

State of Maryland 

State Board of Elections – October 8, 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
Jared DeMarinis, Director, Candidacy and Campaign Finance
Tracey Hartman, Director of Special Projects
Art Treichel, Chief Information Security Advisor
Fred Brechbiel, Chief Information Officer
Keith Ross, Assistant Deputy, Project Management

Also Present: Bruce Robinson, President, Baltimore County Board of Elections

DECLARATION OF QUORUM PRESENT

Mr. Cogan called the meeting to order at 2:00 pm. After taking roll call, he stated that all members were present, that there was a quorum, and that the meeting was being livestreamed.

ADDITIONS TO THE AGENDA

There were no additions to the agenda.

APPROVAL OF MINUTES

Mr. Cogan stated that minutes would be approved at the next scheduled meeting.

ADMINISTRATOR'S REPORT

Ms. Charlson stated that only the portion of the Administrator's Report related to the 2020 General Election preparations would be presented verbally, but that the full report is available on the SBE website.

2020 General Election Preparation

Data Processing Center

Ms. Charlson stated that to date, over 86,617 electronic request for voter registration or mail-in ballots have been processed. The data center is working evenings and Saturdays. An additional eight more processors have been added to accommodate the high volume of requests for mail-in ballots. Again, many thanks to MVA for their generous hospitality and the Maryland Association of Election Officials for the ongoing processing supervision.

Use of Online Voter Services

Use of SBE's online suite of voter services continues to be high. From September 27 through October 2, almost 100,000 individuals used the online systems to register to vote or request a ballot. On National Voter Registration Day (September 22), over 20,000 users used one of these systems to register to vote or request a mail in ballot on National Voter Registration Day, September 22. Over 90,000 votes have successfully accessed the website to obtain their electronic ballot.

Ballot Production

Ballot printing has been completed for all original ballot orders and delivery to the local boards is expected to be completed by October 9. Supplemental ballot orders will begin printing next week and are expected to be delivered by October 16.

Mailing Ballots

Ms. Charlson stated that as of October 7, over 1.1 million ballot packets have been shipped since September 24. This includes requests processed as of October 3. We are sending files regularly to the mailhouse, and they are producing and shipping packets daily. The mailhouse's tracking system allows SBE and the local boards to track ballot packets once they enter the mailstream and share that information with voters asking about the status of their ballots.

In response to a question from Mr. Voelp, Ms. Wagner stated that the data center is scheduled to run until October 23, however that date may be extended if needed.

Voting Equipment Preparation

The pre-election logic and accuracy testing of the voting equipment allocated for use in the November elections is currently underway. To date, over 50% of the local boards have completed logic and accuracy testing on the voting equipment.

Ms. Charlson stated that Ms. Duncan is available to answer any question regarding the public awareness campaign.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Trento gave an update on the following cases:

National Federation of the Blind, Inc., et al. v. Lamone et al., No. 1:19-CV-02228-ELH (U.S. District Court, D. Md.). Mr. Trento stated that the due date for discovery has been extended one month to December 9.

Fusaro v. Davitt et al., No. 20-1879 (U.S.C.A. for the 4th Cir.). Mr. Trento stated that the due date for the Defendant's appeal brief has been extended 30 days to November 23.

Chong Su Yi v. Hogan, Nos. 480720, 480721, 480722, 480723 (Cir. Ct. Montgomery Cty.). Since the last meeting, the Plaintiff has filed an appeal in all of his cases regarding the Court's dismissal of his motions for reconsideration of the Court's dismissal orders of his original motions.

APPROVAL OF PROPOSED EMERGENCY CHANGES TO COMAR 33.08.01.02-1- CANVASSING AND PROPOSED EMERGENCY AND REGULAR CHANGES TO COMAR 33.17.06.05- EARLY VOTING

Ms. Charlson presented for adoption proposed emergency amendments to COMAR 33.08.01.02-1. This clarifies that counsel does not need to be present at all pre-election day canvasses for the 2020 General Elections but does need to be present at post-election day canvasses if the ballots being canvassed could decide the outcome of a contest or question. Subsection B requires that counsel be present at any decision meetings on the legality or acceptability of a vote on any ballot, a mail-in ballot, provisional ballot application, or provisional ballot. This change was presented as an emergency change and therefore will only be in effect for the 2020 General Election.

Ms. Charlson also presented for adoption a proposed amendment to COMAR 33.17.06.05. The proposed amendment removes the prohibition of receiving a mail-in ballot at an early voting

center. This provision is currently in conflict with COMAR 33.11.03.06E¹, which allows for the return of voted mail-in ballots at early voting centers. Ms. Charlson clarified that when 33.11.03.06E was adopted earlier this year, this provision should have been amended at that time. This change was presented as an emergency change and a permanent change.

In response to a question from Mr. Voelp, Ms. Charlson confirmed that voted mail-in ballots are only returned at early voting and election day voting centers- a voter may not receive a mail-in ballot at a voting location.

Mr. Funn made a motion to adopt the proposed emergency amendments to COMAR 33.08.01.02-1, and the proposed emergency and regular amendment to COMAR 33.17.06.05, and Mr. Hogan seconded the motion. It passed unanimously.

NOVEMBER 3 ELECTION DISCUSSION

Mr. Cogan stated that the Members Remarks section of the agenda is moved to the end of the November 3 Election Discussion.

b. Approval of SBE Policy 2020 – 03: Contingency Plans for the 2020 Elections

Ms. Charlson stated that before every election, SBE presents a contingency plans to ensure that voting during early voting and on election day continues without interruption if all or some combination of the equipment fails, is inoperable, or is unavailable. SBE Policy 2020 – 03: *Contingency Plans for the 2020 Elections* is that plan. The fundamental change for the 2020 General Election is the use of vote centers in lieu of polling places, which is a change that would be just for this election. The plan requires that every election day vote center have a backup to the pollbooks, either on a laptop or printed, to serve as a back up in the event that the pollbooks do not work on election day. Ms. Charlson stated that this plan is fundamentally the same as the contingency plan for early voting, but has been applied to election day vote centers.

Mr. Hogan made a motion to approve *SBE Policy 2020 – 03: Contingency Plans for the 2020 Elections* as presented, and Ms. Howells seconded the motion. The motion passed unanimously.

c. Election Observation Visits

Mr. DeMarinis requested two organizations, the Organization for Security and Cooperation in Europe and the United States International Center for Electoral Support, be designated as watchers to enable representatives of the organizations to observe vote centers during the 2020 General Election. Both organizations have had past observation missions in Maryland and are fully vetted by the U.S. State Department. The designated individuals must follow the same rules and regulations as other challengers and watchers, including those appointed by political parties. Additionally, the individuals must follow all COVID-19 protocols for entry into the United States and observe social distancing at the vote centers.

Mr. DeMarinis also requested that the Board to reaffirm the delegation of the authority to designate challengers and watchers for future requests to the State Administrator. This delegation first occurred in October 2016 and was reaffirmed for the 2018 General Election. The delegation of the authority is contingent that (1) international observers have the approval of the U.S. Department of State, any governmental agency to which the State Administrator is referred

¹ 33.11.03.06E reads: Whenever an absentee ballot is received at an early voting center or polling place, a chief judge or designee shall: (1) Instruct the voter to put the voted absentee ballot into the absentee ballot bag; (2) Ensure the security of the absentee ballot bag; and (3) Return the absentee ballot bag to the local board of elections at the end of voting hours each day of early voting and on election day.

by the U.S. Department of State, and any other appropriate U.S. governmental entity; and (2) the members of the State Board of Elections are provided notice by email of the designation.

Mr. Voelp voiced his support for the request, noting that he had the opportunity to observe the watchers in 2018 when he was a member of the Anne Arundel County Board of Elections, and there were no issues.

Mr. Funn made a motion to approve election observation visitors pursuant to Mr. DeMarinis's memorandum dated October 7, 2020, and to reaffirm the delegation of the Board's authority to designate future requests for challengers and watchers to the State Administrator, contingent on the terms described in the October 7 memo. Mr. Voelp seconded the motion, which passed unanimously.

a. Member's Remarks

Mr. Cogan stated that this item would be moved to after agenda item 11- Speaker.

SECURITY BRIEFING

Mr. Treichel stated that SBE has been working with its IT vendors and public partners to assess and prepare SBE's cybersecurity infrastructure and operations for this election period. These preparations include assessment, testing, and strengthening of core SBE cybersecurity capabilities, including: Secure infrastructure architecture, threat and vulnerability detection management, detection and analysis of possible cyber attacks, and rapid response and remediation of attempts to attack. SBE has added advanced social media defense services to monitor for impersonations, misinformation, and other types of social media attacks.

Mr. Treichel stated that SBE has several partners in these efforts including the DHS Cybersecurity & Infrastructure Security Agency (CISA), the FBI, and the Maryland Coordination and Analysis (MCAC or the Fusion Center) Center. SBE has also participated in a number of table top exercises including internal exercises and those sponsored by partner organizations such as DHS and Microsoft.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

SPEAKER

Mr. Bruce Robinson, Member, Baltimore County Board of Elections

Mr. Robinson stated that he was before the Board to offer a possible solution to the risks posed by the directive to accept ballots with identifying marks. He explained that during an in-person election, a voter can readily and easily obtain and vote a replacement ballot upon surrendering a ballot containing a mistake, however, an individual voting a mail-in ballot does not have this option. Often, the voter will cross out the mistake and initial the ballot, and then make their correct mark.

Mr. Robinson explained that prior to 2020 the ballot with additional marks would be overridden during the canvass, but a new directive this year requires that local boards accept ballots with handwritten changes and identifying marks, by duplicating those ballots. Mr. Robinson stated that with the increase in canvass time already anticipated with the large numbers of electronic ballots,

the large number of mail in ballots to be duplicated for identifying and stray marks would further stress the ability of the local boards to meet the November 13 deadline to certify the election. As a solution, Mr. Robinson suggested that curing those ballots, similar to ballots with an unsigned oath, instead of duplicating them.

NOVEMBER 3 ELECTION DISCUSSION (Cont'd)

a. Member's Remarks

Mr. Cogan stated that this is the last scheduled meeting prior to November 3, and therefore is the last opportunity for the members to address the staff or local board members.

Mr. Voelp stated that he has now seen the amount of work that goes on behind the scenes of an election both at the State and local level. With the additional stress of the pandemic, there was a mountain of work to get everything right, as there are no practice run. Mr. Voelp stated that he is unbelievably impressed with the State and local staff.

Mr. Funn seconded Mr. Voelp's statement, adding that this was an election like no other due to the pandemic. He thanked the State and local boards for their hard work, particularly for respecting a voter's right to health without taking away their right to vote. He stated that Maryland is a model for election administration and other states should take after Maryland.

Ms. Howells stated her agreement with the comments made by Mr. Voelp and Mr. Funn.

Mr. Hogan stated that never in all of his years as a candidate or election volunteer did he understand what goes into running an election in a normal year, yet alone in a pandemic year. He expressed his admiration, appreciation, and thanks to the SBE and local boards' staffs.

Mr. Hogan also stated that he felt compelled to remind the public that Maryland has a law in place to protect voters from intimidation. Mr. Hogan read aloud Maryland Election Law § 16-201(a)(5) – (7) which states that a person may not willfully and knowingly:

- “(5) influence or attempt to influence a voter's voting decision through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward;
- (6) influence or attempt to influence a voter's decision whether to go to the polls to cast a vote through the use of force, fraud, threat, menace, intimidation, bribery, reward, or offer of reward; or
- (7) engage in conduct that results or has the intent to result in the denial or abridgement of the right of any citizen of the United States to vote on account of race, color, or disability.”

Mr. Cogan, after making an analogy, stated that the Board has done what they can do for this election and the rest is in the hands of the SBE staff and local boards. He reiterated that this election has been both physically and emotionally tiring, but that we have come so far that we have to keep going and not settle for tired.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan disclosed the following campaign contributions:

- | | |
|--|--|
| 1. Republican National Committee - \$425 | 3. National Republican Senate Committee - \$335 |
| 2. National Republican Congressional Committee - \$250 | 4. Republican State Leadership Committee - \$100 |

5. Ernst for Senate - \$250
6. McSally for Senate - \$430
7. James for Senate - \$130
11. Collins for Senate - \$100
12. Trump for President - \$400
13. National Republican Committee/Trump
for President - \$145
8. McConnell for Senate - \$300
9. Perdue for Senate - \$300
10. Scott for Senate - \$150
14. Nunes for Congress - \$100
15. National Republican Congressional
Committee - \$50
16. McCarthy for Congress - \$200

SCHEDULE NEXT MEETING

The next meeting is scheduled for Friday, December 4 at 2 p.m.

CLOSED SESSION- LEGAL ADVICE AND SECURITY BRIEFING

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 (10) and (15), which permits closing a meeting to discuss public security, network architecture, and security of election network without introducing risk to the process.

Mr. Hogan made a motion to convene in closed session under General Provisions Article, §3-305(b)(7), (8), (10), 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), (8), (10), and (15) of Section 3-305 of the Open Meetings Act to receive advice from counsel and consult with staff about pending or potential litigation and discuss public security, network architecture, and security of election network without introducing risk to the process.

The closed session began at 3:13 pm. Mr. Cogan, Ms. Howells, Mr. Funn, and Mr. Voelp attended the closed meeting. In addition to the board members, Ms. Lamone, Ms. Charlson, Mr. Trento, and Mr. Treichel attended the closed meeting.

Mr. Trento provided legal advice on several issues, and Mr. Treichel provided an update on various SBE's infrastructure and how it is protected and monitored.

No actions were taken.

The closed meeting adjourned at 3:57 pm.

ADJOURNMENT

Mr. Voelp made a motion to adjourn the open meeting, and Ms. Howells seconded. The motion passed unanimously. Mr. Cogan stated that the Board would not be reconvening after the closed session.

The open meeting adjourned at 2:59 pm.