

State of Maryland 

State Board of Elections –September 26, 2019 Meeting

Attendees: Michael R. Cogan, Chair
Patrick J. Hogan, Vice Chair
William G. Voelp, Member
Kelley A. Howells, Member
Malcolm L. Funn, Member
Linda Lamone, Administrator
Nikki Charlson, Deputy Administrator
Andrea Trento, Assistant Attorney General
Keith Ross, Assistant Deputy, Project Management
Jared DeMarinis, Director, Candidacy and Campaign Finance
Erin Perrone, Director, Election Reform and Management
Mary Wagner, Director, Voter Registration
Shafiq Satterfield, Acting Voting Systems Director
Tracey Hartman, Director of Special Projects
Tom Reinheimer, Chief Information Security Officer

Also Present: Allison McCord, Board Member, Harford County Board of Elections
Margaret Jurgensen, Election Director, Montgomery County Board of Elections
Jessica Newby, Montgomery County Board of Elections
Joanne Antione, Common Cause Maryland
Danielle Gaines, Maryland Matters
Lynn Garland, Citizen

DECLARATION OF QUORUM PRESENT

Mr. Cogan called the meeting to order at 2:04 pm and stated that there was a quorum present. Mr. Cogan stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM AUGUST 2019 MEETING

Mr. Voelp made a motion to ratify the approved minutes from the August 22, 2019 meeting, and Mr. Hogan seconded the motion. The motion passed unanimously. Mr. Cogan noted that board members should respond to emails asking for approvals or comments, even if the member agrees or does not have comments.

ADDITIONS TO THE AGENDA

Mr. Cogan noted that there was one addition to the agenda under Agenda Item 6- Regulations for Publication: Subtitles 1 and 19 regarding Same Day Registration. Mr. Cogan stated that the board members did receive electronically in advance of the meeting. These proposed regulations will be considered after the proposed regulations for Subtitle 10 regarding ballot packaging.

At this point in the meeting, it was discovered that the recording device was not recording. After a very short break to address the issue, Mr. Cogan reported that the recording device was working, and that the meeting from that point on was being recorded. He gave a very short synopsis of the first 3 agenda items and then continued to Agenda Item 4.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

Welcome to SBE

Ms. Charlson welcomed to SBE the following individuals:

- Mr. Satterfield introduced Zachary Howe who joined SBE in late August as a database programmer. Mr. Howe will be working as a member of the electronic pollbook team and will be assisting with the development of test cases in preparation for the upcoming software testing.
- Ms. Charlson welcomed Tom Reinheimer who joined SBE earlier this month as the Chief Information Security Officer. Mr. Reinheimer is a Certified Information Systems Security Professional, Certified Information Systems Auditor, Certified Information System Manager, and holds several other certificates and credentials relevant to his work here. He comes to SBE from the federal government and will work with us to strengthen how we protect our election systems and data. Mr. Reinheimer will lead a team of up to four individuals with information security experience.
- Ms. Wagner introduced Gillian Thomas who will be joining the Voter Registration Division. She comes from the Anne Arundel County Board of Elections with extensive knowledge of MDVOTERS and will be an invaluable addition to the team.
- In the absence of Keith Ross, Ms. Charlson introduced Vanessa Sampay who joined SBE as the Inventory Assistant contractor. Ms. Sampay will be assisting in all aspects of SBE's inventory management, including the receiving, updating, transferring, and disposal of equipment and supplies.

Post-Election Audit Webinar

Ms. Hartman recently participated in a three-part webinar hosted by The Center for Technology and Civic Life and for election officials that focused on post-election audits. The first course reviewed some basics of post-election audits, including terminology, types of post-election audits, and how post-election audits support trustworthy elections. The second course focused on identifying steps that offices can take to advance their post-election audit experience, while the third course focused on risk limiting audits.

In response to a question from Mr. Cogan, Ms. Charlson stated that each staff member keeps materials from any webinars, conferences, or seminars attended and that when appropriate, can share a summary and any educational materials.

2nd Annual National CISA Cybersecurity Summit

Mr. Reinheimer attended this 3 day event from September 18th – 20th at the Gaylord National Resort & Convention Center, sponsored by the U.S. Department of Homeland Security's (DHS) Cybersecurity and Infrastructure Security Agency (CISA). The "Protect 2020" track was focused on the 2020 elections and cyber security discussions. Sessions included Building Trusted Relationships in the Cybersecurity Limelight; A #Protect2020 Primer, Lifting the Fog of More: Finding (and Implementing) the Right Best Practices for Your Election, Protecting States Against Ransomware Threats, The State of Election Cybersecurity from the Front Lines: Hear from the State and Local Officials Charged with Protecting our Elections, What the Election Industry is Doing to Secure the 2020 Elections, Learning from Global Partners: Election Tampering at Home and Abroad, and, Disinformation Panel: Building Resilience in the American Public.

National Voter Registration Day

Ms. Wagner reported that Tuesday, September 24th was National Voter Registration Day. It was first observed in 2012 and has been growing in popularity every year since. The holiday has been endorsed by the National Association of Secretaries of State, National Association of State Election Directors, the U.S. Election Assistance Commission (EAC), and the National Association of Election Officials (also known as The Election Center). Many local boards held events to

encourage individuals to register to vote, update existing voter registration information, and educate voters about the voting process. In addition, Facebook launched a nationwide campaign to remind users to register or update their information. The campaign began Thursday, September 19th and ran through National Voter Registration Day. Facebook directed Maryland users to our online voter registration system.

Biennial Meeting

Ms. Wagner reported that on October 17th, SBE expects approximately 300 Maryland Election Officials to attend a mandatory pre-election year meeting at the Crowne Plaza Hotel in Annapolis. A draft agenda was included in meeting folder. She asked board members to let her or Ms. Duncan know if they will be attending and if they need hotel accommodations.

SBE Hosting Statewide Table Top Exercise

Ms. Hartman reported that on October 18th, approximately 130 SBE and local board staff members will gather at the Anne Arundel County Board of Elections' office for the third statewide tabletop exercise (TTX) hosted by SBE. While this TTX will be similar to the two that SBE has hosted previously, this TTX will feature all new injects and other minor changes to help test and train SBE and local board staff members on what to do in worst-case scenarios. The Howard County Board of Elections is again helping SBE with this event, which SBE appreciates very much.

DHS-led Table Top Exercise

Ms. Charlson reported that on October 24th, DHS will lead a table top exercise for SBE employees. This exercise will enable SBE employees to practice responding to a cyber-related incident and identify other federal and State resources able to support our response. SBE has participated in this type of exercise before and has found it to be very beneficial.

2. Election Reform and Management

"I Voted" Sticker Contest

Ms. Perrone reported that there will be new "I Voted" stickers for the 2020 elections. After the 2018 General Election, she received several constituent letters and emails about the "I Voted" sticker used in past elections. In partnership with the Fine Arts Office of the Maryland State Department of Education, the "I Voted" sticker contest began on September 15th and will end on October 15th. The contest is open to Maryland students (including private school and homeschooled students) in grades Pre-K through 12. There will be three separate winners - one winner from elementary school, one winner from middle school, and one winner from high school. Students may submit their artwork at the Maryland State Department of Education's website. The three winners should be announced by the end of November.

In response to a question from Mr. Cogan, Ms. Perrone stated that judges for the contest are still to be determined.

Election Judges' Manual for the 2020 Elections

Ms. Perrone reported that the cover, table of contents, and Chapters 1 through 9 have been approved by the Assistant Attorney General and are ready for the local boards to customize. Some of the local boards have begun customizing the chapters and sent them to Ms. Perrone for her review and approval. Chapters 11 through 13 have been submitted to the Assistant Attorney General, and once approved, will be released to the local boards for their customization.

Supply Ordering

Ms. Perrone stated that she has begun ordering various supplies for the local boards in preparation for the 2020 elections. These orders include orange provisional tabletop privacy screens, clear voter authority card pouches for the front of the privacy sleeves, and white privacy panels for the scanning units. More supplies will be ordered over the next several months.

Universal Postal Union - Status

Ms. Perrone reported that last year, the United States announced that it may pull out of the Universal Postal Union (UPU). A meeting was held on September 24th and 25th to determine what happens. If the United States decided to pull out of the union, there would be no agreement for mail to be delivered to or from our country to any other country, and negotiations with 191 countries on postal rates would have to take place. She explained that this is of particular importance to SBE because of the mailing of absentee ballots to OUCAVA voters. Ms. Perrone reported that it was announced the day before the board meeting that the United States is not withdrawing from the UPU. Specific details are not known yet, but SBE will continue to monitor.

3. Voter Registration

MDVOTERS

Ms. Wagner reported that Janet Smith and Shekia Harding-Bey have been doing regional training on multiple voter registration topics. She thanked the Wicomico, Calvert, Carroll and Frederick County Boards of Elections. Approximately 79 election officials participated in the training.

MVA Transactions

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

New Registration - 13,803 Residential Address Changes - 26,934

Last name changes - 3,619 Political Party Changes - 6,796

Non-Citizens

Ms. Wagner reported that no records were processed in August 2019 due to the office painting and carpet project.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

Mr. DeMarinis reported that currently, 38 candidates have filed at SBE for the 2020 election cycle. SBE has filed 11 candidates for a Baltimore City office.

Enforcement Actions

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

1. On August 26, 2019, Citizens for Brian Frosh paid a civil penalty of \$250.00 for a failure to include authority line.
2. On September 6, 2019, the Committee to Elect James King paid a civil penalty of \$2,000.00 a failure to maintain account books and records and record contributions and expenditures.
3. On September 11, 2019, Friends of Jimmy Trout paid a civil penalty of \$50.00 for a failure to include authority line.

5. Project Management Office (PMO)

Inventory Management

Again speaking for Mr. Ross, Ms. Charlson stated that the required annual inventory report for fixed assets and the report for supplies were both submitted to the Department of General Services (DGS) on August 14th. SBE continues to dispose of equipment via the State's disposal process. This process includes auctioning, recycling, transferring, or trashing of the items.

The PMO proactively works with SBE's contract managers and the local boards to ensure that new equipment and supplies are being recorded in the inventory system in a timely manner.

Additional Space and Painting and Carpeting Projects

SBE received a Use and Occupancy permit from the City of Annapolis, and is now occupying the new space. There are still a few outstanding tasks to be completed, including the Maryland Correctional Enterprise completing its delivery of the furniture.

Painting and carpeting of SBE's offices resumed after a delay due to issues employees encountered with the fumes. SBE worked with DGS' Lease Compliance and the landlord to develop another approach to the work. The new approach included working after hours and using devices (e.g., HEPA air purifiers) to help mitigate the issues with the fumes. As of the meeting, six of the nine phases have been completed. The project is expected to be complete on October 3rd.

Procurements

The PMO continues to work on several procurements while the additional space and painting and carpeting projects are taking place. September 18th was due date for the Election Project and Other Support Staffing Task Order Request for Proposals (TORFP). The evaluation team is now in the process of reviewing the responses. Additional precinct voting booths and the additional precinct carts are being procured. Work also continues on the initiation phase for the 2022 Pollbook Project.

In response to questions from Mr. Cogan and Mr. Voelp, Ms. Charlson stated that this procurement is to create a staffing contract for temporary project management and software development staff. She explained that when the current voting system was implemented, SBE had a similar contract for project management staff while SBE staff supported the upcoming election. She stated that the personnel under this contract will assist with the implementation of the new pollbooks and the software development of MDVOTERS, but if other projects arise during the time of the contract, the contract could be used to hire additional individuals.

6. Voting System

Electronic Pollbooks

Mr. Satterfield reported that SBE continues to work with ES&S on the software update for the implementation of same day registration on election day. SBE received a BETA version of the software on September 18th, and a statewide test of the new software release is scheduled for the week of October 7th.

In the 2020 elections, SBE will implement a wide area network on election day in six counties. This network will be similar to the network used for early voting since 2010. This network is necessary to allow real-time processing of a majority of the same day registration transactions. Without this network, the local boards will not have the information they need to prepare for the absentee and provisional canvasses due to the time it takes to process and import the electronic transactions into MDVOTERS and the need to have this information the day after election day.

At the September 18th meeting of the Board of Public Works, SBE presented for approval the procurement of 1,983 barcode scanners. These barcode scanners will be used with the electronic pollbooks on election day to scan driver's licenses of individuals who wish to register and vote to verify whether this individual has been pre-qualified to register. The procurement for the barcode scanners was approved.

Voting System Upgrade

SBE continues planning for a possible software and firmware upgrade that will include all components of the voting system. ES&S has submitted to SBE the application for State certification of the new software release. ES&S will provide the equipment needed to start the State certification process on September 30th.

The selected Voting System Testing Laboratory (VSTL) completed its testing for the federal certification of the new software, and the U.S. Election Assistance Commission certified the upgrade (EVS 6.1.0.0) on September 24th.

In response to questions from Mr. Cogan and Ms. Howells, Ms. Charlson stated that further discussion regarding the wide area network to be implemented on election day would most likely need to be discussed in closed session. Ms. Howells stated that her questions have to do with the nature of the problem of the wide area network and how that is measured and what alternatives have been explored. In response to a follow up question from Ms. Howells, Mr. Satterfield stated that the six counties included in the wide area network are Baltimore City and Anne Arundel, Baltimore, Howard, Montgomery, and Prince George's Counties.

In response to a question from Mr. Voelp, Mr. Satterfield stated that the software upgrades from ES&S address the previously identified navigation issues with the ballot marking devices. (BMDs). In response to a question from Mr. Cogan, Mr. Satterfield clarified that the upgrades made to EVS 6.1.0.0 are not specific to Maryland, and SBE would not be able to make any software customizations. He explained that because the software is federally certified, SBE tests the software to ensure that the new version is compatible with how we conduct elections in Maryland. This is why State certification occurs.

Ms. Howells voiced her concerns again regarding the wide area network implementation. She stated that her hesitation to take all discussions into a closed meeting is because she feels that the project has not been transparent enough. She further explained that her questions concern the data transfer from the pollbooks. In response, Mr. Satterfield explained that the issue is the amount of time that is needed to process as much pollbook data as possible on election night to support the local boards with their canvassing on the Thursday after election day. He further explained that data from each pollbook needs to be harvested, an individual who registers and votes on election day needs to be registered and processed before that voter's information can be accounted for during the canvasses. Mr. Voelp shared his local board experience and explained that processing these transactions and getting them into MDVOTERS is absolutely vital to begin canvassing on Thursday. Ms. Charlson explained that some of the larger local boards have challenges getting all the transactions timely processed, and therefore, the more transactions that can be processed in real time means that more transactions will be processed and canvassing can begin on time. In response to a question from Ms. Howells, Ms. Charlson explained that 3 a.m. is an automated batch processing time in MDVOTERS. In response to a question from Mr. Funn, Ms. Charlson stated that questions regarding the network security of the wide area network for same day registration would have to be answered in closed session. Mr. Voelp echoed his concerns about security but expressed his understanding of the need for a network on election day.

Finally, Ms. Howells expressed her concern for the complexity of a project like this and asked if other options were considered other than wireless networks. Ms. Lamone responded that that Ms. Howell's question could be answered in closed session.

Ms. Jurgensen stated that the Montgomery County Board of Elections has numerous concerns about the wide area network, including the cost, that the cost is not split with the State, that it is unfair that not all local jurisdictions have to be networked, and that future pollbooks will not work with the networking equipment being purchased. In response to a question from Ms. Howells, Ms. Jurgensen stated that the Montgomery County Board of Elections generally does not have an issue getting its data from the pollbooks uploaded by the 3 a.m. deadline. She stated that any delays are caused by pollbooks not physically being returned in a timely fashion.

In response to a question from Mr. Cogan, Mr. Trento stated that it would be appropriate to go into a closed session for an update on the same day registration wide area network, in order to address the concerns raised by board members.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Trento provided the following report:

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

Mr. Trento stated that he would be filing a motion to change the caption in this proceeding, as Mr. Emmett Davitt retired from the Office of the State Prosecutor, as well as the makeup of the State Board has changed since this complaint was filed.

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

3. *Barber v. Maryland Board of Elections*, No. C-02-CV-17-001691 (Cir. Ct. Anne Arundel Cnty.), *on appeal at* No. CSA-REG-2238-2017 (Md. App.) On January 25, 2018 Ms. Barber appealed from the Circuit Court's January 11, 2018 dismissal of her complaint. Ms. Barber sought

damages and judicial review of, among other things, the State Board’s decision not to issue a declaratory ruling permitting her to use campaign funds to pay for litigation costs she incurred in her unsuccessful attempt to retain her position as an administrative law judge in the District of Columbia. Ms. Barber was ruled ineligible for that position due to her candidacy in 2016 for Judge of the Circuit Court for Prince George’s County, Maryland. On July 26, 2019, the Court of Special Appeals affirmed the dismissal of Ms. Barber’s complaint. On September 5, 2019, the Court of Special Appeals issued the mandate for its ruling. The time for Ms. Barber to file a petition for certiorari to the Court of Appeals has since expired, and so the dismissal of her complaint is now final.

4. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). This case involves the denial of access to Maryland’s voter registration database. Under Maryland law, access to the voter registration list is limited to Maryland registered voters and only for non-commercial, election-related uses. Judicial Watch—an elections watchdog group located in Tennessee—requested Maryland’s voter registration “database” and was denied because it was not a Maryland registered voter. Judicial Watch filed suit, arguing that the database was required to be disclosed under the federal National Voter Registration Act. On April 24, 2019, Judicial Watch filed a reply in support of its motion for summary judgment. On May 8, 2019, the defendants filed a reply in support of their cross-motion for summary judgment. On August 8, 2019, the District Court awarded summary judgment to the plaintiffs, but requested further briefing on the issue of whether the State Board of Elections should be compelled to produce the dates of birth of voters along with the other voter information available on Maryland’s voter registration lists. On September 13, 2019, the parties filed simultaneous briefs on that remaining issue, and on September 20, 2019, filed simultaneous response briefs. The issue is fully briefed and awaiting determination by the Court.

5. *The Washington Post, et al. v. McManus, et al.*, No. 1:18-cv-02527 (U.S. District Court, D. Md.), *on appeal at* No. 19-1132 (U.S.C.A., 4th Cir.). This case presents a First Amendment challenge by a coalition of newspaper publishers that maintain an online presence to certain provisions of the recently-passed Online Electioneering Transparency and Accountability Act (the “Act”). On January 4, 2019, the district court granted the plaintiffs’ motion for preliminary injunction on the ground that the plaintiffs’ “as applied” constitutional challenge to the statute was likely to succeed. On February 2, 2019, the defendants appealed that ruling to the Fourth Circuit. On April 12, 2019, the defendants filed their opening appellate brief. On April 19, 2019, the Campaign Legal Center and Brennan Center for Justice filed *amicus curiae* briefs in support of the appellants. On May 31, 2019, the plaintiffs filed their response brief. On June 7, 2019, *amicus curiae* briefs in support of the plaintiffs were filed by the Institute for Free Speech, the National Association of Broadcasters and NCTA – The Internet & Television Association, and the News Media Alliance together with 16 other media organizations. On July 3, 2019, the defendants filed their reply brief. Oral argument has been scheduled for October 30, 2019.

6. *Johnston, et al. v. Lamone*, No. 18-cv-3988-ADC (U.S. District Court, D. Md.), *on appeal at* No. 19-1783 (U.S.C.A., 4th Cir.). On December 28, 2018, the Libertarian Party of Maryland (the “Party”) and its Chairman, Robert Johnston, filed a lawsuit alleging that the statutory scheme governing the official recognition of minor parties in Maryland, as applied to the Party, was unconstitutional in at least two ways. They alleged that the scheme violates their First Amendment speech and association rights by requiring the Party to undertake the petition process to re-obtain formal recognition under State law, when there are already over 22,000 Maryland voters currently registered as Libertarians. They also alleged that the standard by which Maryland verifies petition signatures is unconstitutionally strict, in that it requires the

rejection of signatures of known Maryland voters due to technical noncompliance with the statutory standard. Plaintiffs moved for a preliminary injunction, which was denied at a hearing on January 31, 2019. Subsequently, the defendant filed a motion to dismiss. On July 11, 2019, the district court granted the motion to dismiss, concluding that the requirement that the Libertarian Party re-petition for recognition did not violate the party's or its members' constitutional rights, and that the challenge to Maryland's signature standard was not ripe in the absence of a filed petition. On July 24, 2019, the plaintiffs filed a notice of appeal, and on September 11, 2019, filed their opening brief. Defendant's response brief is due October 3, 2019.

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

8. *National Federation of the Blind, Inc., et al. v. Lamone et al.*, No. 1:19-CV-02228-ELH (U.S. District Court, D. Md.). On August 1, 2019, the National Federation of the Blind ("NFB"), NFB's Maryland chapter, and three individual plaintiffs filed a lawsuit against the State Administrator and the individual members of the State Board of Elections alleging that SBE's BMD policy has, in practice, violated the rights of voters with disabilities "to an equal opportunity vote in person by a secret ballot," in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Specifically, plaintiffs allege that the policy relegates voters with disabilities to a "lesser used system" that amounts to "an inferior voting option for those who must use the BMD to vote independently." For that reason, plaintiffs assert that the changes to the policy recently adopted by the State Board are insufficient to remedy the violations they have alleged. Instead, they seek an order requiring the State Board "in all future elections to offer BMDs to every in-person voter as the default method of voting, with paper ballots offered only to those voters who affirmatively opt out of using the BMD or in cases where there are long lines of people waiting to vote." On September 3, 2019, defendants filed a motion to dismiss the complaint, and on September 17, 2019 the plaintiffs filed an opposition to the motion. On September 20, 2019, plaintiffs filed a motion for a preliminary injunction. The defendants' reply in support of their motion to dismiss is currently due October 1, 2019, and their opposition to plaintiffs' motion for preliminary injunction is due October 11, 2019, after the Plaintiffs agreed to a one week extension. No hearing on the motions has been scheduled yet.

APPROVAL OF PROPOSED REGULATIONS FOR PUBLICATION: SUBTITLE 10 (VOTING SYSTEM – SYSTEM REQUIREMENTS AND PROCEDURES – BALLOT PACKAGING)

Ms. Perrone presented proposed regulations to COMAR 33.10.01 – EVS Voting System. These proposed changes were in response to local boards' preference whether to have ballots stubs.

The proposed amendments to COMAR 33.10 are as follows:

1. *Ballots – In General (33.10.01.17F)*

Instead of calling this regulation Ballot Stub, it was changed to Ballot Packaging. It will be required for each local board to notify the State Administrator no later than five months prior to the beginning of early voting for a primary election which ballot packaging method is preferred.

2. *Ballots – In General (33.10.01.17F(1))*

This section addresses local boards who prefer to have ballot stubs. This language did not change from the original regulation, but the language is in italics since the lettering and numbering of the regulation had to be reorganized.

3. *Ballots – In General (33.10.01.17F(2))*

This section addresses local boards who prefer to have ballot packs without stubs. Some of the language is new, and some of the language is being deleted since the lettering and numbering of the regulation had to be reorganized. This section also addresses the requirement that a local board must repackage a ballot pack if it is opened at the local board. This repackaging preserves the integrity of the ballot pack until the election judges open the ballot pack at an early voting center or polling place.

In response to a question from Mr. Cogan, Ms. Perrone stated that ballot stubs and ballot wrap or ballot packaging are not defined specifically in the law, but Mr. Hogan pointed out that the proposed amendments essentially define ballot stubs and pre-packaged ballots. In response to a question from Mr. Voelp, Ms. Perrone stated that SBE instructions to the local boards would define what qualifies as ballot packaging or packaged ballots. Also in response to Mr. Voelp's question, Mr. Trento pointed out §(C)(2) of the proposed regulations state that any ballot packages that are opened prior to early voting or election day must be repackaged in a way that maintains the integrity of the ballot pack.

Mr. Voelp made a motion to approve the submission of these regulations for publication and public comment, and Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF PROPOSED REGULATIONS FOR PUBLICATION: SUBTITLES 1 (DEFINITIONS; GENERAL PROVISIONS) AND 19 (SAME DAY REGISTRATION AND ADDRESS CHANGES)

Ms. Hartman presented proposed regulations to COMAR 33.01.01.01 – Definitions, COMAR 33.19.02 – Public Notice, and 33.19.04 – Processing New Registrants and Address Changes.

The proposed amendments to COMAR 33.01 and 33.19 are as follows:

1. *Definitions; General Provisions – Definitions (33.01.01.01(B)(25))*

This proposed amendment adds “election day” to the definition of “Pre-qualified voter,” so that the final definition reads “an individual who is not registered to vote but whom State Board determines to be eligible to register and vote during early voting *or election day*.”

2. *Same Day Registration and Address Changes – Public Notice (33.19.02.01(A))*

This proposed amendment increases the minimum requirements for public notice from SBE, stating that the pre-election mailing for each pre-qualified voter shall include the correct polling place for the pre-qualified voter's address, or shall instruct the pre-qualified voter how to find the individual's correct polling place.

3. Same Day Registration and Address Changes – Processing New Registrants and Address Changes (33.19.04.02)

House Bill 1626 of 2017 removed the requirement for a voter changing their address during early voting to show proof of residency. To that end, in Section A (33.19.04.02(A)) the words “voter provides proof of residency” have been removed, and have been replaced with “election judge determines that the voter,” which is in line with the language used in the Election Law Article. Section B has been removed completely, as Section B depends on a voter not being able to show proof of residency. The text in Section C, which specifies that address changes are not permitted on election day, has not changed, but Section C has now become Section B.

Ms. Charlson noted that, in regards to the proposed changes to COMAR 33.19.02.01(A), in the event that a pre-qualified voter has moved and has not updated their driver’s license, the preference is to direct the potential voter to SBE’s online Polling Place Locator, rather than providing the individual with the polling place information based on his or her prior address.

Ms. Hartman stated that the election judges follow the directions given in the Election Judges’ Manual and the Same Day Registration and Address Change manuals in order to determine if a voter attempting to change their address at early voting lived in the county in which they were attempting to vote.

In response to questions from Mr. Voelp and Mr. Hogan, Ms. Perrone responded that the election judge determines if the voter attempting to change their address during early voting resides in the county by checking the new address in the pollbook. Ms. Hartman reiterated that the amendments to 33.19.04.02(A) are at the request the Joint Committee on Administrative, Executive, and Legislative Review, in order to make the regulations in line with the current state law. Mr. Voelp expanded his question, asking if a voter attempting to change their address during early voting needed to show documentation of the new address, to which Ms. Perrone responded that the voter does not need to show documentation. Ms. Charlson clarified that because House Bill 1626 of the 2017 Legislative Session removed the requirement for a voter changing their address during early voting to show proof of residency, the election judge cannot ask for documentation.

Mr. Hogan made a motion to approve the submission of these regulations for publication and public comment, and Mr. Funn seconded the motion. The motion passed 4-0, with Mr. Voelp abstaining.

USE OF BALLOT MARKING DEVICES – 2020 ELECTIONS – REQUESTS FOR WAIVERS

Ms. Perrone presented a request for an exemption from Ruie Lavoie, the Election Director for the Cecil County Board of Elections, regarding where the election judges must provide voters with information about the BMDs. The Cecil County Board of Elections would like election judges to give the BMD statement at the check-in table. Ms. Lavoie plans to assign a BMD judge to each polling place, who will be responsible in assisting to notify the voters at check-in, and before they receive a paper ballot at the ballot issuance table. This judge will also assist voters at the BMD. This strategy was used throughout early voting in Baltimore County in 2018, where Ms. Lavoie previously worked, and it worked well. Ms. Perrone presented election statistics, stating that in 2018, both Cecil and Baltimore Counties met the minimum requirements for use of the BMDs.

Mr. Voelp made a motion to approve the request for an exemption regarding where the BMD statement is given for Cecil County, and Ms. Howells seconded the motion. The motion passed unanimously.

Ms. Perrone next presented a request for an exemption from Joe Torre, Election Director for the Anne Arundel County Board of Elections, regarding where the BMD statement is given.

The Anne Arundel County Board of Elections requests that the BMD statement be read by the check-in judge rather than the ballot issuance judge. The reason for this request is because at many precincts (and small early voting rooms), the ballot issuance station tends to become a “bottleneck” in the voting process. If the statement is read by the check-in judge, and the voter desires to use the electronic device, the check-in judge could then give that voter a ballot activation card, then that voter could bypass the ballot issuance station, and go directly to the voting area, where a Voting Operations Judge could assist the voter with the use of the ballot marking device. By moving the reading of this statement to the check-in area where many of the precincts and early voting centers have three or more pollbooks, the voter flow will move faster and more smoothly, keeping voter lines shorter and help to relieve the “bottleneck” at the ballot issuance station.

Mr. Voelp made a motion to approve the request for an exemption regarding where the BMD statement is given for Anne Arundel County, and Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented requests from 18 campaign committees to waive late fees incurred by the committees. Sixteen requests (Items 1-16 below) came from audit reports, and two requests (Items 17-18 below) came from the Office of the State Prosecutor refusing to prosecute. No campaign committees were denied the requested waivers of late fees in the current reporting period. The committees requesting a waiver of late filing fees are listed below:

- | | |
|---|---|
| 1. Ademiluyi, April Elect | 10. Hartman, Wayne Friends of |
| 2. AFSCME-ACE PAC | 11. Howard County Republican Central
Committee |
| 3. Baltimore City Republican Central
Committee | 12. Kelley, Delores Citizens For |
| 4. Baltimore County Green Party | 13. Leonard, Robert Friends of |
| 5. Barron, Erek L. Friends of | 14. Levi, Gerron Committee For |
| 6. Bickford, Pieter Citizens for | 15. Long, Robert (Bob) Friends of |
| 7. DiGregory, Bryan for State's Attorney | 16. McCaskill, "Aletheia" for State Senate |
| 8. Frazier, Dennis Friends for | 17. Barclay, Christopher Friends of |
| 9. Gallion, Jason Friends of | 18. Smigiel, Mike Friends Of |

In response to a question from Mr. Voelp, Mr. DeMarinis stated that the recommendation for these requests for waivers is to grant the waivers because the requests were regarding deficiencies on previously filed reports. The committees made good faith efforts to make the corrections.

Mr. Hogan made a motion to approve the requests for waivers of campaign finance late fees, and Mr. Funn seconded the motion. The motion passed unanimously.

APPROVAL OF CONFIDENTIALITY REQUESTS

Mr. DeMarinis presented one request for confidentiality of certain information. He stated that this request meets the requirements for confidentiality. In response to a question from Mr. Voelp, Mr. Cogan stated that the names of the requestors are not stated in open session, and therefore requests for confidentiality do not have to be voted on in closed session.

Mr. Voelp made a motion to approve the four requests for confidentiality, and Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF BY-LAWS OF THE LOCAL BOARDS OF ELECTIONS

Ms. Hartman presented the bylaws for the Caroline, Charles, Frederick, Garrett, Howard, and Queen Anne's Counties Boards of Elections with the recommendation to approve. She stated that all six of the local boards passed bylaws that reflected the changes proposed by SBE in the 2019 model bylaws, and that only the Frederick County Board of Elections had any deviation from the model bylaws. That deviation is in Section 4.2(B)(a)- Petitions, stating that a member may not sign a petition.

Mr. Hogan made a motion to approve the bylaws for the Caroline, Charles, Frederick, Garrett, Howard, and Queen Anne's County Boards of Elections, and Ms. Howells seconded the motion. The motion passed unanimously.

Ms. Hartman presented the bylaws for Baltimore City and Harford and Wicomico Counties Board of Elections with the recommendation to reject. In response to a question from Mr. Cogan, she stated that the reasons for the recommendation of rejection for the three local boards are very similar, that is, none of the three local boards incorporated language that was added to the 2019 model bylaws, including changes regarding the division of duties between the local board staff and the board members, duties of the board counsel, non-disclosure/confidentiality of board members, and litigation involving board members. In response to a question from Mr. Voelp, Ms. Hartman explained that none of these three local boards gave any reason for not adopting the 2019 model bylaws, and that each had rejected the model bylaws as a whole, two of which did so at the recommendation of board counsel. In response to a question from Mr. Funn, Ms. Hartman stated that any rejected bylaws are sent back to the local boards to rewrite their bylaws until the State Board approves them.

Mr. Hogan made a motion to reject the bylaws for the Baltimore City, Harford County, and Wicomico County Boards of Elections and Ms. Howells seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

Public Comment

Ms. Garland shared her concerns regarding the planned wireless network for precincts on election day. In addition to a letter she provided to the Board members, Ms. Garland explained her concerns regarding the cost, security, necessity, and transparency of the planned election day wireless network for precincts in six counties. She stated that:

- 1) Wireless networks are risky and opens the election up to attacks and hacking;
- 2) The cost of the project and the additional costs needed for software have not been justified or explained;

3) The 3 am deadline for transactions to upload to MDVOTERS does not make sense and should be pushed back; and

4) The cost, purpose, and progress of the project should be discussed with the Board and the public.

Ms. Garland closed her remarks by urging the SBE to give this information (the cost, purpose, and progress of the project) to the Board and urged the Board to take these risks into consideration.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

There were no campaign contributions to disclose.

SCHEDULE NEXT MEETING

The next meeting is scheduled for Thursday, October 31, 2019, at 1:00 pm.

ADJOURNMENT

Mr. Voelp made a motion to adjourn the open meeting, and Mr. Hogan seconded the motion. The motion passed unanimously. Mr. Cogan adjourned the meeting at 3:59 pm.

CLOSED SESSION

Mr. Cogan requested a motion to close the board meeting under General Provisions Article, §3-305(b)(7) and (8), which permits closing a meeting to consult with counsel to obtain legal advice and with staff about pending litigation. Meeting in closed session allows the members to consult with Board counsel without waiving attorney-client privilege and obtain information relevant to pending litigation. Mr. Hogan made a motion to convene in closed session under General Provisions Article, §3-305(b)(7) and (8), and Mr. Voelp seconded the motion. The motion passed unanimously.

Mr. Cogan requested a motion to close the board meeting under General Provisions Article, §3-305(b)(15), which permits closing a meeting to discuss cybersecurity since the public discussion of this topic would risk the election information systems. Meeting in closed session allows the members of the State Board to discuss the security of an early voting and election day network and prevent the public disclosure of security information. Ms. Howells made a motion to convene in closed session under General Provisions Article, §3-305(b)(15), and Mr. Hogan seconded the motion. The motion passed unanimously.

The motions having passed, the Board met in closed session in accordance with exemptions (b)(7), (8), and (15) of Section 3-305 of the Open Meetings Act to receive legal advice and consult with staff about pending litigation and receive information about the security of election network.

The closed session began about 4:10 pm. In addition to the board members present when the closed meeting convened, Ms. Lamone, Mr. Trento, Ms. Charlson, Ms. Wagner, Ms. Perrone, Mr. Omenka, and Mr. Reinheimer attended the closed meeting. Mr. Satterfield joined the closed meeting for the discussion of the election day network.

Mr. Trento updated the members on the status of litigation, and Mr. Omenka and Mr. Satterfield explained the proposed election day network in six counties.

No actions were taken. The closed meeting adjourned at 5:02 pm.