

State of Maryland 
State Board of Elections – May 28, 2020 Meeting

Attendees (via conference call):

Michael R. Cogan, Chair
Patrick J. Hogan, Vice Chair
William G. Voelp, Member
Kelley A. Howells, Member
Malcolm L. Funn, Member
Linda Lamone, Administrator
Andrea Trento, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy, Election Policy
Tracey Hartman, Director of Special Projects
Jared DeMarinis, Director, Candidacy and Campaign Finance
Shafiq Satterfield, Regional Manager Supervisor
Art Treichel, Chief Information Security Advisor
Fred Brechbiel, Chief Information Officer
Keith Ross, Director of Project Management

Attendees (at SBE Office): David Walker, IT Division

DECLARATION OF QUORUM PRESENT

Mr. Cogan called the meeting to order at 2:01 pm. After taking roll call, he stated that all members were present, and that there was a quorum. He stated that the meeting was being livestreamed.

ADDITIONS TO THE AGENDA

There were no additions to the agenda.

ADMINISTRATOR'S REPORT

Ms. Lamone thanked the staff of SBE and the local boards for their hard work in preparing for the primary election under very difficult circumstances. She stated that preparations are going smoothly and that ballots are being returned. Mr. Cogan endorsed Ms. Lamone's sentiment and thanked the staff as well.

1. Announcements & Important Meetings

Internal Planning Meetings

Ms. Charlson stated that each Monday, Wednesday and Friday, Ms. Lamone, SBE staff, and our Assistant Attorney General meet to identify and resolve issues and tasks related to the June 2nd Primary Election. This group effort facilitates discussions among different SBE divisions and allows for each division to share decisions and updates related to these elections.

Election Director Conference Calls

Ms. Charlson stated that SBE is conducting weekly calls with the Election Directors and appropriate staff. The calls allow SBE staff and the Election Directors to share information, review decisions, answer or collect questions, and obtain feedback. Meeting summaries were provided in the board meeting materials.

Pre-Election Conference Calls with Local Board Counsel

Before each election, SBE hosts a series of calls with counsel to the local boards of elections to review changes to election laws and regulations, share information about

election-related issues, and provide a forum for counsel to share ideas and ask questions. Ms. Charlson stated that pre-election calls were held on May 12th and 26th. Most counsel participated in the calls, and most of the discussions were about canvassing.

Pre-Election Call with Political Parties

Before each election, SBE hosts a meeting with representatives of the Maryland Democratic and Republican Parties to share information, identify and explain any election-related issues, and answer questions. This meeting was held on May 15th, and a summary of the call was provided in the meeting materials.

Pre-Election Weather and Threat Briefing

On May 27th, the Maryland Emergency Management Agency (MEMA) hosted a briefing for State and local election officials and emergency management officials. Representatives of the National Weather Service, Maryland Department of Health, and the Maryland Coordination and Analysis Center shared relevant information. SBE also shared with the State and local emergency management officials critical election dates and facilities where critical election functions are conducted. Representatives of MEMA also reviewed the procedures for reporting incidents.

2. 2020 Special General Election (April 28, 2020)

Post Election Automated Tabulation Audit

Ms. Hartman reported that the post-election automated audit of ballot images from the 2020 Special General Election for the 7th Congressional District is complete. Before certifying election results, each local board received four reports comparing the voting system's results against the results from the independent tabulation performed by the automated audit software.

These reports showed that:

1. The voting system and Clear Ballot tabulated the same number of ballots (cards cast).
2. Any differences between the two systems' results were less than 0.5%.
3. The voting system accurately tabulated the results.

After the completion of the canvasses and prior to the State Board of Canvassers' certification of the election results, all ballot images were retabulated, and the second set of reports were issued. These reports confirmed that the voting system accurately tabulated the ballot images from all canvasses. The comparison reports and automated audit results (generated before we provided the voting system's results) are posted on SBE's website, and the public portal of ballot images and reports was published last week.

In response to a question from Mr. Cogan, Ms. Hartman stated that the threshold for variances between the results from the voting system and the audit results is 0.5% and that none of the results from the three jurisdictions in the 7th Congressional District had variances greater or close to that threshold.

3. 2020 Presidential Primary Election (June 2, 2020)

Vote by Mail Ballots

Ms. Charlson stated that approximately 3.6 million ballots were printed and mailed by the mail house vendor, SeaChange. These ballots included ballots for newly registered voters, voters who changed their address, or voters who changed their party affiliation. The last

day a file was submitted to SeaChange was May 20th. The last day ballots were delivered into the Maryland mail stream was May 26th.

Online Ballot Delivery System Usage

As of May 25th, 42,461 voters have requested an electronic ballot and 43% of these voters have accessed their accounts. As of the same date, 63% of the voters who have accessed their accounts and started the process chose to download and print a blank ballot. The remaining 37% of these voters accessed their accounts and used the online ballot marking tool to make their ballot selections.

Voting Systems

Logic and accuracy testing of the voting equipment for this election has been completed by the local boards of elections. SBE has completed the audit of the logic and accuracy testing conducted by the local boards of elections, and no issues were identified.

Electronic Pollbook

The electronic pollbook database for the upcoming election was distributed to the local boards of elections on May 22nd. The local boards have completed the logic and accuracy testing of the electronic pollbooks, and SBE is actively conducting audits of the testing. A bulk update for the electronic pollbook will be distributed to the local boards of elections on May 31st. The bulk update will contain transactions posted to MDVOTERS since May 21st, when the pollbook database was created.

In response to a question from Mr. Cogan regarding deadlines and timeframes for the general election, Ms. Duncan stated that there are changes that need to take place to plan for two types of elections- one as a vote by mail election, and one as a regular in-person election. Ballot development, voter registration, pollbooks, and other systems need to be able to accept precinct-level data, which will take a substantial amount of planning. She stated that the planning will begin immediately after the primary election, but ballot development and preparations will take place near the end of July through the end of August. She stated that decisions about how to conduct the general election need to be made as soon as possible, ideally late June to early July. In response, Mr. Cogan stated that he preferred for decisions to be made as late as possible, given the uncertain nature of current times.

In response to a question from Ms. Howells regarding the last day that vote by mail ballots were entered into the Maryland mail stream, Ms. Charlson stated that the ballots that were mailed on May 26th was around 2,000, and that these were ballots that had to be reprinted.

4. Voter Registration

MDVOTERS

The voter registration team has been working to facilitate the vote by mail election.

Currently, user acceptance testing (UAT) is taking place for a July deployment. Approximately 80 plus issues will be incorporated. Development includes updates and enhancements to reports and exports across all facets of MDVOTERS, ERIC enhancements and a re-design of the electronic registration screens.

MVA Transactions

During April, MVA collected the following voter registration transactions:

New Registration - 459

Residential Address Changes - 9,076

Last name changes - 267

Political Party Changes - 1,149

Non-Citizens

Due to the telework mandate, no information is available at this time.

5. Candidacy and Campaign Finance (CCF) Division

Reports due

Mr. DeMarinis reported that the Presidential/Baltimore City Pre-Primary 1 Report was due on April 28th. This report was only due for political committees participating in the Presidential/Baltimore City election. Over 80% of the committees filed timely, and currently, over 92% of the reports have now filed.

The Presidential/Baltimore City Pre-Primary 2 Report was due on May 22nd. Nearly 85% of the committees filed timely, and currently, over 89% of the reports have now filed. The next report, the Pre-General Report 1, is due on August 25th at 11:59 pm.

Mr. DeMarinis stated that committees which failed to file are accumulating late fees daily. The maximum late fee per report is \$1,000. If an authorized candidate campaign committee for a candidate that won in the primary election does not file and pay late fees, it will be deemed a vacancy in nomination prior to the general election.

On June 1st, the semi-annual Contribution Disclosure Statement is due for persons doing public business (persons with governmental contracts of \$200,000 or more) and persons who employ a lobbyist and make applicable contributions. As of May 27th, 482 statements were filed. The maximum late fee is \$1,000.

In response to a question from Mr. Cogan regarding the semi-annual report that was due on June 1st, Mr. DeMarinis stated that he expects around 650 reports to be filed total. In response to a second question from Mr. Cogan regarding a vacancy in the nomination due to a primary election winner that did not file and pay late fees, Mr. DeMarinis, stated that in addition to regular notices, as this was the first reporting cycle for this law, additional notices would be sent to any primary winner in danger of vacating their win due to not filing and paying late fees.

6. Project Management Office (PMO)

Inventory Management

Mr. Ross stated that the FY2020 statewide inventory audit began on March 1, 2020. At meeting time, 63% of equipment and supplies had been inventory audited. The 64 ballot drop off containers had been added to inventory.

SBE's Central Warehouse team, Shafiq Satterfield, the State's Transportation Contract Manager, and the transportation company coordinated the delivery of the ballot drop boxes to the dropbox locations around the State.

Mr. Ross stated that he worked with Shelly Holland, SBE's Budget Director, to identify the other vote-by-mail equipment and supply items purchased so that they could be entered into the inventory system.

FY2022 Pollbook Project

Mr. Ross stated that planning work continues and includes developing the project management documentation required for the Planning phase of the project, developing the Request for Proposal (RFP) that includes the requirements gathering for the pollbook solution, and recruiting of contract project team 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.). No changes from the last update. Plaintiff Dennis Fusaro brought a complaint in federal court alleging that Maryland violates the First and Fourteenth Amendments by limiting access to the voter list to Maryland voters and only for purposes related to the electoral process. On September 4, 2018, the State defendants' motion to dismiss the complaint was granted, and the plaintiff appealed. On July 12, 2019, the Fourth Circuit vacated the dismissal order, and remanded the case for further proceedings. The parties have since conducted discovery and briefed dispositive summary judgment motions, and are awaiting a ruling from the Court.
2. *Johnson v. Prince George's County Board of Elections*, No. CAL16-42799 (Cir. Ct. Prince Georges Cnty.). No change from the last update. This case involves a challenge under the U.S. Constitution and Maryland Constitution and Declaration of Rights to the SBE's alleged failure to provide information and access to voter registration and voting resources to eligible voters detained by the Prince Georges County Department of Correction during the 2016 election. The case had been originally filed in the Circuit Court for Prince Georges County but was removed on the basis of the federal claims asserted by the Plaintiffs. On February 27, 2018, the U.S. District Court for the District of Maryland granted SBE's motion to dismiss the Plaintiffs' federal claims, declined to exercise jurisdiction over the state claims, and remanded the case to the Circuit Court for further proceedings. The parties are awaiting further direction from the court.
3. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). 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 April 17, 2020, the District Court ruled that dates of birth must be included in the list provided to plaintiffs. The parties have reached an agreement-in-principle as to resolving the remaining issues in the case.
4. *National Federation of the Blind, Inc., et al. v. Lamone et al.*, No. 1:19-CV-02228-ELH (U.S. District Court, D. Md.). No change from the last update. On August 1, 2019, the National

Federation of the Blind (“NFB”), NFB’s Maryland chapter, and three individual plaintiffs filed a lawsuit against the State Administrator and the individual members of the State Board of Elections alleging that SBE’s BMD policy has, in practice, violated the rights of voters with disabilities “to an equal opportunity vote in person by a secret ballot,” in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Plaintiffs seek an order requiring the State Board “in all future elections to offer BMDs to every in-person voter as the default method of voting, with paper ballots offered only to those voters who affirmatively opt out of using the BMD or in cases where there are long lines of people waiting to vote.” On September 3, 2019, defendants filed a motion to dismiss the complaint, and on September 20, 2019, plaintiffs filed a motion for a preliminary injunction, seeking relief in time for the November 2020 election. On February 10, 2020, the court denied the defendants’ motion to dismiss, and denied the plaintiffs’ motion for preliminary injunction. On February 24, 2020, the Court entered a scheduling order governing the discovery period for the case, and setting a July 31, 2020 deadline for the filing of dispositive motions. The parties have exchanged initial disclosures and are in discovery. However, due to the disruptions caused by COVID-19 and the changes to the elections, the parties have agreed to extend certain disclosure and discovery deadlines.

5. *Hewes v. Alabama Sec’y of State et al.*, No. 1:19-cv-09158-JMF (U.S. District Court, S.D.N.Y.). On October 3, 2019, plaintiff Henry F. Hewes, a putative candidate for the Democratic nomination for President for the 2020 election, sued the unnamed Secretaries of State of 43 states, (including Maryland), alleging that state-imposed limitations on ballot access for federal presidential candidates violate the First and Fourteenth Amendments to the U.S. Constitution. Plaintiff seeks an order compelling the defendants to place the name of the plaintiff and any other candidate who has registered with the Federal Election Commission on the primary ballots of the states named as defendants. The Defendants jointly filed a motion to dismiss asserting common arguments for dismissal on December 19, 2019. On January 23, 2020, the plaintiff filed an amended complaint, and the defendants thereafter renewed their joint motion to dismiss. The plaintiff’s opposition to the motion to dismiss was due May 8, 2020, but the plaintiff has not served an opposition, nor does the docket reflect that an opposition was filed.
6. *Public Interest Legal Foundation, Inc. v. Lamone*, No. 1:19-cv-03564-ELH (D. Md.). Plaintiff Public Interest Legal Foundation, Inc., filed a lawsuit against the State Administrator, the members of the State Board, and Erin Dennis, seeking access to Maryland’s list of registered voters pursuant to the public inspection provisions of the National Voter Registration Act. Plaintiff alleges that the District Court’s published decision in *Judicial Watch, supra*, entitles them to access, and that the issue left outstanding by the court in that case does not implicate their request since they are not seeking individuals’ dates of birth as part of the information provided for each voter on the list. Plaintiffs filed a motion for summary judgment simultaneously with their complaint. On January 17, 2020, defendants answered the Complaint. On January 24, 2020, defendants moved for a stay of the proceedings pending the resolution of the *Judicial Watch* matter and any appeals therefrom, due to the similarity of the issues between the cases. On May 27, 2020, Judge Hollander issued an order requiring the parties to provide a status update.
7. *Chong Su Yi v. Hogan*, Nos. 480720, 480721, 480722, 480723 (Cir. Ct. Montgomery Cty.). On March 6, 2020, plaintiff Chong Su Yi filed four apparently identical complaints in the Circuit Court for Montgomery County challenging the results of Maryland’s 2018 elections,

and naming Governor Larry Hogan as defendant. Specifically, Mr. Chong appears to be arguing that the results are invalid because of the use of religious facilities as polling places, that the State's use of "scanners" to tabulate ballots is unconstitutional and/or not permitted by federal law, and that the State's identification of candidates' party affiliations on the general election ballot is not permitted by State law. The complaints are substantially identical to complaints Mr. Chong filed in 2019, which the court dismissed with prejudice earlier this year. Defendant moved to dismiss the complaints on May 3, 2020. On May 15, 2020, Mr. Chong filed substantially identical amended complaints in these actions. Defendant's response to these amendments is due June 1, 2020.

8. *Maryland Green Party, et al. v. Hogan et al.*, No. 1:20-CV-01253-ELH (U.S. District Ct., D. Md.). On May 19, 2020, the Maryland Green Party, its Chairman Steven Ellis, the Libertarian Party of Maryland, and its Chairman Robert S. Johnston, III, filed a lawsuit in federal court against Governor Hogan and State Administrator Lamone seeking relief from Maryland's statutory 10,000-signature petition requirement for new party petitions, and from Maryland's statutory signature verification standard for validating and counting petition signatures. The Maryland Green Party is also seeking damages. Plaintiffs claim that the 10,000-signature requirement and the signature verification standard, as applied in the COVID-19 environment, violate their First and Fourteenth Amendment rights to obtain access to the ballot as non-principal parties. Plaintiffs seek a reduction in the signature amount required for new party petitions to 1,000, and a requirement that the State Board accept any signature on the petitions that the State Board can match to an actual Maryland voter, notwithstanding any technical non-compliance with the signature standard. Simultaneous with their complaint, plaintiffs filed a motion for preliminary injunction. Defendants' opposition to the motion for preliminary injunction is due May 29, 2020. A hearing on the motion has been scheduled for June 12, 2020.

In response to a question from Mr. Cogan regarding *Maryland Green Party, et al. v. Hogan et al.*, Mr. Trento stated that the motion for preliminary injunction filed by the plaintiff seeks to enjoin enforcement of the requirements that a petition only be approved and recognition given to the party if their petition only has 10,000 signatures on it. Plaintiffs are seeking relief from that requirement and are asking the court to order that they only need to submit petitions bearing 1,000 signatures.

APPROVAL OF MEETING MINUTES

In response to a question from Mr. Voelp, Mr. Cogan stated that not including the approval of meeting minutes on the agenda was an oversight. He stated that if there were no objections, he would add approval of meeting minutes to the agenda. There were no objections.

Mr. Cogan stated that the meeting minutes were distributed to the members electronically and that the members have had an opportunity to review them. In response to a point of clarification question from Ms. Charlson, Mr. Voelp stated that he was referencing the minutes from the April 13th and April 22nd meetings. There was no discussion or changes to the minutes.

Mr. Voelp made a motion to approve the meeting minutes from April 13, 2020 and April 22, 2020 as presented. Mr. Funn seconded the motion. The motion passed unanimously.

PRO FORMA CONFIRMATION OF ADDITIONAL VOTING CENTERS FOR BALTIMORE CITY

Mr. Cogan stated that this was the exact and identical matter that was addressed in the Board's emergency meeting on May 20, 2020. He stated that this matter was being brought up again to confirm the Board's decision in a regularly scheduled meeting.

Mr. Hogan made a motion to confirm the actions that were taken in the emergency meeting. Mr. Voelp seconded the motion. The motion passed unanimously.

ADOPTION OF FINAL REGULATIONS: SUBTITLE 16 – PROVISIONAL VOTING, SUBTITLE 17- EARLY VOTING, AND SUBTITLE 19- SAME DAY REGISTRATION AND ADDRESS CHANGE

Ms. Hartman stated that the amendments to Code of Maryland Regulation's Title 33 and Subtitles 16, 17, and 19 were approved at the January 2020 meeting and were published in the April 10, 2020 issue of the *Maryland Registrar* for public comment. She stated that her memos dated January 3, 2020 and May 14, 2020 were previously emailed to the members along with the text of the amendments.

Ms. Hartman noted that no public comments were received on the amended regulations and asked the board to adopt the final amendments to COMAR 33.16.03.01, 33.17.01.02, and 33.19.01.01.

Ms. Howells made a motion to adopt the final amendments to Subtitles 16, 17, and 19, and Mr. Hogan seconded the motion. The motion passed unanimously.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan reported a contribution to a Republican campaign, but was unable to give the details at the time of the meeting. He stated that he would give the full details at the next meeting. No other Board members reported contributions.

OLD BUSINESS

In response to a question from Mr. Hogan regarding if local boards are reaching out to voters who did not sign their ballot, Ms. Charlson stated that SBE issued guidelines and procedures on curing ballots, and that local boards were reaching out to the affected voters.

In response to multiple questions from Mr. Voelp regarding old business, the following responses were offered:

1. Regarding electronic signatures in Montgomery County, Mr. Trento stated that he and Mr. DeMarinis had a phone call with a representative from Montgomery County and he believes that they addressed the representative's concerns.
2. Regarding the ballot drop off boxes and if they are watertight in the event of rain, Ms. Charlson stated that the experience from the special general election is that the boxes are watertight. She stated that she received this question from a local board and SBE is still researching the answer, but she believes that any water that gets into the box is just dripping down the side and not actually getting on the internal container that the ballots drop into. In response to a request from Mr. Voelp, Ms. Charlson stated that she would provide him with the answer when she received it.
3. Regarding if there were any ballot drop off boxes that would not have any video surveillance, Ms. Charlson stated that she did not have the information with her but would provide it as soon as she received it.

4. Regarding the possibility of removing a voter's party affiliation from the outside of the vote by mail return ballot envelopes for the general election, Ms. Charlson stated that the staff best able to answer that question were not on the call, but that she would report back on that topic.

Mr. Funn gave his congratulations to the staff and his fellow board members for the work put into the recent elections during this period of crisis. He stated that while everyone might not like every outcome, that we are in difficult times no one has experienced before, and that the SBE and local board staff have handled their responsibilities admirably. Mr. Voelp seconded Mr. Funn's sentiments.

NEW BUSINESS

There was no new business.

SCHEDULE NEXT MEETING

The next meeting is scheduled for Thursday, June 25, 2020, at 2:00 pm.

ADJOURNMENT

Mr. Cogan stated that the open meeting would not reconvene after the closed session and adjourned the open meeting at 2:48 pm.

CLOSED MEETING

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 or potential litigation, and (15) to discuss cybersecurity. Meeting in closed session allows the members to consult with Board counsel without waiving attorney-client privilege, obtain information relevant to pending or potential litigation, and discuss cybersecurity without risking information systems. Mr. Hogan made a motion to convene in closed session under General Provisions Article, §3-305(b)(7), (8), and (15), and Mr. Voelp seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions defined in (b)(7) and (8) of Section 3-305 of the Open Meetings Act to receive advice from counsel and consult with staff about pending or potential litigation and (15) to discuss cybersecurity matters.

The closed session began at 3:00 pm. Mr. Cogan, Mr. Hogan, Ms. Howells, Mr. Voelp, and Mr. Funn attended the closed meeting. In addition to the board members, Linda Lamone, Nikki Charlson, Andrea Trento, Fred Brechbiel, and Art Treichel attended the closed meeting.

Mr. Trento provided legal advice, and staff provided information about pending or potential litigation. Mr. Treichel provided an information security briefing.

No action was taken.

The closed meeting adjourned at 3:26 pm.