

STATE BOARD OF ELECTIONS

P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

Michael G. Summers, Chairman
William G. Voelp, Vice Chairman
Carlos Ayala
Janet Millenson
Yaakov "Jake" Weissmann



Jared DeMarinis
State Administrator

Katherine Berry
Deputy Administrator

Memorandum

To: State Board Members
From: Jared DeMarinis
Date: September 19, 2023
Re: Final Adoption of Regulations

At the next board meeting, I will present for final adoption proposed changes to the following COMAR provision¹ (see enclosure):

- 33.01.01.01- Definitions
- 33.07.11.01 - .02 – Election Judges
- 33.15.02.01 – New or Changed Precincts
- 33.15.03.01 - .02 – Polling Places

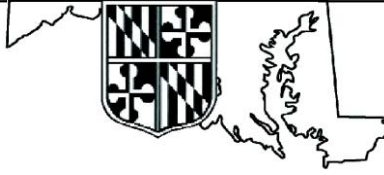
The proposed changes to the regulations were adopted at the June 20, 2023 meeting. They were published in the July 28, 2023 edition of the *Maryland Register* (Vol. 50, Issue 15), and the public comment period closed on August 25, 2023.

If you have any questions before the next meeting, please contact me. I will also be available at the board meeting to answer any questions.

Attachment.

¹ Italicized text is new section or language.

William G. Voelp, Chairman
Justin Williams, Vice Chairman
Severn E. S. Miller
Michael G. Summers
T. Sky Woodward



Linda H. Lamone
Administrator

Nikki Charlson
Deputy Administrator

Memorandum

To: Members of the State Board of Elections
From: Melissa Dorsey and Nikki Charlson
Date: June 6, 2023
Re: Proposed Regulations for June 20th Meeting

At the June 20 meeting, we will present proposed changes to existing regulations. The accompanying document includes the proposed changes and explanations for each one.

We are proposing changes to the following regulations:

1. 33.01.01.01 – Definitions
2. 33.01.05.06 – Administrative Complaint Procedure
3. 33.02.03.05 – Judges’ Manual and Training
4. 33.07.11.01 - .02 – Election Judges
5. 33.15.02.01 – New or Changed Precincts
6. 33.15.03.01 - .02 – Polling Places
7. 33.17.05.03 – Early Voting – Election Judges – Training of Election Judges

If you have any questions before the meeting, please do not hesitate to ask. Otherwise, we are happy to answer your questions at the meeting.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 01 DEFINITIONS; GENERAL PROVISIONS
Chapter 01 Definitions

Authority: Election Law Article, §§ 1-101, 2-102(b)(4), 2-303(g), and 2-303.1(b)(3), Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) - (17) (text unchanged)

(18) Historically Disenfranchised Communities.

(a) "Historically disenfranchised communities" has the meaning stated in Election Law Article § 1-101(aa-1), Annotated Code of Maryland.

(b) A historically disenfranchised community may be identified by:

- (i) Demographic and historical data brought to the attention of the State Board showing that a racial, ethnic, or socioeconomic group has been historically subject to voter suppression efforts; or*
- (ii) A factual finding by a court of competent jurisdiction or legislative body with binding authority over the State Board that a racial, ethnic, or socioeconomic group has historically been subject to voter suppression efforts.*

[(18)] (19) - [(41)] (42) (text unchanged)

Explanation: The proposed change provides an interpretation of the definition of "historically disenfranchised communities." The interpretation will permit local boards and the State Board to conduct the necessary analysis required by Election Law Article § 2-303.1(b)(3)(vii) & (c)(2) attendant to polling place plans.

Subtitle 01 DEFINITIONS; GENERAL PROVISIONS
Chapter 05 Administrative Complaint Procedure

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-602, and 11-305, Annotated Code of Maryland;
42 U.S.C. §15512(a)

.06 Complaint – Consolidation, Record, Hearing, and Determination.

A. - B. (text unchanged)

C. Hearing.

(1) - (3) (text unchanged)

(4) [The State Board shall give at least 5 business days advance notice of the date, time, and place of the hearing] *At least 5 business days before a hearing, the State Board shall provide notice of the date, time, place, and method (in-person or virtual) of the hearing. For good cause, a*

complainant may request an alternative date, time, or method for the hearing. The requisite notice shall be:

(a) Sent **[By]** by mail to the complainant, each named respondent, and any other interested person who has asked in writing to be advised of the hearing;

(b) Posted **[On]** on the State Board website; and

(c) **[By posting]** Posted in a prominent place, available to the general public, at the offices of the State Board.

(5) - (20) (text unchanged)

D. (text unchanged)

Explanation: The proposed change allows a hearing to be conducted either in person or virtually and allows the complainant to request - for good cause - another date, time, or method for the hearing. We received comments in response to prior proposed changes stating the virtual hearings make this process more accessible to voters with disabilities.

Subtitle 02 MEETINGS AND TRAINING

Chapter 03 Judges' Manuals and Training

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 10-206, Annotated Code of Maryland

.05 Judges' Training Program.

A. - B. (text unchanged)

C. Requirements for Training Compensation.

(1) A local board shall pay *at least* \$50 to an election judge who completes the training program.

(2) - (3) (text unchanged)

Explanation: The proposed language is based on the AELR review of changes to this regulation presented at the April Board meeting. To conform the regulation to [HB1200](#) (2023), the language should be "shall pay at least \$50."

Subtitle 07 ELECTION DAY ACTIVITIES

Chapter 11 Election Judges

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 10-202, 10-203, and 10-205, Annotated Code of Maryland

.01 Definitions.

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

- (1) "Previously served" means an election judge who:
 - (a) Was previously appointed in accordance with Election Law Article, §10-203, Annotated Code of Maryland;
 - (b) Completed a term of office; and
 - (c) Served in the capacity of an election judge during the term of office in a statewide primary, general or special election.
- (2) "Term of office" means the time from appointment to the office of election judge through the Tuesday that is 13 weeks before the next statewide primary election.

.02 Compensation of Election Judges

A. *Minimum Compensation.* For each election judge who has not previously served as an election judge, the compensation for each election day and each early voting day actually served shall be at least \$250 per day.

B. *Entitlement to Additional Compensation.* For each election judge who has previously served as an election judge, the compensation for each election day and each early voting day shall be at least \$100 more per day than the compensation provided to an election judge who has not previously served as an election judge.

C. *Limitations on Additional Compensation.* The following individuals are not entitled to additional compensation, unless previously approved by the election director:

- (1) Elections judges serving in their first term of office;
- (2) Elections judges serving a subsequent term of office, but who only acted as a backup election judge during their first term of office;
- (3) Individuals who perform election related tasks but are not sworn in as an election judge and appointed as an election judge.

Explanation: The proposed text establishes the minimum compensation to be paid to election judges to reflect the requirements [HB1200](#) (2023), which increased the minimum compensation for election judges. In accordance with HB1200 (2023), the regulation provides for a bonus to be paid to returning election judges and defines a returning election judge for the purposes of such payments.

Subtitle 15 PRECINCTS, POLLING PLACES, AND FACILITIES

Chapter 02 New or Changed Precincts

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 2-303(g), Annotated Code of Maryland

[.01. Scope.

A. This chapter applies whenever a local board:

- (1) Creates a new precinct; or
- (2) Changes precinct boundaries.

B. For a special election, a local board may combine polling places established for regularly scheduled elections.]

.01 Scope. *This chapter applies whenever a local board:*

- A. *Creates a new precinct; or*
- B. *Changes precinct boundaries.*

Explanation: This proposed text clarifies the scope of the article to ensure it is consistent with HB410 (2023), by removing references to consolidation of polling locations for special elections.

Subtitle 15 PRECINCTS, POLLING PLACES, AND FACILITIES

Chapter 03 Polling Places

Authority: Criminal Procedure Article, §11-722; Election Law Article, §§1-101, 2-102(b)(4), 2-202(b), 2-303.1 and 10-101, Annotated Code of Maryland

[.01 Required Accessibility Survey.

Except in an emergency, a polling place may not be used in any election:

- A. Until it has been fully surveyed, using the State Board's Polling Place Accessibility Survey Form; and
- B. If the building has been substantially modified after it was last surveyed, until it has been fully resurveyed, using the State Board's Polling Place Accessibility Survey Form.]

.01 Required Polling Place Plan.

A. *Requirements for Polling Place Plan.* A local board shall include in the polling place plan:

- (1) *Evidence that the plan complies with Election Law Article, §10-101(a)(2), Annotated Code of Maryland;*
- (2) *An analysis of how to maximize voter participation in each precinct; and*
- (3) *If the polling place plan proposes to reduce the number of separate buildings used as polling places below the total number of separate buildings used as polling places in the 2018 General Election:*
 - (a) *The address and a description of the location of each affected polling place;*
 - (b) *An analysis of available suitable buildings within the precinct boundary, including the availability of parking and a determination regarding building compliance with the federal Americans with Disabilities Act;*
 - (c) *Of the voters who cast ballots in each affected precinct in the three most recent statewide elections:*
 - (i) *The percentage who voted in person on election day;*
 - (ii) *The percentage who voted by mail;*
 - (iii) *The number who registered to vote on election day; and*

- (iv) the number who voted at an early voting center;
- (d) Proximity of the proposed polling place to a dense concentration of voters in the affected precinct;
- (e) The change in the number of registered voters in the affected precinct from the last statewide election;
- (f) The public transportation options that voters in each affected precinct could use to access the polling place that would serve the precinct under the plan; and
- (g) An analysis of the impact on the ability of historically disenfranchised communities to cast a ballot, including demographic information of the voters in the affected precinct.

B. Form for Polling Place Plan.

- (1) The State Board shall:
 - (a) Prescribe a form for a local board to use to provide a proposed polling place plan; and
 - (b) Provide each local board with the form at least 1 year before a primary election.
- (2) Contents of Form. The form shall include questions related to whether the proposed polling place plan meets the requirements defined in §A of this regulation.
- (3) Form Submission. A local board shall submit the form at least 6 months before each statewide primary election. Completion and submission of the form shall constitute fulfillment of a local board's duty to submit a polling place plan pursuant to Election Law Article § 2-303.1(a), Annotated Code of Maryland.

C. Additional Information. For each polling place plan, a local board shall submit with the form required in §B of this regulation:

- (1) A Polling Place Selection Form;
- (2) The State of Maryland's Accessibility Survey form for each polling place;
- (3) Documentation of the local board's approval of the polling place plan;
- (4) A polling place diagram;
- (5) Photographs of the interior and exterior of each polling place; and
- (6) Where a plan proposes to reduce the total number of separate buildings used as polling places in the 2018 General Election, documentation to support the determination that all buildings that will no longer be used as polling places are no longer suitable to be used as a polling place.

D. Approval of Polling Place Plan

- (1) The polling place plan shall be approved if:
 - (a) It complies with the requirements of §A of this regulation and Election Law Article, §10-101(a)(2), Annotated Code of Maryland; and
 - (b) It will not negatively affect access to voting for historically disenfranchised communities.
- (2) The polling place plan shall be rejected if it does not meet the requirements §A of this regulation and Election Law Article, §10-101(a)(2), Annotated Code of Maryland. The basis for rejection shall be set forth and provided to the local board.

(3) If the plan is rejected, the local board shall submit a revised polling place plan to the State Board within 15 days after the date on which the State Board rejected the previous plan.

[.02 New or Changed Polling Place.

A. Notice Required. Whenever a local board changes the location of a polling place, the local board shall notify all voters who are affected by the change.

B. How and When—General. Except as provided in §C of this regulation, the local board shall mail this notice to the affected voters before the next election.

C. How and When—Emergencies.

(1) If an emergency prevents compliance with §B of this regulation, the local board shall:

(a) Take whatever steps it considers reasonable to notify affected voters of the change; and

(b) Inform the State Administrator of the change and the steps being taken to notify voters.

(2) The notice required by this section:

(a) Shall include a prominent notice posted at the former polling place; and

(b) May include:

(i) Television, radio, and newspaper announcements and advertisements; and

(ii) Postings on the Internet.]

.02 New or Changed Polling Place.

A. *Board Action Required to Change the Location of a Polling Place.* A local board may not vote to change the location of a polling place unless the local board first:

(1) *Holds a meeting to discuss the proposed change; and*

(2) *Provides an opportunity for interested parties to testify on the proposed change at the meeting.*

B. *Notice of Proposed Changes.*

(1) *Each local board shall:*

(a) *Maintain a contact list of individuals and organizations who wish to be notified about local board meetings at which proposed changes to the locations of polling places will be discussed; and*

(b) *Enable individuals and organizations to register for the contact list.*

(2) *At least 14 days before the meeting required by §A of this regulation, the local board shall provide written notice of the meeting to:*

(a) *Each individual and organization on the contact list; and*

(b) *The following elected officials:*

(i) *County Executive or Mayor of Baltimore City, if applicable;*

(ii) *County Commissioner or County Council member elected by voters in the precinct(s) with the current polling place and proposed polling place; and*

(iii) Member of the General Assembly elected by voters in the precinct(s) with the current polling place and proposed polling place.

C. Exception for Emergency Changes. The requirements of §§A and B do not apply if a local board determines that an emergency exists that requires a change to the polling place location during the period beginning 21 days before election day through election day.

D. Notice Required to Voters.

(1) Whenever a local board changes the location of a polling place, the local board shall notify all voters who are affected by the change.

(2) Except as provided in §D(3)(b) of this regulation, the local board shall mail this notice to the affected voters before the next election.

(3) How and When - Emergencies.

(a) If an emergency prevents compliance with §B of this regulation, the local board shall:

(i) Take whatever steps it considers reasonable to notify affected voters of the change; and

(ii) Inform the State Administrator of the change and the steps being taken to notify voters.

(b) The notice required by this section:

(i) Shall include a prominent notice posted at the former polling place; and

(ii) May include television, radio, and newspaper announcements and advertisements and postings on the Internet.

Explanation: This proposed text defines the process for local boards to develop a polling place plan. It mirrors the process established for polling place plans and the requirements of HB410 of the 2023 Legislative Session. Further, the proposed regulation provides for the creation of a form by SBE to be used by the local boards to submit the polling place plan, as well as the documentation that must accompany the form. Finally, the regulation updates existing notice requirements for changes to polling places to reflect the new requirements of HB410.

Subtitle 17 EARLY VOTING

Chapter 05 Election Judges

Authority: Election Law Article, §§2-102(b)(4), 9-102(i), 10-206(g), 10-301.1(h), and 12-106(a), Annotated Code of Maryland

.03 Training of Election Judges.

A. - C. (text unchanged)

D. Judges Training Program.

(1) - (2)

(3) Requirements for Training Compensation.

- (a) A local board shall pay *at least* \$50 to an election judge who completes the training program.
 - (i) - (ii) (text unchanged)
- (b) (text unchanged)

Explanation: The proposed language is based on the AELR review of changes to this regulation presented at the April Board meeting. To conform the regulation to [HB1200](#) (2023), the language should be “shall pay at least \$50”.

William G. Voelp, Chairman
Severn E. S. Miller
Michael G. Summers
Yaakov "Jake" Weissmann
T. Sky Woodward



Linda H. Lamone
Administrator

Nikki Charlson
Deputy Administrator

Memorandum

To: State Board Members
From: Jared DeMarinis
Date: May 6, 2023
Re: Proposed Changes to Regulations

At the next board meeting, I will propose changes to the following COMAR provision¹ (see enclosure):

- *33.13.21 -Online Platforms*
 - *.01 Scope*
 - *.02 Definitions*
 - *.03 Political Advertiser Purchaser Responsibilities.*
 - *.04 Online Platform Responsibilities.*
 - *.05 Penalties.*
- 33.18.01 – Penalties
 - .02- Civil Penalties

Campaign Financing (Subtitle 13)

.21 Online Platforms

The proposed regulations clarify the requirements of Election Law Article §13-405 for online platforms and the placements of qualifying paid digital communications. The regulations address the concerns of the court raised in *Washington Post v. MacManus*. 944 F.3d 506 (2019) by limiting the scope of applicability and modifying the definition of the online platform.

The regulations are crafted to increase political speech and open marketplace of political discussion. Qualifying paid digital communications target voters and potential voters in ways that other mediums of political communications can not. Political campaigns may never see or have the ability to address the issues or statements disseminated in the qualifying paid digital communications. The database allows political campaigns, independent expenditure entities and other stakeholders to identify political ads hidden from the general public due to microtargeting and respond in kind. The database is narrowly tailored to limit the financial burden and impact on the online platforms without chilling speech.

¹ Italicized text is new section or language.

.01 Scope

The proposed regulation narrows the application of the statute and regulations to online platforms that are not press organizations or entities.

.02 Definitions

The proposed regulations define key terms of art and narrowly tailors the definition of an online platform with a revenue component.

.03 Political Advertiser Purchaser Responsibilities

The proposed regulations define the responsibilities of the political advertiser purchaser with respect to an online platform. It requires the purchaser to affirmatively notify the online platform that it intends to place a qualifying paid digital communication on the platform to influence voters. The regulation requires the purchaser to provide the platform with the necessary information to be published on the database. Additionally, the regulation mandates the purchaser to notify the State Board of Election within 48 hours if the online platform does not provide a mechanism to identify the placement of qualifying paid digital communications.

.04 Online Platform Responsibilities

The proposed regulation requires the online platform to provide a mechanism to identify a political advertiser purchaser prior to the completion of the commercial transaction for the placement of qualifying paid digital communication. Additionally, the regulation clarifies the requirements for the public database of the qualifying paid digital communications on the online platform and whether the commercial transaction used any intermediary sites such as an ad network for placement.

.05 Penalties

The proposed regulation sets the civil penalties for noncompliance with the statute and regulations.

.18 Penalties

.02 Civil Penalties

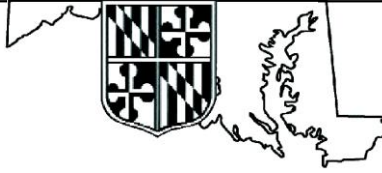
In the 2023 General Assembly Legislative session, SB 269/HB 169 prohibited the use of currencies other than United States currency in making monetary contributions, donations, expenditures or disbursements, The proposed regulation sets the civil citation penalties for failure to use United States currency in those situations.

Attachment: Proposed Regulations

STATE BOARD OF ELECTIONS

P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

Michael G. Summers, Chairman
William G. Voelp, Vice Chairman
Carlos Ayala
Janet Millenson
Yaakov "Jake" Weissmann



Jared DeMarinis
State Administrator

Katherine Berry
Deputy Administrator

Memorandum

To: State Board Members
From: Jared DeMarinis
Date: September 14, 2023
Re: Final Adoption of Regulations

At the next board meeting, I will present for final adoption proposed changes to the following COMAR provision¹ (see enclosure):

- *33.13.21 -Online Platforms*
 - *.01 Scope*
 - *.02 Definitions*
 - *.03 Political Advertiser Purchaser Responsibilities.*
 - *.04 Online Platform Responsibilities.*
 - *.05 Penalties.*
- 33.18.01 – Penalties
 - .02- Civil Penalties

The proposed changes to the regulations were adopted at the June 20, 2023 meeting. They were published in the July 28, 2023 edition of the *Maryland Register* (Vol. 50, Issue 15), and the public comment period closed on August 28, 2023.

One public comment was received. The written comments from Campaign Legal Center are in support of COMAR Proposed Rules 33.13.21 Online Platforms, relating to online political ad databases and reporting. Therefore, it is recommended to proceed with the adoption of the proposed regulation as drafted.

If you have any questions before the next meeting, please contact me. I will, of course, be available at the board meeting to answer any questions.

Attachment.

¹ Italicized text is new section or language.

Title 33 State Board of Elections
Subtitle 13 Campaign Financing
Chapter 21 Online Platforms

Authority: Election Law Article, §§1-101, 2-102(b)(4), 13-405, Annotated Code of Maryland

.01 Scope.

This chapter does not apply to a press organization, or a website owned or controlled by a press organization.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Ad network" means any entity whose business is to facilitate the placement of advertisements on behalf of a third party for a fee by buying or selling directly or indirectly advertisement space on third party online platforms, websites, software applications or social media sites seeking to host advertisements.

(2) Online Platform.

(a) "Online platform" has the meaning stated in Election Law Article, §1-101(dd-1), Annotated Code of Maryland

(b) For the purposes of this chapter an "online platform" must have \$10 million or greater in annual gross revenue.

(3) "Political advertiser purchaser" means any of the following to the extent it seeks to make a qualifying paid digital communication on an online platform:

(a) A political committee;

(b) A candidate;

(c) A person required to register to file an independent expenditure report pursuant to Election Law Article, §13-306, Annotated Code of Maryland;

(d) A person required to register to file an election communication report pursuant to Election Law Article, §13-307, Annotated Code of Maryland;

(e) A participating organization;

(f) An out-of-State political committee required to file a campaign finance report;

(g) An agent as defined in COMAR 13.07.07.01;

(h) A foreign principal as defined in Election Law Article, §13-236.1, Annotated Code of Maryland; and

(i) An individual required to register with the Attorney General of the United States pursuant to 22 U.S.C. §§ 611 – 621, the Foreign Agent Registration Act of 1938.

.03 Political Advertiser Purchaser Responsibilities.

A. Notice. A political advertiser purchaser shall provide notice that it is disseminating a qualifying paid digital communication to the online platform on which it intends to disseminate that qualifying paid digital communication.

B. Required Information. A political advertiser purchaser shall provide to the online platform at the time of the initial point of purchase for the dissemination of a qualifying paid digital communication by the online platform the following information:

(1) The name of the political advertiser purchaser and, if an agent, the name of the entity represented by the agent;

(2) A telephone number, mailing address and email address of the political advertiser purchaser; and

(3) A copy of the qualifying paid digital communication.

C. Notice to the State Board. If a political advertiser purchaser is not able to provide the notice required by § A of this regulation because the online platform is not equipped to receive such notice, then the political advertiser purchaser shall provide in writing within 48 hours to the State Board:

(1) Notice that the online platform failed to provide a mechanism for disclosing to the online platform that political advertiser purchaser is disseminating a qualifying paid digital communication; and

(2) All of the information required in § B of this regulation.

.04 Online Platform Responsibilities.

A. Notice. An online platform shall provide a mechanism for a political advertiser purchaser to provide notice to the online platform that it is placing a qualifying paid digital communication for dissemination.

B. Database Requirements. If the online platform is the initial point of the purchase for the dissemination of a qualifying paid digital communication, the online platform shall make available for public inspection on a website owned or controlled by the online platform in a machine readable database within 48 hours after receiving the notice described in § A of this regulation the following information:

- (1) The date of the notice to disseminate the qualifying paid digital communication;*
- (2) The name of the political advertiser purchaser and if the political advertiser purchaser is an agent, the political committee or person responsible for the placement of the qualifying paid digital communication;*
- (3) A telephone number, contact mailing address and email address of the political advertiser purchaser and the political committee or person responsible for the placement of the qualifying paid digital communication; and*
- (4) The total amount paid by the political advertiser purchaser for the distribution or dissemination of the campaign material.*

C. Online Platforms - Not Insertion Order Point. If the online platform is not the initial point of purchase for the dissemination of a qualifying paid digital communication and receives the qualifying paid digital communication from an ad network, the online platform shall make available for public inspection on a website owned or controlled by the online platform in a machine readable database within 48 hours after receiving compensation for the placement of the qualifying paid digital communication the following information:

- (1) The date the qualifying paid digital communication was disseminated on its platform; and*
- (2) A link to the database on the website owned or controlled by the online platform that is the initial point of purchase for the dissemination of the qualifying paid digital communication containing the information set forth in §B of this regulation.*

D. Online Platform – Other Requirements. An online platform in §C of this regulation may provide only the link to the database on the website owned or controlled by the online platform that is the initial point of purchase for the dissemination of the qualifying paid digital communication on its website if:

(1) The qualified paid digital communication identifies the website of the database of the online platform that is the initial point of purchase in the authority line of the qualified paid digital communication; and

(2) The online platform clearly discloses that the source of the qualified paid digital communication came from an ad network.

E. Database Labeling. The database on the website shall be identified as “Political Advertisement Disclosures” on the website and be downloadable.

F. Safe Harbor. An online platform may rely on the information provided by the political advertiser purchaser and will not be held liable for failure to include a qualifying paid digital communication on its database if the political advertiser purchaser did not provide notice that the political advertiser purchaser intended to disseminate a qualifying paid digital communication.

.05 Penalties.

A. Civil Penalties - Political Advertiser Purchaser. A political advertiser purchaser that fails to notify the State Board in a timely manner according to the requirements of this chapter is subject to a civil penalty not exceeding \$5,000.

B. Civil Penalties – Online Platform. An online platform that violates this chapter is subject to a civil penalty not exceeding \$5,000.

**Title 33 State Board of Elections
Subtitle 18 Violations
Chapter 01 Civil Penalties**

Authority: Election Law Article, §§2-102(b)(4), 13-235, 13-238, 13-239, 13-250 and 13-604.1, Annotated Code of Maryland

.02 Civil Penalties.

A. – J. (Text unchanged)

	1st Offense	2nd Offense	3rd and Subsequent Offenses

<i>K. Failure to make a monetary contribution or donation in United States currency in violation of Election Law Article, §13-238, Annotated Code of Maryland</i>	<i>\$750</i>	<i>\$1000</i>	<i>\$1000</i>
<i>L. Failure to make a monetary disbursement or expenditure in United States currency in violation of Election Law Article, §13-250, Annotated Code of Maryland</i>	<i>\$750</i>	<i>\$1000</i>	<i>\$1000</i>

Subtitle 11 ABSENTEE BALLOTS

33.11.01 Definitions; General Provisions

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 2-304, 2-305, 3-202.1, 9-303, 9-305, 9-306, 11-301, 11-302, and 11-304, Annotated Code of Maryland

.04 Ballot Drop Boxes.

A. - C. (text unchanged)

D. *Electioneering Boundary.*

(1) *The local board shall post signs delineating an area around each ballot box where a person shall not electioneer. A local board is not required to delineate this area with a physical line on the ground.*

(2) *Except as provided in §D(3) of this regulation, the line shall be located as near as practicable to 50 feet from the ballot box after consideration of the placement of the ballot box and the effect of placement on public safety and the flow of pedestrian and vehicular traffic.*

(3) *If the ballot box is placed within the electioneering boundary of a polling place, the line for the ballot box shall be the electioneering boundary of the polling place.*

(4) *The signs shall contain the words “No Electioneering Beyond this Point.”*

E. *Electioneering Activities.*

(1) *The following activities are not permitted within the electioneering boundary set forth in §D of this regulation:*

(a) *Electioneering by individuals; or*

(b) *Observing or recording voter activities by a group of affiliated individuals.*

(2) *An individual observing a ballot box or recording activities within the electioneering boundary set forth in §D of this regulation is not electioneering if the person is not communicating with, questioning, or otherwise interfering with voters dropping off materials at a ballot box.*

F. *Other Activities.*

(1) *Except as provided in §F(2) of this regulation, an individual shall not visibly possess, carry, or brandish a firearm within the electioneering boundary set forth in §D of this regulation.*

(2) *A law enforcement officer or security guard who is on duty or traveling to or from duty may enter the electioneering boundary set forth in § D of this regulation to drop off materials at a ballot box.*

(3) *A person may observe an election official remove materials from the ballot box as long as the person does not interfere with the process.*



August 28, 2023

Submitted electronically at DL_regcomments_SBE@maryland.gov.

Nikki Charlson, Deputy Administrator
Maryland State Board of Elections
151 West St., Suite 200
Annapolis, MD 21401

**Re: Comments in Support of Proposed Action 23-156-P,
Adoption of COMAR 33.13.21 Online Platforms**

Dear Chairman Summers and Members of the Board,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the State Board of Elections (“Board”) in support of Proposed Action 23-156-P, adoption of COMAR 33.13.21 Online Platforms (.01-.05) (“proposed rules”), relating to online political ad databases and reporting.¹

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy through law at all levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court proceedings. Our work promotes every American’s right to an accountable and transparent democratic system.

CLC commends the Board’s efforts to address digital political advertising transparency and its commitment to developing thorough, clear, and functional regulations. We support the proposed rules, and our comments focus on the importance of these policies.

Specifically, these comments discuss the unique threat posed to democracy by a lack of transparency around digital political advertising; explain the strong constitutional foundation for transparency in political advertising; and recommend minor suggested revisions to further clarify the proposed rules.

DISCUSSION

I. Background

The Supreme Court has repeatedly recognized that voters benefit from campaign finance transparency, and that democracy functions better when the interests funding and influencing campaign-related debate are disclosed.² This need is especially apparent in the context of digital political advertising—where anonymity and technical innovations such as microtargeting and user data harvesting enable advertisers to subject voters

¹ See Maryland Register, Vol. 50, Issue 15 at 705, Notice of Proposed Action 23-156-P (July 28, 2023), <https://2019-dsd.maryland.gov/MDRIssues/5015/Assembled.aspx>.

² See, e.g., *Citizens United v. Fed. Election Com’n*, 558 U.S. 310, 339 (2010).

to ever more finely-targeted and often-ephemeral campaign advertising with little disclosure of who is behind the messages.

Without legal requirements ensuring transparency, the rapid expansion of digital political advertising threatens to facilitate the spread of misinformation and disinformation online and undermine voters' right to know who is attempting to influence their votes.

Election Law Article, § 13-405, Annotated Code of Maryland and the proposed rules provide voters with critical information about digital political advertising, enabling Maryland's election system to evolve with developing technologies while protecting against false information, fraudulent actors, and the influence of secret spending in state elections.

A. Digital Political Advertising Presents Unique Threats to Democracy

Digital political advertising has surged in recent years across the country.³ In 2008, U.S. presidential candidates collectively spent \$22.25 million on online political ads. Those numbers have since ballooned to an estimated \$1.4 billion in 2016⁴ and \$2.1 billion in 2020.⁵

Substantial spending for digital political ads is also evident in Maryland. For example, in 2022, digital political ad spending on federal races alone in Maryland totaled an estimated \$58 million.⁶ Moreover, even relatively modest digital advertising expenditures often have an outsized impact in state and local races because overall spending levels are typically lower than in federal elections.⁷

This rapid rise in digital political advertising impacts the public, not only because of its exploding volume and cost, but also because digital communications are fundamentally different from traditional advertising delivery and carry unique risks.

Platforms use “targeting” or “behavioral advertising,” which involves tracking users' actions and preferences to deliver ads based on those characteristics.⁸ Indeed, “[t]he targeting has become so precise that next door neighbors streaming the same true crime show on the same streaming service may now be shown different political ads — based on data about their voting record, party affiliation, age, gender, race or ethnicity, estimated home value, shopping habits or views on gun control.”⁹ This microtargeting is invisible to voters, leaving most recipients of these ads unaware of the process.¹⁰

³ See Tech for Campaigns, *2020 Political Digital Advertising Report*, <http://bitly.ws/M8NR> (noting political digital advertising between 2018 and 2020 grew by 460%, nearly twice the rate of election spending overall).

⁴ Lata Nott, *Political Advertising on Social Media Platforms*, ABA, Jun. 25, 2020, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/political-advertising-on-social-media-platforms/.

⁵ The Center for Responsive Politics provides an online tool to filter through campaign spending, at *Online Political Ad Spending*, <https://www.opensecrets.org/online-ads>.

⁶ *AdImpact's 2022 Political Cycle-in-Review*, ADIMPACT, 5 (Feb. 28, 2023), available at <https://adimpact.com/2022-cycle-in-review/>.

⁷ See, e.g., Chisun Lee, et al., *Secret Spending in the States*, BRENNAN CTR., 3 (June 2016), <http://bitly.ws/Pe5i>.

⁸ Federal Trade Commission Staff, *FTC Staff Report: Regulatory Principles for Online Behavioral Advertising* (February 2009), <http://bitly.ws/M8NZ>.

⁹ Natasha Singer, *This Ad's for You (Not Your Neighbor)*, N.Y. TIMES (Sept. 15, 2022), <https://www.nytimes.com/2022/09/15/business/custom-political-ads.html>.

¹⁰ See Michael Harker, *Political Advertising Revisited: Digital Campaigning and Protecting Democratic Discourse*, 40 LEGAL STUDIES 151, 153–57 (2020).

As platforms have amassed exponentially larger amounts of user data, they have increasingly fine-tuned their ad targeting capacity.¹¹ While campaigns develop and amass their own databases and supporter lists, these individual campaign databases are dwarfed by the scale of datasets maintained by the biggest advertising platform managers.¹²

These microtargeted ads find the public not only on their social media or the web sites they browse, but also through the apps on their mobile phones and “connected” TV (or “CTV”), the use of smart televisions and streaming devices, which increasingly provide subscribers with lower-tier pricing on streaming services for users willing to tolerate advertising and commercials.¹³

The practice of microtargeting means that online audiences have little understanding of the full range of advertising run by a candidate or advocacy group, including the different messages other voters are being shown. This new ability to secretly direct a range of specially tailored, and perhaps even conflicting, messages to different audiences is incompatible with the core legitimizing aspects of democratic society—such as “publicity and transparency for the deliberative process.”¹⁴

This hyper-targeting is part of an already-siloed online ecosystem where algorithms filter content based on users’ predetermined preferences. This results in a dangerous echo-chamber which “creates an antidemocratic space in which people are shown things with which they already associate and agree, leading to nondeliberative polarization.”¹⁵

Increased transparency, including requiring disclosure of who is paying for digital political ads and making copies of particular ads available to the public, as in the proposed rules and the statute they implement,¹⁶ is essential to countering the opacity currently being cultivated by digital advertising.

Studies show that ads from anonymous groups exert more influence over recipients than ads run by candidates.¹⁷ This is not because the ads themselves were more persuasive. Instead, “it is largely differences in *backlash*, not persuasion” that provide this undeserved boost to anonymous groups’ ads.¹⁸ Otherwise put, unlike when viewing ads from recognized candidates or sponsors, voters have no means of critically assessing or holding accountable those who finance political ads anonymously.¹⁹

Campaign finance disclosure helps voters make reasoned decisions.²⁰ And, “[a]lthough disclosure only weakens—and does not undermine—the impact of

¹¹ See Ira S. Rubinstein, *Voter Privacy in the Age of Big Data*, 2014 WISC. L. REV. 861, 863.

¹² *Id.* at 864.

¹³ AdImpact, *supra* note 6 at 2; see also Alex Weprin, *Why Streaming Services Are Pushing Subscribers to Ad Tiers*, HOLLYWOOD REPORTER (Aug. 23, 2023), <https://www.hollywoodreporter.com/business/business-news/netflix-disney-now-pushing-subscribers-to-ad-tiers-1235572459/>.

¹⁴ See Jürgen Habermas, *Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research*, 16 COMMUN. STUDIES 411, 413 (2006).

¹⁵ Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1666–67 (2018).

¹⁶ Election Law Article, § 13-405(b), Annotated Code of Maryland.

¹⁷ Travis Ridout, et al., *Sponsorship, Disclosure, and Donors: Limiting the Impact of Outside Group Ads*, 68 POL. RES. Q. 154 (2015).

¹⁸ Deborah Jordan Brooks & Michael Murov, *Assessing Accountability in a Post-Citizens United Era: The Effects of Attack Ad Sponsorship by Unknown Independent Groups*, 40 AM. POL. RSCH. 383, 403 (2012) (emphasis added).

¹⁹ See Ridout, *supra* note 17 at 164.

²⁰ See Jennifer A. Heerwig, Katherine Shaw, *Through a Glass, Darkly: The Rhetoric and Reality of Campaign Finance Disclosure*, 102 GEO. L.J. 1443, 1471–72 (2014).

[anonymous] ads . . . disclosure does seem to ameliorate the structural imbalance that favors ‘dark money’ advertising.”²¹ Meaningful disclosure produces a voting base that can make more informed political decisions, in context and with a more critical eye.

While some major online platforms have created their own proprietary databases to provide some public information about political ads disseminated on their platforms,²² these voluntary efforts, which are not mandated and could be discontinued or altered at the discretion of those companies, are an insufficient solution for the digital transparency problem.²³

For example, in a 2020 post-primary report about online influence in U.S. elections, CLC found substantial gaps between reported online expenditures and voluntary, private online political ad archives.²⁴ From February through July 2020, the super PAC Senate Leadership Fund reported to the Federal Election Commission (“FEC”) that it spent over \$450,000 on “online advertising” supporting seven Republican Senate incumbents across the country.²⁵ However, political ad archives maintained by Meta, Google, Snapchat, and Reddit failed to capture a single one of these ads.²⁶ Similar expenditures in Indiana and Iowa by the Democratic-aligned super PACs Future Progress and Democratic Progress were unaccounted for in archives maintained by Meta, Google, Snap (Snapchat’s parent company), and Reddit.²⁷ The gaps left by these self-regulated voluntary private archives will only continue to expand as online advertising rapidly innovates.

Without uniform disclosure requirements for all major platforms, as in these proposed rules and the statutory provisions they implement, the public is still left in the dark about the content in and entities behind many targeted political ads running online.

B. Maryland Joins Other States in Leading to Address the Need for Digital Political Ad Transparency

²¹ Ridout, *supra* note 17 at 163–64.

²² See Victoria Smith Ekstrand & Ashley Fox, *Regulating the Political Wild West: State Efforts to Disclose Sources of Online Political Advertising*, 47 NOTRE DAME J. LEGIS. 74,, 78-79 (2021); see, e.g., *Political Advertising in the United States*, GOOGLE AD TRANSPARENCY CENTER, <https://adstransparency.google.com/political?region=US&topic=political>; see also, *Meta Ad Library*, META, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&media_type=all and *Snap Political Ads Library*, SNAP INC., <https://snap.com/en-US/political-ads>.

²³ For example, social media site X (formerly known as Twitter) debuted a searchable, public archive of paid political ads run on the platform in 2018; by 2023, the public archive was no longer available for ads that ran after November 22, 2019. Users seeking information regarding political ads on X running after that date must submit a Google Form to request data, which (when requested by *Politico*) did not include some paid political ads that appeared to fall under X’s disclosure policy. See Sheera Frenkel, *Facebook and Twitter Expand Peek Into Who’s Behind Their Ads*, N.Y. TIMES (Jun. 28, 2018), <https://www.nytimes.com/2018/06/28/technology/facebook-twitter-political-ads.html>; *Ads Transparency*, X BUSINESS, <https://business.twitter.com/en/help/ads-policies/product-policies/ads-transparency.html> (last visited Aug. 26, 2023); Jessica Piper, *Twitter fails to report some political ads after promising transparency*, POLITICO (Apr. 10, 2023), <https://www.politico.com/news/2023/04/10/twitter-political-ads-transparency-00091077>.

²⁴ Brendan Fischer, et al., *How the 2020 Elections Remain Vulnerable to Secret Online Influence*, CAMPAIGN LEGAL CTR. (Aug. 2020), <https://campaignlegal.org/sites/default/files/2020-08/08-18-20%20Post-Primary%20Digital%20Ad%20Report%20%28330pm%29.pdf>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

While digital political ads continue to proliferate, the federal government has failed to address the threats posed by a lack of transparency in digital political advertising.

Instead, as in the current rulemaking, state governments have stepped up to address the problem posed by unregulated digital electioneering, exploring innovative disclosure models.²⁸ Without the guardrails provided by disclosure laws, the potential harms posed by digital electioneering will only multiply as technologies continue to advance.

Artificial intelligence is already revolutionizing the creation and targeting of digital advertising materials.²⁹ Super PACs and other “dark money” groups can now computer-generate and easily micro tailor ads to manipulate the most vulnerable audiences.³⁰ These technologies allow bad actors to increase the volume and credibility of misleading political ads— and without any disclosure requirements, voters are left in the dark and law enforcement is obstructed.³¹ Maryland’s disclosure laws and the proposed rules provide important protection against these new threats.

II. The Constitutional Underpinnings of Transparency

The Supreme Court has reiterated that disclosure laws serve at least three important government interests: (1) providing “citizens with the information needed to hold . . . elected officials accountable for their positions and supporters;”³² (2) deterring actual political corruption and the appearance of corruption;³³ and (3) gathering the data necessary to detect violations of the law.³⁴ And the public’s informational interest is “alone. . . sufficient to justify” disclosure laws.³⁵

Voters have the right to certain information about the political messages they receive — including information about who pays for those messages.³⁶ Disclosure through reporting, including digital ad archives, allows voters to know who is funding a campaign or influencing government decision-

²⁸ In addition to Maryland, California, Colorado, New Jersey, New York, Vermont, Washington, and Wyoming have all taken steps to establish disclosure requirements for platforms hosting political ads. Five of the seven states also set standards for record-keeping. See Cal. Bus. & Prof. Code §§ 17940–43; Cal. Gov. Code §§ 84503–10; Colo. Const. art. XXVIII, § 2; N.J. Stat. Ann. §§ 19:44A, 19:44B; N.Y. Elec. Law § 14-107-B (including “online platform[s]” in expenditure disclosure requirements); 12 Vt. Stat. Ann. tit. 17 ch. 6; Wash. Rev. Code § 42.17A.345; Wyo. Stat. §§ 22-25-101, 22-25-110; see also Carolina Menezes Cwajg, *Transparency Rules in Online Political Advertising: Mapping Global Law and Policy*, UNIV. OF AMSTERDAM, 48–94 (Oct. 2020), <http://bitly.ws/M8R7>.

²⁹ See Heejun Lee & Chang-Hoan Cho, *Digital Advertising: Present and Future Prospects*, 39 INT’L J. OF ADVERTISING 332, 336 (2020).

³⁰ See Cameron Joseph, *AI Political Ads Are Here, and No One Knows How to Handle Them*, VICE NEWS (Apr. 27, 2023), <https://www.vice.com/en/article/epvxn7/ai-political-ads-republicans-biden>.

³¹ See Ekstrand & Fox, *supra* note 22 at 83.

³² *Citizens United*, 558 U.S. at 370-71.

³³ *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976) (per curiam).

³⁴ *Id.*

³⁵ *Citizens United*, 558 U.S. at 369.

³⁶ The Supreme Court has long recognized the importance of transparency in a variety of contexts, including candidate elections, ballot initiatives and lobbying. See, e.g., *Buckley*, 424 U.S. at 67 (candidate elections); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 792 n.32 (ballot initiative); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 203 (1999) (“Through the disclosure requirements . . . voters are informed of the source and amount of money spent . . . [and] will be told ‘who has proposed [a measure],’ and ‘who has provided funds for its circulation.’” (second alteration in original)); *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.*, 454 U.S. 290, 299 (1981) (“The integrity of the political system will be adequately protected if [ballot measure] contributors are identified . . .”); *United States v. Harriss*, 347 U.S. 612, 625 (1954) (upholding federal lobbying disclosure statute).

making.³⁷ This helps voters determine who supports which positions and why, allowing them to make fully informed decisions when they cast their ballots. As the Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.³⁸

Requiring disclosure of the sources of funding for election-related speech has been a feature of American campaign finance law for more than a century,³⁹ and the Supreme Court has consistently rejected challenges to electoral transparency laws, repeatedly emphasizing their constitutional validity.⁴⁰

The Supreme Court's decision in *Citizens United* opened the door to unlimited corporate independent expenditures and ultimately led to the creation of super PACs, making corporations an increasingly attractive vehicle to funnel unlimited funds to political committees and other independent spenders while concealing the true source of those funds.⁴¹

The Court in *Citizens United* assumed that these new forms of unlimited spending would be transparent, observing that “prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.”⁴²

Effective disclosure, including (and especially) in digital advertising is essential to protect “[t]he right of citizens to inquire, to hear, to speak, and to

³⁷ See *Gaspee Project v. Mederos*, 13 F.4th 79 at 91 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 2647 (2022) (“The donor disclosure alerts viewers that the speaker has donors and, thus, may elicit debate as to both the extent of donor influence on the message and the extent to which the top five donors are representative of the speaker's donor base . . . [in *Citizens United*] the Court recognized that the disclaimers at issue were intended to insure that the voters are fully informed . . .”(internal quotations and citation omitted)).

³⁸ *Buckley*, 424 U.S. at 66-67 (internal quotation marks and footnote omitted). In *Buckley*, the Supreme Court articulated the constitutional standard for disclosure laws and upheld federal disclosure requirements, explaining that disclosure served three important purposes: “providing the electorate with information, deterring actual corruption and avoiding its appearance, and gathering data necessary to enforce more substantive electioneering restrictions.” *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (listing the “important state interests” identified in *Buckley*), *overruled in part on other grounds by Citizens United v. Fed. Elections Comm'n*, 558 U.S. 310 (2010). The first of these, the public's informational interest, is “alone sufficient to justify” disclosure laws. *Citizens United*, 558 U.S. at 369; *see also*, *Gaspee Project*, 13 F.4th at 86.

³⁹ See Publicity of Political Contributions Act, Pub. L. No. 61-274, §§ 5-8, 36 Stat. 822, 822-24 (1910).

⁴⁰ See *Buckley*, 424 U.S. at 64-68 (upholding Federal Election Campaign Act disclosure requirements); *McConnell*, 540 U.S. at 194-99 (upholding McCain-Feingold Act's federal disclosure requirements); *Citizens United*, 558 U.S. at 366-71 (same); *see also Citizens Against Rent Control*, 454 U.S. at 299-300 (expressing approval of disclosure in the ballot initiative context); *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. at 792 & n.32 (striking down corporate expenditure ban in part because disclosure sufficed to enable “the people . . . to evaluate the arguments to which they are being subjected”).

⁴¹ See *Citizens United*, 558 U.S. at 365-69; *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) (The D.C. Circuit's decision in *SpeechNow*, issued shortly after *Citizens United*, directly gave rise to super PACs by striking down the contribution limits applicable to political committees that make only independent expenditures).

⁴² *Citizens United*, 558 U.S. at 370; *see also Buckley*, 424 U.S. at 67 (“A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return.”).

use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it”⁴³ outlined by the Supreme Court in *Citizens United*. As discussed in Part I and consistent with this precedent, the proposed rules plainly promote compelling government interests.⁴⁴

III. Minor Suggested Revisions

We recommend one change to the proposed rules and have identified a few minor suggested technical changes the Board may wish to consider.

First, we recommend the Board add language to the safe harbor provision of the proposed rule clarifying that an online platform may not rely on information provided by an ad purchaser if the platform “knows or has reason to know the information is false.” As the statute makes clear, platforms may only rely on such information “in good faith,”⁴⁵ and reliance on information the platform knows or has reason to know is false clearly would not be in good faith.

Second, to the extent that it is standard practice in COMAR to define terms via cross-reference to statute or other regulations, the terms “political committee,” “candidate,” “participating organization,” and “qualifying paid digital communication” may benefit from definitional cross-references. Similarly, the reference to an “out-of-State political committee required to file a campaign finance report” may similarly benefit from a cross-reference to relevant filing requirement in Election Law Article, § 13-301, Annotated Code of Maryland.

Conclusion

CLC thanks the Board for its consideration of the foregoing comments and recommendations regarding this important rulemaking. We would be happy to answer questions or provide additional information to assist the Board’s rulemaking process.

Respectfully submitted,

s/ Elizabeth D. Shimek
Elizabeth D. Shimek
Senior Legal Counsel

⁴³ *Citizens United*, 558 U.S. at 339. The Supreme Court has recognized that disclosure does not meaningfully inhibit First Amendment interests and actually advances those interests. *See id.*

⁴⁴ While the Fourth Circuit previously held Maryland’s statutory requirements could not be applied to news outlets, *see Washington Post v. McManus*, 944 F.3d 506 (4th Cir. 2019), the proposed rules explicitly exclude news organizations and websites owned or controlled by a press organization. Additionally, the proposed rules apply only to platforms with at least \$10,000,000 in gross revenue. The law is thus narrowly tailored to reach only large and highly influential platforms where the bulk of advertising and influence takes place. *Compare id.* at 522 (finding fault in Maryland’s prior inclusion of small news platforms).

⁴⁵ Election Law Article, § 13-405(d)(2), Annotated Code of Maryland.

Subtitle 11 ABSENTEE BALLOTS

Chapter 05 Canvass of Ballots – Rejecting Ballots

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-303, 11-301, 11-302, and [11-303(d)(2)(iii)] 11-303.2, Annotated Code of Maryland

.04 Ballot Rejection – Multiple Ballots from the Same Individual.

If a local board receives multiple ballots from the same voter, [The] the local board shall [reject multiple absentee ballots] canvass the ballots as follows:

A. (text unchanged)

B. If more than one ballot is received from the same individual in different envelopes:

(1) If the signed oaths have different dates, [only the ballot with the later date shall be counted], the local board shall:

(a) Count the ballot with the earliest signed oath date that the local board determines is legally sufficient; or

(b) Reject all ballots if none of them are legally sufficient.

(2) If the signed oath associated with one ballot is dated and the signed oath associated with the other ballot is either undated or indecipherably dated, the local board shall count the ballot with the dated oath and reject the ballot with the undated or indecipherably dated [ballot shall be rejected] oath;

(3) If the signed oaths all have the same dates or all have indecipherable dates[, all ballots shall be rejected;] the local board shall:

(a) Count the first ballot it received if that ballot is legally sufficient;

(b) If the first ballot it received is not legally sufficient, count the ballot it received next if it is legally sufficient; or

(c) Reject all ballots if the ballots were received on the same date.

(4) (text unchanged)

C. Except as provided as in §D of this regulation, if an absentee ballot and provisional ballot are received from the same individual, the local board shall count the first ballot the voter cast if the ballot is legally sufficient and reject [the provisional ballot] any other ballot.

D. If the local board receives an absentee ballot after a provisional ballot or absentee ballot from the same voter has been counted, the local board shall reject the absentee ballot.

Explanation: These proposed changes reflect changes enacted in Chapters [151](#) and [152](#) (2023) (introduced as [HB 535](#) and [SB 379](#), respectively), which require the local board to count the first ballot from the individual and reject any other ballot.