

State of Maryland 

State Board of Elections –October 31, 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
Donna Duncan, Assistant Deputy for Election Policy
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

Also Present: The Honorable Tom Hucker, Member, Montgomery County Council
James Shalleck, President, Montgomery County Board of Elections
David Naimon, Secretary, Montgomery County Board of Elections
Diane Dillion, Board Member, Montgomery County Board of Elections
Dr. Elisse Barnes, Board Member, Montgomery County Board of Elections and Co-Chair, Friends of White Oak
Cindy Remmey, Election Director, Harford County Board of Elections
Joanne Antoine, Executive Director, Common Cause Maryland
Tierra Bradford, Policy Director, Common Cause Maryland
David Drake, MD Legislative District 15 PAC
Barbara Crain, Board of Directors, League of Women Voters of Maryland
Paul B. Ellis, Citizen
Richard Jurgena, Citizen
Josephine Wang, Citizen
Daniel Koroma, Citizen and White Oak resident
Rachall Day, Student
Danielle Gaines, Maryland Matters
Lynn Garland, Citizen

DECLARATION OF QUORUM PRESENT

Mr. Cogan called the meeting to order at 12:59 pm and stated that there was a quorum present. Mr. Cogan stated that the meeting was being recorded and live streamed.

RATIFICATION OF MINUTES FROM SEPTEMBER 2019 MEETING

Mr. Voelp made a motion to ratify the approved minutes from the September 26, 2019 regular meeting and the October 8, 2019 emergency meeting. Ms. Howells seconded the motion. The motion passed unanimously.

ADDITIONS TO THE AGENDA

In response to a comment from Ms. Charlson, Mr. Cogan stated that scheduling the next meeting would be added to the end of the agenda, prior to adjournment.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

Biennial Meeting

Ms. Charlson stated that the mandatory meeting of Maryland election officials was held on October 17, 2019 in Annapolis. Almost 300 board members, board attorneys, election directors, deputy directors, and staff attended. The entire morning was devoted to review and discussion on election security and incident response. The afternoon allowed for breakout sessions covering election technology, poll worker training, voter registration training, election audits, board member duties and training against workplace bullying.

Ms. Charlson recognized Ms. Wagner, Janey Hagerty, and Jessica Perkins for coordinating the event. She also thanked the State and local board staff members that shared information with us during various seminars - Abigail Goldman, Vincent Omenka, Ms. Perrone, Mr. Satterfield, Natasha Walker, Guy Mickley, Janet Smith, Shermaine Malcolm, Chris Lohr-Beatty. Additional contributors sharing invaluable information were Maryland State Senator Paul Pinsky, Geoff Hale with the U.S Department of Homeland Security, Carl Lucas serving as Cybraics' Cyber Security Engineer, and Katie Lombardi, the Department of Budget and Management's Training Coordinator. Our Assistant Attorney General Andrea Trento meet with many of the local board counsel to review recent court decisions, on-going cases and discuss 2020 election process.

A highlight for this meeting every other year is recognizing State and local board employees with Years of Service Awards. We presented 74 employees with either 5, 10, 15, 20, 25 or 30 year service awards. Additionally, our "Election Officials of the Year" award and Governor's Citation was presented to Sally Chen, Jon Holton, Jim Holton and Guy Mickley, all of the Howard County Board of Elections, for their efforts with the planning and implementation of Maryland's table top training exercises.

SBE's Statewide Table Top Exercise

On October 18th, approximately 130 State and local election officials gathered at the Anne Arundel County Board of Elections' office for the third statewide tabletop exercise (TTX) hosted by SBE. While this TTX was similar to the two SBE previously hosted, this TTX featured all new worst-case scenarios to help test and train the participants. The Howard County Board of Elections again helped SBE plan this event, while the Anne Arundel County Board of Elections helped with setup. SBE appreciates the help of both local board very much. Ms. Charlson thanked Ms. Hartman and Ms. Perrone for coordinating this significant exercise.

Briefing for the Senate's Education & Environmental Affairs Committee

On October 23rd, this committee asked for a briefing on: (1) Montgomery County's local public campaign finance efforts; (2) the process of separating the Governor and Lt. Governor ticket; (3) election security; and (4) the use of the ballot marking device. SBE presented each topic and received from the committee members questions on these and other topics. The committee members seemed appreciative of the information.

U.S. Department of Homeland Security-led Table Top Exercise

On October 24th, the U.S. Department of Homeland Security led a table top exercise for SBE employees. Although this table top exercise was a different model than the one SBE hosted the prior week, it provided participants the opportunity to think about how we would receive and communicate information about a cyber event, respond to reports of voters' names missing from the electronic pollbooks, and receiving and posting election results with a compromised network. The

feedback from this exercise has been positive, and Ms. Charlson thanked SBE's federal partners for coordinating and attending the exercise.

National Conference of State Legislature's (NCSL) Redistricting Seminar

From October 24th - 27th, Nikia Wilbon-Turner of the Voter Registration Division attended the NCSL's Redistricting seminar in Columbus, OH. The seminar outlined current technology solutions, including ERSI (ArcGIS), CityGate GIS, Zillioninfo, and Maptitude. The GIS solutions were demonstrated and provided a platform for a simulation exercise.

Special Election for the 7th Congressional District

The Governor issued a proclamation establishing the process to fill the vacancy in the 7th Congressional District created by the death of Congressman Cummings. A copy of the proclamation was included in the meeting folder. There will be a special primary election on February 4, 2020, and the special general election will be combined with the 2020 Presidential Primary Election scheduled for April 28, 2020. Other important dates are:

- October 30th - Start of candidate filing window
 - November 20th - Deadline for candidates affiliated with principal parties to file for the special primary election
 - December 3rd - Deadline to certify and display the ballot for the special primary election
 - December 21st - Deadline under federal law to transmit absentee ballots to requesting military and overseas voters
 - February 4th - Deadline for candidates of other parties to file required paperwork for the special general election
 - February 24th - Deadline to certify and display the ballot for the special general election
- We have already started planning these elections with the Baltimore City Board of Elections and the Baltimore County and Howard County Boards of Elections and will continue to share information as it becomes available.

At this point in the meeting, Mr. Cogan requested that the Board move to Agenda Item #8- Approval of Emergency Regulations – Subtitles 17 (Early Voting) and 19 (Same Day Registration and Address Change). As there were no objections, the rest of the Administrator's Report was deferred.

APPROVAL OF PROPOSED EMERGENCY REGULATIONS: SUBTITLES 17 (EARLY VOTING) AND 19 (SAME DAY REGISTRATION)

Ms. Charlson presented proposed emergency regulations to COMAR 33.17.01 – Definitions; General Provisions, and 33.19.01 – Definitions; General Provisions. She explained that these proposed changes are needed due to the date of the special general election being the same date as the 2020 Presidential Primary Election.

The proposed amendments to COMAR 33.17 and 33.19 are as follows:

1. Applicability to Elections. (33.17.01.02B)

Ms. Charlson explained that the Governor's proclamation combines the special general election for the 7th Congressional District and the 2020 Presidential Primary Election. To implement this requirement, we must offer early voting for the special general election for the 7th Congressional District. The early voting period for the special general election will coincide with the early voting period for the 2020 Presidential Primary Election.

2. Applicability to Elections (33.19.01.01C)

Ms. Charlson explained that House Bill 286 of the 2019 Legislative Session established the process for same day registration on election day. It is the advice of the Office of the Attorney General that this legislation requires same day registration on election day for all elections, including special elections. To ensure this is in the place for the special primary election on February 4, 2020, we propose this as an emergency change. We will request at a future meeting a motion to make these changes permanent.

Ms. Charlson stated that Mr. Trento has not yet reviewed the proposed emergency regulations and requested that the Board approve the proposed emergency changes, subject to Mr. Trento's review. In response to a question from Mr. Voelp, Ms. Charlson explained that the process for same day registration will be the same as it would be for a regular election and that the software changes for the electronic pollbooks will be ready in time.

In response to a question from Ms. Howells, Ms. Hartman explained that the emergency regulations process is faster than the standard process. Emergency regulations are submitted to the Joint Committee for Administrative, Executive, and Legislative Review, which decides how to proceed with the emergency regulations. Ms. Charlson added that emergency regulations are published in the *Maryland Register* but the publication may be after the regulations have gone into effect. In response to a question from Ms. Howells, Ms. Hartman explained that emergency regulations are only in effect for up to 180 days, and if the Board does not take action to enact similar regulations in the normal process, the emergency regulations would not be in effect after those 180 days. In response to a question from Mr. Hogan, Ms. Duncan stated that SBE is still determining the ballot layout for the combined Special General Election for the 7th Congressional District and the 2020 Presidential Primary Election.

Mr. Hogan made a motion to approve the submission of the emergency regulations, subject to legal review, and Mr. Voelp seconded the motion. The motion passed unanimously.

Ms. Lamone thanked the Governor's staff for working with SBE before issuing the proclamation.

At this point, the meeting returned to the Administrator's Report.

ADMINISTRATOR'S REPORT (Cont'd.)

2. Election Reform and Management

Election Judges' Manual for the 2020 Elections

Ms. Perrone reported that all chapters and appendices of the Election Judges' Manual for election day are available to the local boards for customizations. Work will now begin on the Early Voting Manual, Same Day Registration and Address Change Manuals, and the Page Program Manual.

"I Voted" Sticker Contest

The Maryland State Department of Education (MDSE) has reported that over 650 submissions were received for the "I Voted" sticker contest. MDSE is conducting some internal adjudication to narrow the number of submissions before sending submissions to SBE for additional adjudication. Public voting should begin in mid-November.

3. Voter Registration

MDVOTERS

Ms. Wagner that the mock election for software release 7.2 is ongoing. The majority of the release is centered on candidacy as well as various small enhancements for voter registration. This release will go into production in November.

MVA Transactions

Ms. Wagner reported that during the month of September, the MVA collected the following voter registration transactions:

New Registration - 10,176	Residential Address Changes - 22,914
Last name changes - 2,880	Political Party Changes - 5,471

Non-Citizens

Ms. Wagner reported the following summarizes of relevant activity from September and October:

- Submitted to the Office of the State Prosecutor - 10
- Removal of non-citizens - 10
- Removal of non-citizens who voted - 2
- Removal of non-citizens who voted multiple times - 2
- Non-citizens reported by Immigration & Customs Enforcement - 0
- Change in status from Office of the State Prosecutor - 0

In response to a question from Mr. Voelp, Ms. Wagner stated that the State Prosecutor does not share information with SBE about how it prosecutes persons. Mr. Trento stated that he would ask the Office of the State Prosecutor if they could share that information.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

Mr. DeMarinis reported that currently, 43 candidates have filed at SBE for the 2020 election cycle.

Enforcement Actions

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

1. On October 11, 2019, Friends of Galen Clagett committee paid a civil penalty of \$50.00 for a failure to include an authority line.
2. On October 21, 2019, Montgomery Co. Career Firefighters Assn. Local 1664 paid a civil penalty of \$500.00 for failure to record all contributions and expenditures.
3. On October 23, 2019, the Committee to Elect Michael A. Geppi paid a civil penalty of \$100.00 for failure to record all contributions and expenditures.
4. On October 25, 2019, Judge for Marilyn Pierre committee paid a civil penalty of \$100.00 for failure to record all contributions and expenditures.

5. Project Management office (PMO)

Inventory Management

Ms. Charlson stated that SBE continues to dispose of equipment via the State's disposal process that includes auctioning, recycling, transferring, or trashing of the items. The PMO completed the creation of inventory records for the new equipment delivered during this reporting period. The inventory records were uploaded into SBE's inventory system.

Additional Space and Painting and Carpeting Projects

The Painting and Carpeting project was completed on schedule. The Lease Compliance section of the Department of General Services performed a final walk-through of the office space and made note of items that need to be addressed by the landlord. We are waiting on the delivery of the report.

Ms. Charlson, on behalf of Keith Ross, thanked all SBE staff for their efforts on what was an arduous effort.

Procurements

The PMO continued to work on several procurements.

1. The technical evaluation of the Election Project and Other Support Task Order Request for Proposals (TORFP) was completed during this reporting period. The evaluation committee reduced the initial pool of proposals down to ten vendors and received oral presentations from these ten vendors. Financial proposals will be evaluated next.
2. The additional privacy sleeves and black precinct carts are now in production at the Maryland Correctional Enterprise facilities.
3. The additional precinct voting booth procurement was completed and awarded. The booths are scheduled to be delivered in February 2020.

Other

Mr. Ross served as the Suite Captain for the recently held building fire drill which was a success. The Annapolis Fire Department was present and complemented the timeliness of the building evacuation. Ms. Charlson thanked David Walker, Gary Hastings, Ebony Parran, and Janet Smith who served as Fire Captains that made sure all staff evacuated the building.

6. Voting System

Electronic Pollbooks

Mr. Satterfield reported that SBE continues to work with Election Systems & Software (ES&S) on the software update to implement same day registration on election day using the electronic pollbooks. SBE conducted a statewide test of the new software release the week of October 21, 2019. The findings from the week of testing have been communicated to ES&S for follow-up and resolution.

SBE continues to work on the implementation of a wide area network on election day in six counties. The framework of the network has been established, and SBE plans to perform multiple tests with assistance from the local boards to validate the network.

Voting System

Mr. Satterfield reported that SBE has received and completed the User Acceptance Testing (UAT) of the additional voting equipment procured in preparation for the upcoming 2020 elections. The equipment was tested at SBE's warehouse and is now being delivered to the requesting local boards.

SBE is working with ES&S to offer training to the local boards on ElectionWare and associated applications for the voting system. Training will cover several election related activities including creating media, conducting logic and accuracy testing, and uploading election results. Training is expected to begin in January of 2020.

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 agreed to proceed to a limited discovery period, which is scheduled to close on November 22, 2019.

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

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

4. *The Washington Post, et al. v. McManus, et al.*, No. 1:18-cv-02527 (U.S. District Court, D. Md.), *on appeal at* No. 19-1132 (U.S.C.A., 4th Cir.). 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 took place on October 30, 2019, and a decision should issue within the next several months.

5. *Johnston, et al., v. Lamone*, No. 18-cv-3988-ADC (U.S. District Court, D. Md.), *on appeal at* No. 19-1783 (U.S.C.A., 4th Cir.). On December 28, 2018, the Libertarian Party of Maryland (the “Party”) and its Chairman, Robert Johnston, filed a lawsuit alleging that the statutory scheme governing the official recognition of minor parties in Maryland, as applied to the Party, was unconstitutional in at least two ways. They alleged that the scheme violates their First Amendment speech and association rights by requiring the Party to undertake the petition process to re-obtain formal recognition under State law, when there are already over 22,000 Maryland voters currently registered as Libertarians. They also alleged that the standard by which Maryland verifies petition signatures is unconstitutionally strict, in that it requires the rejection of signatures of known Maryland voters due to technical noncompliance with the statutory standard. Plaintiffs moved for a preliminary injunction, which was denied at a hearing on January 31, 2019. Subsequently, the defendant filed a motion to dismiss. On July 11, 2019, the district court granted the motion dismiss, concluding that the requirement that the Libertarian Party re-petition for recognition did not violate the party’s or its members’ constitutional rights, and that the challenge to Maryland’s signature standard was not ripe in the absence of a filed petition. On July 24, 2019, the plaintiffs filed a notice of appeal, and on September 11, 2019, filed their opening brief. On October 3, 2019, Defendants filed their response brief. On October 14, 2019, plaintiffs filed their reply brief. Oral argument has not yet been scheduled by the Fourth Circuit.

6. *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.

7. *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. On October 11, 2019, Defendants filed a consolidated reply in support of their motion to dismiss and in opposition to the motion for preliminary injunction. On October 16, 2019, plaintiffs filed a motion for expedited discovery in advance of the filing of their reply in support of their motion for preliminary injunction. On October 30, 2019, defendants filed an opposition to that motion. Plaintiffs’ reply is due November 13, 2019.

ADOPTION OF PROPOSED REGULATIONS FOR FINAL PUBLICATION: SUBTITLE 16 (PROVISIONAL VOTING)

Ms. Perrone presented proposed regulations to COMAR 33.16 – Provisional Voting for final adoption. These proposed regulations were approved by the Board at its June meeting and published in the August 30, 2019 edition of the *Maryland Register* (Vol. 46, Issue 18). The public comment period closed on September 30, 2019, and no comments were received.

Ms. Perrone presented for final adoption the following regulations with the following recommendations:

1. **33.16.02.03 and 33.16.02.06- Provisional Voting Documents and Supplies:** No comments were received. *Recommend adopting as published.*
2. **33.16.03.01- Issuance of Provisional Ballot:** No comments were received. *Recommend adopting as published.*
3. **33.16.04.02- Pre-Canvass Procedures:** No comments were received. *Recommend adopting as published.*
4. **33.16.05.03- Canvass of Ballots – Procedures:** No comments were received. *Recommend adopting as published.*

There was no discussion on the adoption of the proposed regulation as final. Mr. Hogan made a motion to adopt the proposed regulation for final publication, and Ms. Howells seconded the motion. The motion passed unanimously.

ADOPTION OF PROPOSED REGULATIONS FOR FINAL PUBLICATION: SUBTITLE 19 (SAME DAY REGISTRATION AND ADDRESS CHANGES)

Ms. Hartman presented proposed regulations to COMAR 33.19 – Same Day Registration and Address Changes for final adoption. These proposed regulations were approved by the Board at its July meeting and published in the September 13, 2019, edition of the *Maryland Register* (Vol. 46, Issue 19). The public comment period closed on October 15, 2019, and no comments were received.

Ms. Hartman presented for final adoption the following regulations with the following recommendations:

1. **33.19.01.01- 33.19.01.02- Definitions; General Provisions:** No comments were received. *Recommend adopting as published.*
2. **33.19.03.01- Election Judges:** No comments were received. *Recommend adopting as published.*
3. **33.19.04.01- 33.19.04.02- Processing New Registrants and Address Changes:** No comments were received. *Recommend adopting as published.*

There was no discussion on the adoption of the proposed regulations as final. Mr. Funn made a motion to adopt the proposed regulation for final publication, and Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF EARLY VOTING CENTERS

1. **Baltimore County-** Ms. Perrone presented a request from the Baltimore County Board of Elections to move the one of its 11 early voting sites from the Administration Building at Towson University to the South Campus Pavilion at Towson University. The proposed new site is 1.1 miles from the Administration Building, is accessible for 2020 early voting, allows for electioneering, is accessible by public transportation, has adequate parking, and is adequate to handle the estimated peak voting hour. Ms. Perrone also presented the ten Baltimore County early voting sites that are not changing. Mr. Voelp made a motion to approve the 11 Baltimore County early voting sites as presented, and Mr. Hogan seconded. The motion passed unanimously.
2. **Charles County-** Ms. Perrone presented a request from the Charles County Board of Elections to move the one of its two early voting sites from the La Plata Firehouse to the Sacred Heart Friendship Hall. The proposed new site is 1.3 miles from the La Plata Firehouse, is accessible for 2020 early voting, allows for electioneering, is accessible by public transportation, has adequate parking, and is adequate to handle the estimated peak voting hour. Ms. Perrone also presented the other Charles County early voting site that is not changing. Mr. Hogan made a motion to approve the two Charles County early voting sites as presented, and Mr. Voelp seconded. The motion passed unanimously.
3. **Harford County-** Ms. Perrone presented a request from the Harford County Board of Elections to move two of its four early voting sites from the Aberdeen Fire Department and the Jarrettsville Library to the Aberdeen Senior Activity Center and the Jarrettsville Volunteer Fire Company (VFC), respectively. The Aberdeen Senior Activity Center is 0.2 miles from the Aberdeen Library and the Jarrettsville VFC is 1.1 miles from the Jarrettsville Library. Both proposed new sites are accessible for 2020 early voting, allow for electioneering, have adequate parking, are adequate to handle the estimated peak voting hour, and the Aberdeen Senior Activity Center is accessible by public transportation. Ms. Perrone also presented the two Harford County early voting sites that are not changing. Mr. Voelp made a motion to approve the four Harford County early voting sites as presented, and Mr. Funn seconded. The motion passed unanimously.
4. **Queen Anne's County-** Ms. Perrone presented a request from the Queen Anne's County Board of Elections to move one of its two early voting sites from the Kent Island Library to the Kent Island Fire Hall. The proposed new site is 1.2 miles from the Kent Island Library, is accessible for 2020 early voting, allows for electioneering, is accessible by public transportation, has adequate parking, and is adequate to handle the estimated peak voting hour. Ms. Perrone also presented the other Queen Anne's County early voting site that is

not changing. Mr. Hogan made a motion to approve the two Queen Anne's County early voting sites as presented, and Ms. Howells seconded. The motion passed unanimously.

5. **Somerset County-** Ms. Perrone presented a request from the Somerset County Board of Elections to move its one early voting site from the Somerset County Office Building to the Somerset County Commission on Aging. The proposed new site is 6.4 miles from the Somerset County Office Building, is accessible for 2020 early voting, allows for electioneering, is accessible by public transportation, has adequate parking, and is adequate to handle the estimated peak voting hour. Mr. Voelp made a motion to approve the Somerset County early voting site as presented, and Ms. Howells seconded. The motion passed unanimously.
6. **Talbot County-** Ms. Perrone presented a request from the Talbot County Board of Elections to move its one early voting site from the bay area of the Easton Fire Hall to the Bingo Hall of the Easton Fire Hall. The proposed new site is accessible for 2020 early voting, allows for electioneering, is accessible by public transportation, has adequate parking, and is adequate to handle the estimated peak voting hour. Mr. Funn made a motion to approve the Talbot County early voting sites as presented, and Mr. Hogan seconded. The motion passed unanimously.
7. **Montgomery County- Designated Sites-** Ms. Perrone presented a request from the Montgomery County Board of Elections to move two of its 11 early voting sites. At one site – the Bohrer Park Social Hall, the Montgomery County Board of Elections is requesting to use the Activity Room for the first six days of early voting for the primary election and the Gymnasium the last two days of the primary election and the entire early voting period for the general election. In response to a question from Mr. Funn, Ms. Perrone stated that there will be adequate signage to direct voters to the correct voting location within Bohrer Park Social Hall for each day of early voting.

The Montgomery County Board of Elections is also proposing to replace the St. Catherine Laboure Catholic Church with the Wheaton Library and Recreation Community Center (WLCRC). Ms. Perrone stated that depending on a review of budgetary constraints, either the gymnasium or the social hall will be used for early voting at the WLCRC. The WLCRC is 1.1 miles from St. Catherine's Church.

Both proposed sites are accessible for 2020 early voting, allow for electioneering, are accessible by public transportation, have adequate parking, and are adequate to handle the estimated peak voting hour. Mr. Naimon, Secretary of the Montgomery County Board of Elections, stated that the budgetary concerns pertain to a floor covering needed for the WLCRC gymnasium. Mr. Shalleck, President of the Montgomery County Board of Elections, stated that the budgetary concerns pertaining to the gymnasium have been resolved. In response to this information, the members of the Montgomery County Board of Elections present stated that they wished to withdraw the WLCRC social hall as an option for an early voting site.

Ms. Perrone also presented the nine other Montgomery County early voting sites that are not changing. In response to a question from Mr. Voelp, Mr. Cogan stated that the SBE staff cannot speak to why the proposed early voting site at White Oak was not included in the 11 early voting sites proposed. Mr. Hogan made a motion to approve the 11 Montgomery

County early voting sites as presented, and Ms. Howells seconded. The motion passed unanimously.

- 8. Montgomery County: Optional 12th Early Voting Site-** Ms. Perrone presented two options from the Montgomery County Board of Elections for a 12th early voting site- the Nancy H. Dacek North Potomac Community Recreation Center (“North Potomac”) or the White Oak Community Recreation Center (“White Oak”). Both proposed new sites are accessible for 2020 early voting, allow for electioneering, have adequate parking, are adequate to handle the estimated peak voting hour, and are accessible by public transportation.

Remarks from James Shalleck

Mr. Shalleck, President of the Montgomery County Board of Elections, stated that while the majority of the local board does not feel that a 12th early voting center is needed, at the direction of the State Board, the local board attempted to decide on a possible 12th early voting center, but could not make a determination. There are currently eleven early voting centers in Montgomery County, open for eight days that already are within five miles of 80% of the voters in Montgomery County. Mr. Shalleck stated that the cost of an additional early voting center- \$234,000 total for the primary and general elections- was the main concern of the board members. In terms of necessity of the site, Mr. Shalleck referenced letters from the County Executive Marc Elrich and from members of the Montgomery County Council that stated their previous opinion that a 12th early voting site was not needed for the primary election, despite that those individuals have since clarified their stance to be in support of a 12th early voting center at White Oak for the primary and general elections. Mr. Shalleck voiced his and the local board’s concern for long lines at the early voting centers. He thanked Councilmember Hucker for securing funds for additional equipment at the polling places, in order to make wait time shorter. He stated that adding additional sites dilutes the effectiveness of each site, by adding on the burden of additional staff, judges, and equipment.

Despite his concerns and those of the majority of the local board members, Mr. Shalleck stated that the local board works in good conscience, and didn’t want to send a 3-2 vote to the State Board. The majority of the local board voted in favor of the North Potomac Center, and the minority for the White Oak Center. Because the local board does not require a supermajority, the local board decided to send both options to the State Board.

In response to a question from Mr. Hogan regarding the 5-mile radius population density of the two proposed sites, Mr. Shalleck responded that density is not the issue, but rather distance from an early voting site.

In response to a question from Mr. Funn, regarding the purpose of the presentation if the local board does not want a 12th early voting center, Mr. Trento responded that the State Board and the local government has the authority to make the final decision regarding the addition of an early voting center. Mr. Cogan stated that the State Board was appealed to by the minority voting members of the local board to review the majority vote. This occurred at the emergency meeting of the State Board on October 8, 2019, when the State Board directed the local board to provide a 12th early voting site. Mr. Cogan stated that the State Board’s duty today is to determine 1) if Montgomery County should have a 12th voting site, and 2) if there is to be a 12th voting site, which site should be chosen based on the two presented.

In response to a question from Mr. Funn, Mr. Shalleck stated that the local board did consider available transportation in addition to distance in choosing a 12th early voting site. Mr. Shalleck further stated that the North Potomac Center alleviates the lack of parking issue at the Potomac Center. In response to a question from Mr. Hogan, Mr. Shalleck stated that the Potomac Center is very popular and that the local board had not and was unlikely to consider eliminating the Potomac Center as an early voting site in favor of the North Potomac Center.

In response to a question from Ms. Howells, Mr. Shalleck stated that the local board has increased the amount of scanners and election judges in order to alleviate long lines, but that this can not fix the distance that a voter has to drive to get to an early voting center.

Remarks from David Naimon

Mr. Naimon, Secretary of the Montgomery County Board of Elections, stated his disagreement with Mr. Shalleck's idea of waiting to "see what happens" with the primary election early voting to determine if a 12th early voting site is necessary. He stated that the example of Frederick County does not apply to the current situation as the Frederick early voting site was not available for the primary election. He also disagreed with Mr. Shalleck's statement that early voting centers are understaffed and that therefore an increase in staff would decrease waiting times. He said that it is election day, not early voting, when staff is in short supply.

Mr. Naimon reiterated that the County Executive and County Council are both in favor of a 12th voting site at White Oak and have promised to fund it. Mr. Naimon displayed a series of maps showing the population density of Montgomery County and the higher density in White Oak, wait times on election day during the 2018 General Election and the longer wait times in White Oak, early voting turnout as a percentage of actual voters and the greater turnout in White Oak, and legislative districts showing that if a 12th early voting site is added in North Potomac, half of the 12 early voting centers would be in two and the least populated legislative districts. In closing, Mr. Naimon reiterated his support for a 12th early voting site at White Oak.

In response to a statement from Mr. Cogan, Mr. Naimon stated that the current 11 early voting sites are well-placed, but there are still long wait times in the area surrounding White Oak. In stating that a 12th early voting site would not dilute the resource of staff, he reiterated the support of the County Executive and County Council who have promised funding for a 12th early voting site at White Oak.

Mr. Voelp stated that he does not agree with the urgency of the need for a 12th early voting site at White Oak. He stated that if the need for an early voting center at White Oak was as important as its supporters feel, then it should have been included in the original 11 early voting sites proposed. He does not agree in the local board's decision to bring the question of which early voting site for the State Board to decide.

Remarks from Diane Dillon

Ms. Dillon, a member of the Montgomery County Board of Elections, reiterated Mr. Shalleck's opposition to a 12th early voting site because of the cost, regardless of if the local government has promised the funding. However, if the State Board overrules the local board's decision, then she supports the North Potomac center as an early voting site over

White Oak. In response to a question from Mr. Voelp, she stated that North Bethesda was considered but there was not an adequate site for early voting.

Remarks from Councilmember Thomas Hucker

Mr. Hucker, a member of the Montgomery County Council, reiterated the unified opinion of all Montgomery County elected leaders who support a 12th early voting center at White Oak, and that only three members of the local board do not. He agreed with Mr. Voelp that this should not be a matter in front of the State Board. He concluded his remarks by stating that this question is about supply and demand and that the area surrounding White Oak has a demand for a 12th early voting site, while North Potomac does not.

Remarks from Dr. Elisse Barnes

Dr. Barnes, a member of the Montgomery County Board of Elections and Co-chair of the Friends of White Oak, stated that she is the only member of the local board who lives in the eastern part of Montgomery County, and therefore, this issue is personal to her. She stated that the wait lines experienced in 2018 were unacceptable and must not happen again. Dr. Barnes, reiterated that long lines will only be solved by adding a 12th early voting site at White Oak.

In response to a question from Mr. Cogan asking why more people do not vote by absentee ballots, Dr. Barnes replied that it takes voters a long time to adjust to “no excuse” absentee voting. Mr. Hogan stated some people just like voting in person, and Mr. Funn echoed that sentiment by stating that new citizens and immigrants frequently want to vote in person.

Remarks from Paul B. Ellis

Mr. Ellis, a lifelong resident of Silver Spring, reiterated his support for a 12th early voting center at White Oak. He stated that he has served as an election judge, and has seen the long lines first hand. He pointed to his handout with pictures of long lines at the Silver Spring Civic Center on the last day of early voting in 2018.

Remarks from Robert Jurenga

Mr. Jurenga stated that the wait time map that Mr. Naimon showed is from election day, not early voting, and therefore should have no bearing on the discussion. He stated that he agrees with the local board and does not support a 12th early voting site, however he stated that if there is to be a 12th early voting site, it should be at North Potomac.

Remarks from Josephine Wang

Ms. Wang, a 52-year Montgomery County resident and immigrant from China, stated that voting is very important to immigrants. There are lots of Asian immigrants living in the Poolesville and Clarksburg area who are forgotten about in regards to access to voting. Ms. Wang concluded by stating her support for a 12th early voting site at North Potomac.

Remarks from Daniel Koroma

Mr. Koroma, a resident of White Oak, stated that his parents came to the United States from Sierra Leone and, like many immigrants, worked two jobs. The only time to vote for many immigrants is on the weekend, when public transportation in Montgomery County is not running. He stated that a 12th early voting center at White Oak would be life changing for immigrants and reiterated the importance to immigrants of voting at the polls.

Board Discussion

Mr. Hogan stated that he has respect for the local boards and does not want to override a local board's decision, but does not see the issue with a 12th early voting site if the local government has committed the funding. In response to a question from Mr. Hogan asking what refrains or constrains the State Board's decision, Mr. Trento, after reading Section 10-301.1 of the *Election Law Article*, explained that the State Board, in collaboration with the local board, and the local government must work together to establish each early voting site but the chosen site does not require local board approval. Mr. Trento clarified that "in collaboration" does not mean "agree with." Mr. Hogan read an opinion from the Assistant Attorney General for the General Assembly, who gave the same interpretation that Mr. Trento had given. Mr. Hogan closed his statement by announcing his support of a 12th early voting site at White Oak.

Mr. Voelp pointed out Regulation 33.17.03.02(f)(2) says that the State Board must give "deference" to the local board decision, to which Mr. Trento reminded the Board that regulations do not supersede State law. Mr. Voelp reiterated his point from earlier in the meeting that "we should not be here," and that the local board needed to decide this amongst themselves and not bring the decision to the State Board. He also reiterated that if the need for an early voting center at White Oak, then it should have been included in the original 11 proposed sites. He believes that overturning a local board's decision is setting a bad precedent.

Ms. Howells stated that she is hesitant to overturn the decision of a local board, as the State Board members are not the experts on Montgomery County, and she saw no evidence of fraud or corruption by the Montgomery County Board of Elections in making its decision. She also disagreed with the notion that just because the county promised funding, the cost is not an issue. She urged voters to use absentee ballots if they are not going to make it to the polls on Election Day.

Mr. Funn stated that he was appalled at the action of the local board in not making a decision on a 12th early voting center, and that this issue should not be before the State Board. Mr. Funn asked the local board members present if they had considered the letter from the County Executive and County Council stating that they would "only" fund the White Oak site. He then asked Mr. Shalleck if the local board discussed this with them and what to do if the State Board did approve a 12th early voting site, but not at White Oak, and Mr. Shalleck responded that the local board did not consider that option.

Mr. Cogan stated that he has come to many conclusions. The first is that the local board decision is that a 12th early voting site is not needed. The second is that he does not take the cost into consideration because the County Council approved the funding. He realizes that it is important for the State Board to defer to the local boards, but realizes that decisions of the local boards do not exist in a vacuum. In the future, he stated that the local boards need to do a better job of making sure that all communities are represented and are aware of voting options. Mr. Hogan stated that State law ensures that there are an adequate number of early voting sights for each local jurisdiction, and that he has not heard sufficient evidence that Montgomery County does not have enough early voting centers.

Mr. Hogan made a motion to establish a 12th early voting site in Montgomery County, and the site be White Oak, and Mr. Funn seconded the motion. Mr. Hogan and Mr. Funn voted

in favor of the motion. Mr. Voelp, Mr. Cogan, and Ms. Howells all voted against the motion. The motion failed.

RECESS

Mr. Cogan called a brief recess at 4:25pm, and reconvened the meeting at 4:32 pm. He announced that there would be an agenda item under New Business to consider a request from the Montgomery County Board of Elections to change where in the voting process the statement related to the ballot marking devices must be made.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented requests from three campaign committees to waive late fees incurred by the committees, all of which came from audit reports. 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. Baltimore Teachers Union _ COPE PAC, The
2. OShea, Bob Committee to Elect
3. Valentino-Smith, Geraldine Friends for

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 BY-LAWS OF THE LOCAL BOARDS OF ELECTIONS

Ms. Hartman presented the bylaws for the Somerset, Worcester, Montgomery, Prince George's, and Talbot County 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, with only minor changes by a few counties. Ms. Hartman stated that the board members have her report of her recommendations and that she could answer any questions.

In response to a question from Mr. Voelp, Ms. Hartman stated that it was within the authority of the State Board to not approve a particular local board's bylaws or to also rescind the approval of a previously set of approved bylaws in order to require all local boards to require a supermajority in order for a motion to pass, but that a substantial policy change such as Mr. Voelp's example, would best be implemented with more research done before implementing. Mr. Cogan stated that Mr. Voelp's question would be better directed to Mr. Trento. After discussion amongst the members on the issue of a supermajority requirement for local boards, with input from Mr. Trento, Mr. Voelp agreed to discuss the matter with Mr. Trento and bring it up at a future meeting if he deemed necessary.

Mr. Hogan made a motion to approve the bylaws for the Somerset, Worcester, Montgomery, Prince George's, and Talbot County Boards of Elections, and Mr. Funn seconded the motion. The motion passed unanimously.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

Montgomery County Ballot Marking Device Statement

Ms. Perrone presented a request from Margaret Jurgenson, Election Director for the Montgomery County Board of Elections, to read the statement related to the ballot marking devices at the

check-in, as opposed to the ballot issuance table. Ms. Perrone read from an email from Ms. Jurgenson stating that “The reason for this request is that the ballot issuance table in the voting process at Early Voting or Election Day precincts is a chokepoint. If the statement is read at the check-in station, the check in judge can send the voter directly to the Voting Judge that is assigned to this BMD station bypassing the ballot issuance table.”

Mr. Funn made a motion to approve Montgomery County’s request, and Mr. Voelp seconded the motion. The motion passed unanimously.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan disclosed a \$200 contribution to Harris for Congress, and Ms. Howells disclosed a \$15 payment for a dinner ticket to the Southern Prince George’s Republicans.

SCHEDULE NEXT MEETING

The next meeting is scheduled for Thursday, December 12, 2019, at 2:00 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 4:44 pm.

CLOSED SESSION

Mr. Cogan 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, and §3-305(b)(7) and (8), which permits closing a meeting to consult with counsel to obtain legal advice and staff to consult on pending litigation. Meeting in closed session allows the members of the State Board to be briefed on a personnel matter and share their views without compromising the confidentiality of those discussions and 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, and Ms. Howells seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(1), (7), and (8) of Section 3-305 of the Open Meetings Act to discuss pending litigation and the compensation of individuals over whom the State Board has jurisdiction.

The closed session began at 4:46 pm. In addition to all of the board members, Ms. Lamone, Mr. Trento, and Ms. Charlson attended the closed meeting.

Mr. Trento updated the members on various litigation, and Ms. Charlson presented requests for one-time salary adjustments for two individuals. No actions were taken.