Single Point Sourcing, printed 11.2 million ballot pages, including test decks. They also supplied the local boards of elections with blank ballot paper for ballot duplication. Both Montgomery and Prince George's County had three page ballots, and seven other local boards had two pages.

Election Equipment Transportation.

Delivery of equipment for early voting started two days prior to early voting on October 23rd. Equipment pickup was completed after all 79 early voting centers closed on November 1, 2018, as required.

Equipment delivery for Election Day started on October 29th, and pickup was completed on November 14th. This took a day longer than normal due to the Veteran's Day holiday. During this time, all equipment was locked and sealed. The voted ballots and thumb drives had been returned by election judges on election night.

Equipment Deployed

There were 79 early voting centers for this election. This was one more than the primary election, as Frederick County added an additional center. During early voting, 544 electronic pollbooks, 236 ballot scanners, and 150 ballot marking devices were used.

On Election Day, 5,775 electronic pollbooks, 2,508 ballot scanners, and 1,865 ballot marking devices were deployed. Thirteen ballot scanners and six ballot marking devices were replaced, and it is widely thought that the equipment performed well. Reports of jamming ballots were significantly less than the 2016 General Election. Approximately 3.11% of ballots cast were ballots marked by the ballot marking device.

Equipment with reported issues will be inspected once the equipment is released (around December 10th).

Absentee Ballot Delivery

Our mailhouse vendor mailed to requesting overseas and domestic voters approximately 84,000 ballots from September 22nd to November 1st.

SBE sent emails to over 56,000 voters requesting to download their absentee ballot from SBE’s website. Approximately 47,000 of these voters logged into their online account. The table below shows the type of voter requesting an electronic absentee ballot and how the voter chose to mark his or her ballot.

In response to a question from Mr. Hogan, Ms. Charlson stated that no suspicious activity was detected in either the Online Voter Registration System or the Online Ballot Delivery System.

	Domestic, Civilian Voters	UOCAVA Voters	Total Voters
Blank Ballot Delivery (Mark ballot by hand)	24,952 (61%)	4,091 (61%)	29,043 (61%)
Online Ballot Marking Tool (Mark ballot with tool)	15,712 (39%)	2,617 (39%)	18,329 (39%)
Total	40,664	6,708	47,372

In response to a question from Mr. McManus, Ms. Charlson stated that SBE would provide a briefing on the usage of the ballot marking device by precinct at the next board meeting.

Election Day Reports

Overall, the voting process on election day was smooth. 1,786 of the State’s 1,798 (99.3%) polling places were open and checking in voters by 7:10 am. Nine of the remaining polling places were checking in voters by 7:30 am, and the remaining three polling places were doing so by 8:00 am.

Voters and the press reported that some precincts in Prince George’s County ran out of ballots. We are working with the Prince George’s County Board of Elections to determine how many precincts ran out of ballots and will share that information once we have collected and analyzed it. Preliminary information shows that some of the precincts reported as having run out of ballots did not, in fact, run out.

Voter Services Website

The various components of the voter services website – voter look-up, polling place locator, online voter registration and absentee ballot request system, and online ballot delivery system – performed well in the 2018 General Election. The voter services project

team is scheduled to meet early in December to identify lessons learned and plan for the 2020 elections.

Post-Election Auditing

After each election, SBE performs a comprehensive audit of various aspects of the election. The Voting System Division reviews data associated with the pre-election logic and accuracy testing, opening times of the election day polling places, reviewing discrepancies between the number of voters checked in to vote and the number of ballots cast, and performing the voting system verification.

Ms. Perrone and Cortnee Bryant are collecting various documentation from the local boards to complete other auditing tasks, including the polling place evaluation forms and ballot accounting forms. Tracey Hartman collects the canvassing minutes from each local board and compares information in the minutes against absentee and provisional data in MDVOTERS and the voting system data.

Once all of the data is collected and analyzed, each local board receives a report of findings and corrective actions to resolve any findings.

Post-Election Ballot Tabulation Audit

Automated Software Audit - The audit of ballot images from the 2018 General Election is underway. Before certifying their election results, each local board received four reports, which compared the voting system's results from early voting and election day (Phase 1) against the results from the independent tabulation performed by the Clear Ballot Group. These reports show that:

- A. The voting system and Clear Ballot tabulated the same number of ballots (cards cast)
- B. Any differences between the two systems' results are less than 0.5%.
- C. The voting system accurately tabulated the results

These comparison reports and Clear Ballot's results (generated before we provided the voting system's results) are posted on SBE's website. The ballot images for absentee and provisional ballots are being tabulated now, and the next set of the four reports will be complete prior to the certification of results for State offices. This set of reports (Phase 2) will include all ballot images and will also be posted.

Manual Audit - On October 24th, Ms. Charlson randomly selected an early voting center for each county with more than one early voting center. (If a county only had one early voting, that early voting center was selected.) Since the Chair of the State Board of Elections was unable to make this selection, he designated Ms. Charlson to perform this task. On the same day, we notified each election director of the selected early voting center and provided instructions on how to select a scanning unit in the selected early voting center, generate results for that unit, and secure the results and ballots for the audit.

The local boards of elections selected absentee and provisional ballots for the audit. At the start of the absentee and provisional canvasses, these ballots were scanned and results were printed. The results and selected ballots are secured for the audit.

At today's meeting, the members of the State Board of Elections will select the precincts to be included in the manual audit and consider additional regulations. We expect that the local boards will conduct the manual audits in January and February 2019.

In response to a question from Mr. McManus, Ms. Charlson clarified that for the manual audit, the paper ballots are counted by hand, much like a manual recount. The ballots are tallied up by teams and compared to the Voting System results for the selected precincts. This audit is another way of validating the accuracy of the Voting System.

Ms. Howells asked what the instructions are for selecting a scanning unit for the manual audit. Ms. Charlson explained that every early voting center is required to have someone from the local board there to help with the closing process. That local board person and the two chief judges check each scanning unit to see which units have scanned the minimum number of ballots. Then, the chief judges choose from those units that meet the minimum.

Wicomico County Recount

When the results for the Wicomico County Board of Education District 3 were certified, one vote separated the candidates. William Turner had 3,056 votes, and David L. Goslee, Jr. had 3,055 votes. On November 27th, the Wicomico County Board of Canvassers began a manual recount of voted ballots. Ms. Bryant and Ms. Hartmann supported the recount. At the end of the recount, there was still a difference of one vote, but the winner changed from William Turner to David L. Goslee Jr.

Certification of Election Results for State Offices

The Board of State Canvassers is scheduled to meet at the State Board of Elections' office at 1 pm on December 5th to certify the results of the 2018 Gubernatorial General Election for State and federal offices and State ballot questions. This certification triggers the timeframe to file a recount for a State office.

Post-Election Reports

After each general election, each state is required to complete the U.S. Election Assistance Commission's (EAC) Election Administration and Voting Survey. This survey requests data related to voter registration, turnout, absentee and provisional ballot rejection reasons, equipment and infrastructure. Tracey Hartmann and Janet Smith will be compiling the data for the survey, and the data will be submitted by February 1st, the deadline established by the EAC.

3. Voter Registration

MVA Transactions

No data as the voter registration rolls were closed.

Non-Citizens

Submitted to the Office of the State Prosecutor - 19

Removal of non-citizens - 19

Removal of non-citizens who voted - 4

Removal of non-citizens who voted multiple times - 2

Non-citizens forwarded to the Office of the State Prosecutor - 19

MDVOTERS

On November 23rd, the election certification was completed in MDVOTERS. This process applies voter history credit and closes out the 2018 General Election. Electronic transactions are now available for the local boards to process.

The next software release (7.0) is going into production the weekend of December 15th. Enhancements included added functionality to the candidacy module as well as minor changes to reports and correspondence.

4. Candidacy and Campaign Finance (CCF) Division

Campaign Finance

November 20th was the deadline for all political committees participating in the 2018 Gubernatorial Election to submit the 2018 Post-General Report. Currently, there are over 2,300 participating political committees in the gubernatorial election. Notices of the due date of the report were 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.

If candidates who won in the 2018 General Election fail to file the required reports or have outstanding late fees for campaign finance reports, these candidates cannot be sworn into office until the matter is resolved.

Maryland Law requires persons doing business with State government and persons employing lobbyists to file a *Disclosure of Contributions*, a report required every six months. This report is due each May 31st and November 30th with the transaction period ending the last day of the month prior to the due date. SBE has 783 registered entities in the system.

Public Financing Program

As of October 31st, Montgomery County disbursed \$1,165,725 to the nine qualified candidates for the 2018 General Election. Two candidates were not eligible for disbursements because they were unopposed. Montgomery County has over \$1.75 million unspent funds remaining from the 2018 Primary Election.

In response to a question from Mr. McManus, Mr. DeMarinis stated that the remaining funds will likely roll over and that the Public Financing Program will continue.

Campaign Finance Enforcement

The following committees had one or more Election Law Article violations and paid a civil penalty:

1. Friends of Kendal Wade paid \$100 for making cash disbursements greater than \$25.00
2. Carissa Antonis paid \$50 for failing to include an authority line on campaign material
3. Friends of Mike (David) Lyles paid \$100 for making cash disbursements greater than \$25.00
4. Friends of Dj (Donjuan) Williams paid \$100 for making cash disbursements greater than \$25.00

International Election Missions

As requested, Mr. DeMarinis notified the members of the State Board of Election that representatives of the National Election Commission from South Korea observed the elections.

5. Project Management Office (PMO)

Inventory: Excess Equipment Disposal

SBE continued to work with Department of General Services (DGS) to auction off, recycle, or send to trash the equipment and supply items located in the central warehouse. After making several attempts to sell the TS-R6 black cases. SBE is using the DGS trash contractor for the disposal of the black cases. To date, 6,962 of the 17,200 black cases have been picked up by the trash contractor.

Other

The PMO continued to work with our Assistant Attorney General on a memorandum of understanding relating to handling of SBE's inventory allocated to the counties and the insurance coverage requirements. When implemented, each Election Director will be required to review and annually sign the MOU.

The PMO provided support for the deployment of the helpdesk incident reporting system and command center for the 2018 General Election.

The PMO continued to work with DGS on the one-year renewal of our central warehouse facility for the period beginning February 1, 2019. The renewal must go before the Board of Public Works for approval.

Mr. Hogan addressed some recent criticisms of the election. Certain accusations were made, claiming that there were major issues with the election and that people need to be held accountable. Mr. Hogan feels that as a board, they have some responsibility in addressing such claims and providing the facts from the State Board perspective. Mr. Hogan stated that one complaint was that there were long lines at some early voting centers and he explained that voter turnout was high and that voters are utilizing the early voting option. Another criticism was that some polling places opened late, which Mr. Hogan stated is not within SBE's control, as it is a responsibility of the local board of elections. Regarding the Prince George's County precincts that ran out of ballots on election day, Mr. Hogan explained that SBE relies on the local boards and their experience to determine the number of ballots to order and that it is the local board's responsibility to deploy the appropriate amount of ballots to their precincts. In response to the criticism that results were posted online in certain counties while some polling places were still open, Mr. Hogan stated that the problem was quickly rectified and the results were swiftly taken down.

Mr. Hogan expressed that it is unrealistic to believe a large-scale operation such as an election will have no issues; instead, it is important to do your best to correct the issues moving forward.

Mr. Hogan heard from one voter who had a very long wait time during early voting at Towson University. The voter arrived at the early voting center around 7:45 pm and eventually voted at 9:15 pm. Mr. Hogan stated that he hopes SBE will work with the local boards to address issues like this and to work toward preventing them in the future.

Ms. Charlson agreed with Mr. Hogan that these were the main issues that were reported for this election and that SBE is working toward making improvements to prevent issues in the future. Ms. Charlson reiterated that long lines are an indication that people are voting and that finding voting locations with the capacity for the growing numbers of voters remains one of election officials' greatest challenges. SBE will share with the board the report on the Prince George's County ballot supply issue when it is complete.

Ms. Lamone explained that it is State policy to not release the election results until everyone is done voting, so she made the decision to hold the results on election night because people were still voting. Ms. Lamone stated that she believed the Prince George's County ballot supply issue was the greatest issue for this election. Regarding the long lines at the Towson University early voting center, Ms. Lamone stated that many of the voters at this location were out-of-state students, so many of them had to vote provisional ballots, which slows down the process. One early voting center in Montgomery County was also used as a polling place on election day. As a result, many voters went to this location on election day, thinking they could vote there even if it was not their assigned polling place because they were able to do so during early voting. Many of these voters had to vote provisional ballots, which used up ballots, slowed down the process, and backed up the lines.

Regarding the Prince George's County issue, Ms. Lamone explained that the county had enough ballots, but they simply did not deploy enough of the ballots to the precincts. By the time the precincts reported that the ballot supply was getting low, it was rush hour and raining, which made it a major challenge to transport the additional ballots from the warehouse to the precincts. Ms. Lamone stated that SBE is also investigating why the precincts did not request additional ballots sooner. In response to a question from Mr. McManus, Ms. Lamone stated that when the precincts ran out of ballots, some of them started using the ballot marking device, which takes a good deal of time.

Ms. Charlson stated that there are a number of lessons learned from this election regarding ballot estimations, ballot deployment, ballot supply management, etc. She noted that it is difficult to obtain information from the polling places on election day, since the pollbooks are not networked as they are for early voting. Ms. Charlson stated that the ballot supply issue was not a large-scale incident, as only about 20 precincts throughout the state ran out of ballots. Ms. Lamone communicated that the issues resulting from higher-than-expected voter turnout were seen not only Maryland, but throughout the country.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Trento provided the following report.

1. *Benisek v. Lamone*, No. 1:13-cv-03233 (U.S. District Court, D. Md.). This case involves claims that the State's congressional districting map is an unconstitutional political gerrymander. On the morning of October 4, 2018, a hearing was held on the parties' fully briefed, cross-motions for summary judgment, and on November 7, 2018, the court granted the plaintiffs' motion for summary judgment, denied that of the defendants, and awarded judgment to the plaintiffs. As part of its judgment, the court enjoined the State from conducting further elections for the U.S. House of Representatives using the current map, and established a schedule for the State – and, failing that, a three-person commission chaired by Magistrate Judge J. Mark Coulson – to submit a new map to the district court for approval.

On November 15, 2018, the defendants filed a notice of appeal as well as an unopposed motion to stay in the district court. In exchange for obtaining plaintiffs' consent to the motion to stay, defendants agreed to expedite their initial filings in the U.S. Supreme Court in order to increase the likelihood that the case will be heard this term. The district court conditionally granted the motion to stay, ordering that the stay will be lifted if, by July 1, 2019, the Supreme Court has not ruled on the case. Defendants have committed to filing their jurisdictional statement in the Supreme Court by December 3, 2018.

2. *Fusaro v. Davitt et al.*, No: 1:17-cv-03582 (U.S. District Court, D. Md.). Plaintiff Dennis Fusaro brought a complaint in federal court alleging that Maryland violates the First and Fourteenth Amendments by limiting access to the voter list to Maryland voters and only for purposes related to the electoral process. On September 4, 2018, the State defendants' motion to dismiss the complaint was granted, and the plaintiff appealed. The appellant's opening brief was filed November 13, 2018. The appellees' brief is due December 13, 2018.

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.) No change from the last update. 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. The appeal is fully briefed, 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.). 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. The case is currently in discovery, which is scheduled close December 5, 2018. Summary judgment motions are due January 29, 2019.

6. *Segal v. Maryland State Board of Elections*, No. 1:18-cv-2731 (U.S. District Court, D. Md.). On September 5, 2018, Jerome Segal filed a complaint seeking a preliminary and permanent injunction requiring the State Board of Elections to accept the petition filed in support of the creation of the Bread and Roses party, and to include plaintiff's name on the general

election ballot as the Bread and Roses Party's nominee for the U.S. Senate contest. The State Board had rejected the petition on the ground that it lacked a sufficient number of valid signatures, and had rejected plaintiff's candidacy on the ground that the party whose nomination he sought had not been recognized and that plaintiff's participation in the Democratic primary precluded him under Maryland law from appearing on the general election ballot. On September 18, 2018, the court held a hearing on plaintiff's request for preliminary injunctive relief, and denied the request. On September 19, 2018, plaintiff appealed and requested expedited appellate proceedings. On October 11, 2018, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court's denial of the preliminary injunction. Plaintiff subsequently sought *en banc* review of that disposition, which was denied on November 14, 2018. The case has been remanded to the district court for further proceedings.

7. *Libertarian Party of Maryland v. Lamone*, No. 1:18-cv-02825 (U.S. District Court, D. Md.). On September 11, 2018, the Libertarian Party of Maryland brought an action challenging the removal of Ms. Ademiluyi's candidacy for Judge of the Circuit Court for Prince George's County as a violation of the party's constitutional rights under the First and Fourteenth Amendments. Initially, the party sought unsuccessfully to stay the state court proceedings in *Egbuonu v. Lamone*, and then, after judgment was entered in that state proceeding, sought to enjoin the State defendants from following the judgment in *Egbuonu*. On September 20, 2018, the Court held a hearing on the party's motion for preliminary injunction was held, and denied the motion. On November 5, 2018, the plaintiff voluntarily dismissed the case.

8. *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. A hearing on the plaintiffs' motion was held on November 16, 2018. The court has yet to rule on the motion.

9. *Hanna v. Maryland State Board of Elections*, No. C-02-CV-002660 (Cir. Ct. Anne Arundel Cnty.). On September 5, 2018, plaintiff Willie Hanna filed suit to challenge the State Board's rejection of his petition candidacy for the contest for Delegate representing the 40th legislative district, on the ground that he had not submitted sufficient verifiable signatures in support of his petition. Mr. Hanna used a petition form that omitted several components that are required by Maryland law. On September 11, a summons was issued but to date only the complaint has been served on the Defendant. On October 11, 2018, Defendants filed a motion to dismiss or, in the alternative, for summary judgment. No response in opposition to that motion has been filed. The Court has set a hearing on the motion for January 19, 2019. Mr. Trento will verify the date of the hearing, as January 19th is a Saturday.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented requests from 13 campaign committees to waive late fees incurred by the committees. The committees requesting a waiver of late filing fees are listed below:

1. Barbee, Lori for Commissioner

2. Brewington, Julie Friends of
3. Burns, Emmett Citizens for
4. DePaulo, Nicholas Central Committee
5. Harrison, Ingrid S. Friends of
6. Hilfiger, Christopher for BOE
7. Hiltpold, Eric for Calvert GOP
8. Klausmeier, Krista Friends of
9. Malikidogo-Fludd, Kenge for County Council District 5
10. Manno, Roger Friends of
11. Patti, Heather for County Council
12. Taylor, Rodney C. Citizens for
13. Thompson, Sherone E. for Board of Education, Friends for

Mr. DeMarinis also presented five campaign committees that were denied waivers of late fees, for the board's information only.

Mr. DeMarinis stated that to date, over \$47, 000.00 in late fees have been collected this year. In response to a question from Mr. McManus, Mr. DeMarinis stated that the collected fees are added to the Fair Campaign Finance Fund.

Mr. Hogan made a motion to approve the 13 waiver requests, and Mr. Cogan seconded the motion. The motion passed unanimously.

RATIFICATION OF EMERGENCY POLLING PLACE CHANGES FOR 2018 GENERAL ELECTION

Ms. Duncan presented a previously approved request for a polling place change (Precinct 14-11) in Prince George's County from Bowie State University's McKeldin Gym to Bowie State University's Student Center. Ms. Duncan stated that the reason the change is needed is because the McKeldin Gym flooded due to a series of storms. As a result, the floor and ceilings are buckling and there is concern of mold spores. The proposed replacement site is accessible and meets the polling place requirements. Ms. Duncan noted that the board approved this change via email and is now required to ratify that action.

Mr. Cogan made a motion to ratify the previously approved polling place change, and Mr. Funn seconded the motion. The motion passed unanimously.

2018 GENERAL ELECTION: SELECT CONTEST & PRECINCTS FOR POST-ELECTION MANUAL TABULATION AUDIT

Ms. Charlson stated that the board would be selecting at random the contest and precincts for the Post-Election Manual Tabulation Audit by drawing pieces of paper out of a hat. Ms. Charlson explained that the selected contest must be a vote-for-one state contest and that the board would first choose the contest, followed by the precincts.

Mr. McManus drew "Comptroller" as the selected contest.

Ms. Charlson stated that the legislation requires that we audit two percent of the precincts for the post-election manual tabulation audit, which is 36 precincts. She explained that since there are 24 counties, the board would select one precinct from each of the 24 counties and then select the 12 additional precincts at random. The board members took turns drawing precincts from the hat until 36 precincts were selected.

Ms. Charlson placed the non-selected contests and precincts into an envelope and sealed it with tamper tape.

APPROVAL OF PROPOSED REGULATIONS: POST-ELECTION AUDIT & MISCELLANEOUS REGULATIONS

Ms. Charlson presented proposed regulations to implement the post-election ballot tabulation audit required by House Bill 1278 of the 2018 Legislative Session. This law (codified in Election Law Article, §11-309) requires that election officials perform an automated software audit of all electronic images after each election and a manual audit of paper ballots after each general election. A manual audit of paper ballots is optional after a primary election. This law also requires SBE to adopt regulations to implement the requirements of §11-309.

Ms. Charlson explained the proposed regulations to the Code of Maryland Regulations (COMAR) 33.08.05.

1. Regulation .01 – Definitions: In response to the discussion at the October meeting, I defined “automated software audit” and clarified when the term “precinct” includes an early voting center (Regulations .02 – .06) and when it does not (Regulations .07 – .10). Defining “automated software audit” caused the remaining terms to be renumbered.
2. Regulation .09 – Post-Election Audit – Ballot Tabulation Audit – Manual Audit
 - a. § A – In General: This new language requires the local boards of elections to provide notice of the post-election manual ballot tabulation audit. The notice proposed for this audit mirrors the notice required for the absentee and provisional canvasses.
 - b. § C – General Election Audit: This new language defines the process for selecting the early voting center and the scanner from that early voting center whose ballots will be manually audited and how the selected ballots shall be stored. Based on suggestions by staff of the Department of Legislative Services and edited by the Office of the Attorney General, clarifying text was added to (3)(a) – (d).
 - c. § D – Conducting the Manual Audit – In General: The subsection explains how the manual tabulation will be conducted and generally how to prepare for and conduct the audit. This language parallels regulations relating to conducting a recount. *See* 33.12.05.03 and .04.
 - d. § E – Conducting the Manual Audit – Sort Method: A local board would use the “sort” method to audit a “vote for one” contest. The proposed language parallels the “sort” method for a recount. *See* 33.12.05.05.
 - e. § F – Conducting the Manual Audit – Tally Method: A local board would use the “tally” method to audit a “voter for more than one” contest. The proposed language parallels the “tally” method for a recount. *See* 33.12.05.06.
 - f. §G – Post-Manual Audit Activities: This language explains the post-audit reporting requirements.
3. Regulation .10 – Post-Election Audit – Ballot Tabulation Audit – Automated Audit: This proposed language would formalize the current practice of not providing the vendor performing the automated audit results until the vendor has provided the results of its tabulation (*i.e.*, the “prisoner exchange”).

In addition to these regulations, Ms. Charlson presented several other proposed regulations to COMAR, based on voting system or legislative changes.

4. 33.10.02 & .03 – AccuVote TS & Model ES-2000: Since we no longer use these voting systems, the proposed changes repeal these two chapters.
5. 33.12.06 – Recount Procedures – Direct Recording Equipment: Since we no longer use this voting system, the proposed changes repeal the recount procedures for this voting system.
6. 33.12.07 & .08 – Challenges and Payment of Cost: Since Chapter 06 will be repealed (see above), Chapters 07 and 08 are renumbered to Chapters 06 and 07, respectively.
7. 33.17.01.02 – Early Voting – Definitions; General Provisions – Applicability to Elections: If a local board is conducting a special election by mail, Election Law Article, § 9-503(c)(4) requires a local board to provide at least 1 voting center and the voting center must be open for several days before election day. Because § B of this regulation currently excludes early voting for special elections, the language should be updated to comply with § 9-503(c)(4). The proposed language makes this change.
8. 33.17.05.02 – Election Judges – Number of Election Judges: This proposed change removes the reference to the prior voting system and accommodates the new voting system.
9. 33.17.07.04 – Early Voting – Post-Early Voting Activities: Chapter 318 of the Laws of Maryland (2015) amended Election Law Article, § 11-301 to allow observation of the process to generate early voting results. The proposed changes to Regulation .04C incorporate the requirements of § 11-301.

Regarding Regulation 33.17.07.04, Mr. McManus asked what would authorize a local board to prohibit public observation of the generation of early voting results. Ms. Charlson stated that space is typically the main reason for observation limitations. The process would not be closed to the public; SBE works with the local boards to facilitate observation as much as possible (i.e. rotating observers). In response to a question from Mr. Funn, Ms. Charlson stated that observers are not allowed to view the early voting results, but they can observe the process for generating the early voting results.

In response to a question from Mr. Cogan, Ms. Charlson explained that there is not a formal process for the local boards to provide notification and explanation to SBE of a decision to restrict observation in some way. Typically, it is an informal conversation with the counsel or election director about their challenges or concerns.

Mr. McManus requested for Ms. Charlson to add clarifying language in Regulation 33.17.07.04 that states that nothing in this regulation shall be construed to prohibit all public observation. He was concerned that the language as it is now would alarm those interested in observing and inadvertently embolden the local boards to restrict parts of the process that should not be restricted. Ms. Charlson stated that she would remove Regulation 33.17.07.04 from today's proposed regulations, add clarifying language, and bring it back for consideration the next time we have proposed regulations.

Ms. Howells asked for the reasoning behind Regulation .09D(5), which states that if team members do not agree on how a vote should be counted, the team should refer the ballot to the

election director and the election director will determine how the vote shall be counted. Ms. Charlson explained that the manual audit is a staff function and that the election directors generally have a better understanding of what constitutes a valid vote. Ms. Charlson also stated that the goal of the audit is to provide an explanation for a discrepancy, as it is not a recount.

In response to a question from Ms. Howells, Ms. Charlson stated she would change the language in the regulations from “Chair” to “Chairman” to be consistent with other documents.

Mr. Cogan asked if the purpose of the manual audit was to validate the equipment or to determine if fraud occurred. Ms. Charlson stated that the General Assembly’s intention with the manual audit was to validate the accuracy of the voting system equipment. However, this audit is just one piece of a larger audit process, so there are other aspects of the audit process that help control for fraud. Mr. Cogan expressed that he would like the public to know that the board takes fraud seriously and that efforts are being made to mitigate and prevent fraud.

In response to a question from Mr. McManus, Ms. Charlson specified that the local boards will be told which precincts they will need to audit about one to two weeks in advance so they can prepare. Mr. McManus proposed giving the local boards a range of voter totals (i.e. precinct size) in advance and then sharing the exact precincts at a later date in order to preserve the integrity of the audit and Ms. Charlson stated that that could be done.

Mr. Hogan made a motion to approve the proposed regulations with the minor changes discussed and the removal of Regulation 33.17.07.04 at this time, and Mr. Funn seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Remarks from Rebecca Wilson

Rebecca Wilson described to the board her experience as a chief election judge in the general election. Ms. Wilson was a chief judge in one of the precincts that ran out of ballots in Prince George’s County on election day. She stated that voter turnout was very high at her precinct and that she monitored their ballot supply. At 6:00 pm, there were about 200 ballots remaining, so she called to request more ballots. Ms. Wilson stated that she was not told if or when more ballots would be delivered and at about 7:15 pm, they ran out of ballots. In addition to having voters use the ballot marking device, the closing judge retrieved additional ballots from a nearby precinct with the same ballot style, so every voter was ultimately able to vote.

Ms. Wilson offered some suggestions for preventing similar situations in the future, including better communication between the local board and its precincts, better tracking of remaining ballots, and close examination of voter turnout during and after early voting to inform ballot estimations.

Mr. McManus commended Ms. Wilson and the pollworkers on their problem solving efforts and Mr. Hogan encouraged Ms. Wilson to present her experiences and concerns to the Prince George’s County Board of Elections.

Remarks from Denisha Gingles

Denisha Gingles presented to the board her experience in the general election as a voter and new resident of Maryland. Ms. Gingles provided positive feedback on the Online Voter Registration System, but stated that she had some issues with registration and voting in Maryland. She obtained a voter registration application from a state agency, but believes she was given an old version of the application. She stated that she mailed in her voter registration application by the deadline, but when she went to the polling place to vote on election day, she was not on the register. Ms. Gingles felt that the judges at her polling place were not knowledgeable about the provisional process because they had to ask the chief judge for guidance. She voted a provisional ballot, but later determined that her vote was not counted because her voter registration application was returned in the mail and was therefore not processed.

Mr. McManus thanked Ms. Gingles for her remarks and Mr. Funn mentioned that new legislation has been passed that will allow same day registration on election day, so that will be an option in the future.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Ms. Howells disclosed one contribution of \$15.00 to the Southern Prince George's Republican Club. No other board members had any contributions to report.

SCHEDULE NEXT MEETING

The next meeting is scheduled for January 10, 2019, at 12:00 pm.

ADJOURNMENT

Mr. Cogan made a motion to adjourn the open meeting, and Ms. Howells seconded the motion. The motion passed unanimously. Mr. McManus adjourned the open meeting at 4:06 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 one or more individuals. 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.

Mr. Hogan made a motion to convene in closed session, and Mr. Cogan seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(1) of Section 3-305 of the Open Meetings Act to discuss compensation for four individuals employed by local boards of elections.

The closed session began at 4:09 pm. In addition to the board members present at the open meeting, Ms. Lamone, Mr. Trento, and Ms. Charlson were present at the closed session.

During the closed session, Ms. Charlson presented one-time step adjustments for four individuals employed by the local board of elections.

Mr. Cogan made a motion to accept the requested one-time step adjustment one employee, and Ms. Howells seconded the motion. The motion passed unanimously.

Mr. Funn made a motion to accept the requested one-time step adjustments for the three other employees, and Mr. Cogan seconded the motion. The motion passed unanimously.

In response to a question from Ms. Howells, Ms. Lamone explained the recent personnel actions taken by the Harford County Board of Elections.

Mr. Cogan made a motion to adjourn the closed session, and Mr. Hogan seconded the motion. The motion passed unanimously. The closed session adjourned at 4:23 pm.