

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Bobbie S. Mack, Member (by phone)
Linda H. Lamone, State Administrator
Jeff Darsie, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy for Election Policy
Erin Perrone, Director, Election Reform and Management
Paul Aumayr, Director, Voting Systems

Also Present: Ralph Watkins, League of Women Voters
Meryl Governski, Boies, Schiller & Flexner
Hampton Dellinger, Boies, Schiller & Flexner
Joan Kleinman, Representative Van Hollen's office
Lou Ann Blake, National Federation of the Blind
Maurice Peret, Blind Industries and Services of Maryland
Alyssa Fieo, Maryland Disability Law Center
Ellen Ringlein, National Federation of the Blind
Sharon Manecki, National Federation of the Blind
Grim Patterson, National Federation of the Blind

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 4:07 pm and confirmed that a quorum was present. He stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM FEBRUARY 25, 2016, MEETING

Mr. Hogan made a motion to ratify the approval of minutes from the February 25, 2016, meeting, and Ms. Howells seconded the motion. The motion passed unanimously.

CLOSED MEETING

Mr. McManus 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 consult with staff about pending or potential litigation. These exemptions would apply to any discussions between the Board, its counsel, and staff to obtain confidential legal advice and discuss pending litigation on the State Board's draft concept for use of the ballot marking device. Meeting in closed session would allow the Board to hear and obtain information, opinion, and legal advice from its counsel without waiving or compromising the confidentiality of such discussions and consult with staff on pending litigation.

Mr. Hogan made a motion to convene in closed session, and Mr. Cogan seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions (b)(7) and (8) of Section 3-305 of the Open Meetings Act to obtain confidential legal advice and discuss

pending litigation regarding the State Board’s draft concept on use of the ballot marking device. The open meeting recessed at 4:15 pm.

In addition to the board members present at the open meeting, Ms. Mack attended the closed meeting by phone. Mr. Darsie, Ms. Lamone, Ms. Charlson, Ms. Duncan, and Ms. Perrone were present. During the closed session, Mr. Darsie presented the Temporary Restraining Order filed on behalf of candidates to alter the way candidates’ names appear on the ExpressVote ballot marking device. No action was taken. The closed meeting adjourned at 4:50 pm.

The open meeting reconvened at 4:52 pm.

2016 PRIMARY ELECTION – USE OF BALLOT MARKING DEVICES

Mr. McManus summarized the State Board’s decision that most voters during early voting will manually make selections on pre-printed ballots, rather than using the ballot marking device to make selections. He noted that balance was needed to ensure that ballots cast by voters with disabilities are not segregated from other ballots. Mr. McManus read the State Board’s clarified draft concept for the minimum number of voters using the ballot marking device during early voting and on election day.

1. During early voting, a minimum of 2 voters without disabilities a day at each early voting center. There are 8 days of early voting, and 69 early voting centers. This means that a minimum of 16 voters at each early voting center, and 1,104 statewide will use the ballot marking device to make selections. There is no limit to the number of voters with disabilities that can use the ballot marking device.
2. On election day, a minimum of 2 voters without disabilities at each precinct. There are 1,989 precincts. This means that a minimum of 3,978 voters will use the ballot marking device on election day. There is no limit to the number of voters with disabilities that can use the ballot marking device.
3. Any voter may ask to use the ballot marking device.

Alyssa Fieo, Director of Legal Advocacy for the Maryland Disability Law Center (MDLC), and Lou Ann Blake, a member of the National Federation of the Blind (NFB) of Maryland and Deputy Director of the Jernigan Institute at the NFB, stated their concerns with the draft concept.

Ms. Blake stated that the Help America Vote Act gives to voters with disabilities the right to vote independently, and voters with disabilities will not return to voting with assistance. She stated that it is insensitive and disrespectful to offer a voter with an obvious disability a paper ballot and may end up discouraging voters from voting. Ms. Blake requested that clear written instructions in large print and in Braille be provided at each ballot marking device and that pollworkers are trained to provide assistance. Surveys conducted by the National Federation of the Blind consistently show that election judges do not know how to set up units for voters with disabilities.

Ms. Fieo stated that there is agreement to have one ballot marking device in each location and no segregated ballot in accordance with the 2007 legislation. She referenced an opinion of the Attorney General that stated that election officials needed to ensure that “sufficient numbers” of voters without disabilities used the ballot marking device to ensure that there is no segregated ballot. Ms. Fieo shared her concern that the revised draft concept would leave determining whether a voter has a disability up to election judges. She proposed that a minimum of 5 voters

use the ballot marking device each day of early voting and 15 voters on election day and advised against setting a minimum number of voters without disabilities.

In response to a question, Ms. Blake stated that there are no data on the number of voters with disabilities, but generally, voters with disabilities vote at a lower rate than voters without disabilities. Mr. Hogan stated that knowing the number of voters with disabilities would enable election officials to use a formula to apply what is a “sufficient number” of voters to use the ballot marking device to prevent a segregated ballot.

Ms. Fieo stated that MDLC has no position on ballot layout. In response to the MDLC’s and NFB of Maryland’s written recommendations, Mr. McManus stated that providing a demonstration unit at each early voting location may be difficult logistically, but that the local boards have been alerted to the navigation issues and written instructions will be provided. Mr. McManus also noted that providing these instructions in Braille would be costly, agreed that pollworkers will be trained on how to provide assistance with the ballot marking device, and stated that no funds are available for public outreach and training.

Ralph Watkins, Vice President of Voter Services, League of Women Voters of Maryland, stated that the League shares the concern that a minimum of two voters is insufficient to protect voters with disabilities individually or as a group. Mr. Watkins encouraged that as much information and assistance as possible be provided when voters are in line, and he offered the assistance of the League in this effort.

Meryl Governski and Hampton Dellinger of Boies, Schiller and Flexner LLP stated that they represent Mr. Van Hollen, Mr. Rubin, Mr. Trone, Mr. Stokes, and Ms. Pugh, all candidates in the 2016 Primary Election. Ms. Governski stated that the candidates are concerned with all voters using the ballot marking device, making selections before viewing all candidates, and how candidates’ names are unevenly split between screens.

Mr. Dellinger stated that the temporary restraining order filed in the Anne Arundel County Circuit was to preserve the legal rights of his clients but that he would like to find a resolution. He stated that the proposed minimum number of voters was sufficient and suggested that the voters using the ballot marking device be selected early in the day and that the directions for the ballot marking device be changed. Mr. Dellinger said that candidates have the legal right to have their names viewed and heard by the voters equally with all other candidates.

In response to a question about his clients’ responses to the recommendations made by the NFB and MDLC, Mr. Dellinger stated that there is no perfect solution and recommended offering each voter a paper ballot and giving election judges the authority to use common sense. He stated that his clients were fine with the minimum of two voters in the State Board’s draft concept, and no more than one ballot marking device in each voting location. Mr. Dellinger stated that the suggested changes to the ballot marking device would not require certification or can be submitted under the Election Assistance Commission’s *de minimis* or emergency certification process.

Mr. Dellinger stated that Maryland law is clear as to how the candidates’ names must be displayed and that there are strong arguments for not requiring any voters to use the ballot marking device and that a minimum of 15 ballots is too high. He offered that a minimum of four votes in an attempt to reach a compromise. Mr. Dellinger also advocated that there be no limit on the number of voters who requested to use the ballot marking device but all voters should be

initially presented with a paper ballot and that voters using the ballot marking device should use the audio version of the ballot unless the voter refuses.

Mr. McManus proposed revising the State Board's draft concept to include taking two voters out of the "paper ballot" line at the beginning of the day and asking that they use the ballot marking device. Other voters should be directed to a paper ballot unless the voter asks to vote on the ballot marking device. Mr. Cogan noted that impact on election administration is another competing interest that must be considered.

Mr. Hogan made the following motion:

1. During early voting, a minimum of 2 voters a day at each early voting center will use the ballot marking device to mark their ballots. During the morning of each voting day, election judges will take two voters from the paper ballot line and move them to the ballot marking device. There is no limit to the number of voters with disabilities that can use the ballot marking device.
2. On election day, a minimum of 2 voters at each precinct will use the ballot marking device to mark their ballots. During the morning of election day, election judges will take two voters from the paper ballot line and move them to the ballot marking device. There is no limit to the number of voters with disabilities that can use the ballot marking device.
3. Any voter may ask to use the ballot marking device.

Mr. Cogan seconded the motion. The motion passed unanimously.

There was a discussion about when ballot printing would begin. The State Board's vendor for absentee ballot packet printing and mailing can delay printing ballots until 12 noon on Monday, March 7, 2016, and still meet the March 12, 2016, ballot transmission deadline in the federal Military and Overseas Empowerment Act.

Mr. Hogan made a motion to extend the deadline to begin printing ballots until 12 noon on Monday, March 7, 2016, and Mr. Cogan seconded the motion. The motion passed unanimously.

NEW BUSINESS

There was no new business.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

No members reported any campaign contributions.

CONFIRM NEXT MEETING

The next regular meeting is scheduled for Thursday, March 24, 2016, at 2 pm.

ADJOURNMENT

Ms. Mack made a motion to adjourn the meeting, and Ms. Howells seconded the motion. The motion passed unanimously. Mr. McManus adjourned the meeting at 6:30 pm.