

**State of Maryland** 

**State Board of Elections – February 22, 2018 Meeting**

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Attendees: David McManus, Chair  
Patrick J. Hogan, Vice Chair  
Michael R. Cogan, Member  
Kelley A. Howells, Member  
Gloria Lawlah, Member  
Linda Lamone, Administrator  
Andrea Trento, Assistant Attorney General  
Nikki Charlson, Deputy Administrator  
Donna Duncan, Assistant Deputy, Election Policy  
Keith Ross, Assistant Deputy, Project Management  
Paul Aumayr, Director, Voting System  
Jared DeMarinis, Director, Candidacy and Campaign Finance  
Mary Wagner, Director, Voter Registration  
Erin Perrone, Director, Election Reform and Management  
Sarah Thornton, Technical Writer, Project Management Office

Also Present: Mary Kiraly, Citizen, Montgomery County  
Ralph Watkins, League of Women Voters – Maryland  
Holly Joseph  
Kevin Keene, Election Director, Harford County Board of Elections  
Dale Livingston, Deputy Director, Harford County Board of Elections  
Melissa Youngbar, Citizen, Baltimore City  
Jacqueline Phillips, Member, Montgomery County Board of Elections  
Mary Ann Keefe, Member, Montgomery County Board of Elections

**DECLARATION OF QUORUM PRESENT**

Mr. McManus called the meeting to order at 4:00 pm and stated that there was a quorum present. He stated that the meeting was being recorded.

**RATIFICATION OF MINUTES FROM JANUARY 2018 MEETING**

Ms. Lawlah made a motion to ratify the approved minutes from the January 18, 2018 meeting, and Mr. Hogan seconded the motion. The motion passed unanimously.

**RATIFICATION OF ACTION TO SUPPORT SENATE BILL 333**

Senate Bill 333 alters certain requirements for absentee ballot requests and canvassing procedures for provisional ballots when an individual casts more than one ballot for the same election. This bill would require local boards of elections to count a provisional ballot and reject an absentee ballot if both ballots are cast by the same voter. This codifies SBE's preference to count a ballot cast in a voting location under the supervision of an election judge over a ballot cast remotely.

Ms. Charlson attended a hearing last week on Senate Bill 333 and provided a written testimony, which is included in the meeting folder. Mr. McManus requested that the board members be notified if there are any amendments to Senate Bill 333.

Ms. Lawlah made a motion to ratify the State Board's action (approved via email) to support Senate Bill 333, and Mr. Cogan seconded the motion. The motion passed unanimously.

## **ADDITIONS TO THE AGENDA**

Mr. DeMarinis requested the addition of “Administrative Closures” to the agenda and Ms. Charlson requested the addition of “Public Comment” under “New Business.”

## **ADMINISTRATOR’S REPORT**

Ms. Lamone introduced the new Assistant Attorney General, Andrea Trento. Mr. Trento is coming to us from Hogan Lovells in Baltimore. He graduated from Harvard Law School and Yale (undergraduate school).

### **1. Announcements & Important Meetings**

#### Maryland Cybersecurity Council

On January 25, 2018, Ms. Charlson briefed the Maryland Cybersecurity Council on how election officials in Maryland protect critical election systems, provided an overview of suspicious activities in 2016, and the readiness of these systems for the 2018 elections. Ms. Charlson summarized how the critical IT systems are protected, monitored and restored.

#### House Ways and Means Briefing

On January 26, 2018, we provided our usual briefing on the state of election preparations. At this briefing, we shared with the committee members information about candidate and campaign finance filings, the January pre-primary election training exercise, voter registration activities, and how election officials protect information systems. After Ms. Charlson’s briefing, representatives of State agencies who are required to provide voter registration information or facilitate voter registration transactions updated the committee members on the status of their efforts.

#### Election Directors’ Meeting

On February 1st, SBE hosted an Election Directors’ meeting. The meeting was held via conference call, and all local boards were represented on the call. During the meeting, we updated the Election Directors and other participants on the transportation, staffing, and absentee ballot printing and mailing contracts, pollbooks and other equipment, and the status of the election judges’ manual and other supply ordering. A copy of the meeting summary was included in the meeting folder. The next Election Directors’ meeting is scheduled for March 8, 2018.

#### Department of Homeland Security’s Government Coordinating Council for the Election Critical Infrastructure

The Council met on February 15th in Washington DC. The Department of Homeland Security (DHS) provided updates on:

- DHS Cyber Security Service

- Federal legislation

- Lessons learned from completed assessments

Information was provided on the benefits and service of the Multi-State Information Sharing and Analysis Center (MS-ISAC.) The Council finalized its strategic goals and objectives and discussed its information sharing protocols.

#### Securing Voter Registration Databases

On February 16th, the Center for Election Innovation and Research hosted a meeting for election officials on security voter registration databases. The meeting focused on sharing best practices on protecting, detecting, and restoring voter registration databases. Nikki

Charlson and Kenway Chen, SBE's IT Programmer, attended this meeting and identified additional security practices to implement.

#### National Association of State Election Directors' (NASED) Winter Meeting

NASED hosted its winter meeting in Washington, DC from February 17th - 19th. Most of the agenda focused on cybersecurity and included a classified briefing by various federal agencies. Other topics included updates from the U.S. Election Assistance Commission and congressional staff members, post-election audits, and election night reporting by the Associated Press. Ms. Lamone attended this meeting, and Ms. Charlson joined her for the classified briefing and provided information on Maryland's 2016 post-election audit process.

#### Fiscal Year 2019 Budget Analysis

The Department of Legislative Services (DLS) recently released its analysis of SBE's FY19 budget, and a copy of this analysis was provided in the meeting folder. DLS proposed reducing SBE's budget for the new electronic pollbooks and asking SBE to provide an update on the voting system vendor's development of a solution to the navigation issues related to the ballot marking device. DLS also asked SBE to comment on why the voting system vendor did not resolve the navigation issues on the ballot marking device and provide an update on the status of cybersecurity efforts.

On February 20th and 22nd, the respective budget committees held hearings on SBE's FY19 budget. At these hearings, we agreed with DLS' recommendations and provided the requested information on the ballot marking devices and cybersecurity efforts. A copy of our written response to DLS' analysis was included in the board meeting folder.

Mr. Hogan stated that he would be willing to follow up with some members who were asking questions about the ballot marking tool at the Senate hearing. Ms. Lamone welcomed Mr. Hogan to do so and said that there is a House bill that has been introduced which would require that at least ten people use the ballot marking device; the National Federation of the Blind is lobbying for 30.

#### Maryland Association of Election Officials' Annual Meeting

The annual meeting of the Maryland Association of Election Officials will be held March 13 - 15, 2018, in Ocean City. The most current agenda and conference registration form are included in the meeting folder.

## **2. Election Reform and Management**

### Election Judges' Manual

The local boards continue to submit their customized chapters of the *Election Judges' Manual*. The Early Voting Supplement was made available to the local boards for their customization earlier this week.

### Printing, Inserting & Mailing of Absentee Ballots

The election calendar detailing the deadlines for mailing absentee ballots has been made for distribution to staff at SBE, the local boards, and the vendor. Weekly conference calls between SBE staff members and the vendor are held to ensure all supplies, documentation and processes are completed before important deadlines.

## **3. Voter Registration**

After 12 years with SBE, Stacey Johnson is leaving to pursue another career. Stacey has been an integral part of the development and maintenance of MDVOTERS. She will be missed, but we wish her well.

#### MDVOTERS

SBE conducted refresher training on processing same day registration and provisional transitions in the statewide voter registration database.

#### Electronic Registration Information Center (ERIC)

Since joining ERIC in 2012, the total number of voter registration records impacted is:

- Cross State Report (another member state has newer information than MD): 258,484
  - Potential Duplicates: 7,671
  - In-State Updates (more recent information at MVA): 188,880
  - Deceased (according to the Social Security Administration): 46,164
  - NCOA (USPS National Change of Address program): 439,757

#### MVA Transactions

During the month of January 2018, MVA collected the following voter registration transactions:

New Registration - 8,135	Residential Address Changes - 11,964
Last name changes - 1,828	Political Party Changes - 2,522

#### Non-Citizens

Removal of non-citizens - 8  
Removal of non-citizens who voted - 1  
Removal of non-citizens who voted multiple times - 2  
Non-citizens forwarded to the Office of the State Prosecutor - 8

### **4. Candidacy and Campaign Finance (CCF) Division**

#### Candidacy

As of February 19th, 523 candidates have filed at SBE for the 2018 Gubernatorial Election. The deadline to file for office is 9pm on February 27, 2018.

The CCF Division is sending to all candidates for State office who filed a certificate of candidacy in 2017 letters stating the need to file a financial disclosure statement by March 1, 2018. Additionally, State Ethics is sending out notices to these candidates. Failure to file a financial disclosure statement in the year of the election may result in the candidate not appearing on the ballot.

#### State Gubernatorial Fair Campaign Financing Program

State Senator Richard Madaleno and his running mate, Luwanda Jenkins, have publicly declared their intention to participate in the gubernatorial public financing program. This marks the first time in the history of the program that public financing of a gubernatorial election is being used in successive elections.

#### County Public Financing Programs

As of January 31, 2018, the Montgomery County Public Election Funds has made \$1,809,535 in disbursements to certified candidates. January had the biggest aggregate disbursement to date of \$796,948. So far, 15 out of 33 participating candidates have

qualified for the program. Committees may file matching fund requests on the first and third Tuesday of every month.

### Campaign Finance Enforcement

The following committees paid civil penalties:

1. Employees Action Movement-Maryland Classified Employees Association PAC paid a \$850 civil penalty on January 24, 2018, for failing to maintain account book and records; failing to report all contributions received and expenditures made on a campaign finance report(s).
2. Friends to Elect Rita Weaver paid a \$150 civil penalty on January 25, 2018, for disbursements by unauthorized method and failing to report all expenditures made on a campaign finance report.
3. Friends of Johnny Mautz paid a \$50.00 civil penalty on February 2, 2018, for a self-reported authority line violation.
4. Citizens for Cyriacus Okoro paid a \$150.00 civil penalty on February 5, 2018, for making disbursements by an unauthorized method and failing to maintain account books and records.
5. Friends of Liz Copeland was referred to the Office of the State Prosecutor for making non-check disbursements for walk-around services. The committee paid a civil penalty of \$95.00 on February 1, 2018.

### 5. **Project Management Office (PMO)**

#### Inventory: Excess Equipment Disposal

SBE continues to work with the Department of General Services (DGS) and the State's contract recycler to dispose of the TS-R6 voting system and other legacy equipment and supplies. To date, 10,004 TS-R6 units have been picked up by the recycler. During this reporting period, SBE sold to jurisdictions in the State of Connecticut 60 Accuvote Optical Scan units. In addition, SBE sold 2,000 voter access cards, the cards used with the legacy touchscreen voting system.

#### Inventory System Updates

SBE continues to work with the local boards to ensure that each office's Accountable Officer understands the fundamentals of the inventory system in order for them to update information and fulfill their responsibilities in the inventory production system. To help the Accountable Officers stay up-to-date on the inventory system requirements, SBE developed a weekly inventory communication vehicle. This weekly communication supplements the existing Inventory Dashboard, and both are used to provide information, documents, and videos.

#### Staffing

SBE's PMO is working with others at SBE to ramp-up the 2018 Primary Election statewide staffing efforts. SBE's Training Coordinator, Sharon Tolson-Feemster, started work on February 1st, and she is working to onboard the trainers who will be training throughout the State. The expectation at peak is to have between 400 - 450 temporary resources in varying capacities supporting the upcoming primary election.

#### Other

SBE continued to work with the Worcester County Board of Elections and the Worcester County administration to find and finalize a new local board office and warehouse. Most of the Worcester equipment and supplies are stored at SBE's Central Warehouse. When

the Worcester County Board of Elections has a new facility, the equipment and supplies will be transported back to Worcester County. The uncleaned equipment will be disposed of as per DGS' disposal requirements.

On February 20th, the Worcester County Board of Commissioners approved the move forward to sign a lease for 5,000 square feet for the office and warehouse at the Royal Plus facility.

The PMO is actively working on additional efforts in support of the 2018 Primary Election. These efforts include the setup and support of the helpdesk system and the implementation of the temporary resource time-tracking application.

## 6. **Voting Systems**

### Pre Primary Testing & Training Exercise

A statewide pre-primary testing and training exercise was conducted last month. This testing included updated pollbook software for all the local boards, new pollbook hardware for Charles and Caroline Counties, and refresher training on the voting system, including updated procedures for the DS850 high-speed central scanner for those local boards that use them.

### Electronic Pollbooks

Testing during the pre-primary testing and training exercise uncovered a bug in the pollbook software. Following discussions with ES&S, this bug is being investigated. Once fixed, the software will be re-tested prior to being installed statewide.

SBE and ES&S are also looking to make changes to the prototype tablet pollbooks tested in Charles and Caroline Counties, and as such, these tablets will not be used in the 2018 Primary Election in those two counties.

### Additional Voting Equipment

For the 2018 Elections, SBE is leasing additional voting equipment from ES&S. This includes 465 precinct-based scanners, 6 additional DS850 high-speed central scanners, and associated ballot boxes, bins and memory drives. Deliveries to SBE's Central Warehouse commenced last week, where they will undergo acceptance testing prior to delivery to the local boards. All of this equipment will be delivered to the local boards by March 16<sup>th</sup>.

SBE is also procuring ancillary items, including paper rolls for scanners and pollbooks, seals, ballot on-demand printers, and additional network equipment and barcode scanners for the ten new early voting sites.

### Transportation

The transportation vendor, Interstate, is scheduling planning meetings with all the local boards in preparation of delivery and pickup of equipment for the primary and general elections. They have also submitted their training guide for their staff, and this has been approved by SBE.

## 7. **Legislation - 2018**

A chart of the legislation we are tracking was provided. To date, most legislation has only had a committee hearing with no further action. We provided written testimony in support of SB 333, a copy of which is provided in the meeting folder. SB 333 codifies our

current canvassing practice and focuses on mitigating fraud. Noted below is the one bill that has been approved by a committee and is moving through the process.

SB 281 - Altering the membership of the Maryland Cybersecurity Council to include the State Administrator of Elections or the State Administrator's designee and other various changes to the Council. This bill is scheduled for final passage in the Senate on 2/23.

## 8. **Information Security & Technology**

### Department of Homeland Security (DHS) - Physical Assessments

DHS offers physical assessments of facilities to identify improvements to a facility's physical security. DHS has performed this assessment at three local boards' facilities - Anne Arundel County, Baltimore County, and Carroll County, and assessments for several more local boards have been scheduled or are being scheduled. The physical security of these facilities is critical, as critical voting processes are performed and critical voting equipment are stored at these facilities.

### Department of Homeland Security (DHS) - Cyber Assessments

Over two days this month, representatives of DHS conducted several assessments of MDVOTERS, the State's voter registration, candidate, and election management system, and the suite of online services SBE offers (e.g., voter look-up, online voter registration, etc.) These assessments are not customized for election systems or Maryland's systems, but they can help with prioritizing resources and identifying where improvements can be made. Summaries of the assessments DHS conducted are included in the board meeting folder. DHS will conduct similar assessments on MD CRIS, the State's online campaign finance system, in April.

## **ASSISTANT ATTORNEY GENERAL'S REPORT**

Mr. Trento submitted the following report:

1. *Benisek v. Lamone*, No. 17-333, October 2017 Term (Supreme Court). This case involves claims that the State's congressional districting map is an unconstitutional political gerrymander. Certiorari was granted in December. On February 21, 2018, the State defendants filed its response brief, and oral argument has been scheduled for March 28. Assistant Attorneys General Sarah Wright and Jen Katz have been representing the State Board in this litigation, and Solicitor General Stephen M. Sullivan will argue the case in the Supreme Court.
2. *In the Appeal of Kennedy Services, LLC*, MSBCA 3064 (Md. State Bd. of Contract Appeals). This matter involved the bid protest of Kennedy Services challenging the State Administrator's award of a staffing contract to another vendor. After a Second Amended Order was issued January 5, 2018, remanding the case to the Procurement Officer for award of the contract to Kennedy Services, Kennedy Services ultimately withdrew their bid. The contract has since been awarded to the other vendor. Assistant Attorney General Douglas Carrey-Beaver, Principal Counsel for the Contract Litigation Unit, represented the State Board in this matter.
3. *In re Petition of the Maryland State Board of Elections*, No. 24-C-17-005677 (Cir. Ct., Baltimore City). This matter relates to a petition for judicial review of a decision of the Board of Contract Appeals holding that SBE had breached its contract with Star Computer Supply ("Star") when it sought to recover money it had paid Star through an offset against

other amounts payable to Star by the State of Maryland under unrelated contracts. On February 12, Star filed its response to the petition for review as well as a cross-petition for attorneys' fees. Assistant Attorney General Jonathan Pomerance is representing the State Board, and is preparing a reply memorandum in support of the petition as well as a motion to dismiss the cross-petition for attorneys' fees. The matter is scheduled to be heard in the Circuit Court on March 13.

4. *Fusaro v. Davitt et al.* (U.S. District Court, D. Md.). Plaintiff Dennis Fusaro has 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. The State defendants filed their motion to dismiss the complaint on January 26, arguing that the statute governing access to Maryland's voter registration list is constitutional, and will file a reply brief in support of the motion tomorrow, February 23. Assistant Attorney General John Grimm is representing the State Board in this litigation.
5. *Claudia Barber v. Maryland Board of Elections*, No. C-02-CV-17-001691 (Cir. Ct. Anne Arundel Cnty.) On January 25, Ms. Barber appealed from the Circuit Court's January 11 dismissal of her complaint. Ms. Barber sought damages and judicial review of, among other things, the State Board's decision not to issue a declaratory ruling permitting her to use campaign funds to pay for litigation costs she incurred in her unsuccessful attempt to retain her position as an administrative law judge in the District of Columbia. Ms. Barber was ruled ineligible for that position due to her candidacy in 2016 for Judge of the Circuit Court for Prince George's County, Maryland. Assistant Attorney General Jen Katz represented the State Board in this litigation, and Assistant Attorney General Andrea Trento will represent the State Board in the appeal.
6. *Krishanti Vignarajah v. Larry Hogan for Governor, et al.*, No. C-02-CV-17-002883 (Cir. Ct. Anne Arundel Cnty.) On October 7, 2017, Ms. Vignarajah filed a complaint for declaratory relief, seeking a declaratory judgment that she meets the statutory eligibility requirements to be a candidate for Governor in the 2018 election. On November 27, 2017, the State defendants moved to dismiss, and argument had been scheduled to be heard on that motion in early February. Shortly before oral argument, Ms. Vignarajah voluntarily dismissed her complaint.

In response to a question from Mr. Hogan, Mr. Trento explained that there was something in the press from a spokesperson from the Larry Hogan campaign that challenged her eligibility, so that is why she named them the defendants. They were dismissed voluntarily from the case before Ms. Vignarajah voluntarily dismissed the lawsuit altogether.

#### **APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES**

Mr. DeMarinis presented requests from nine campaign committees to waive late fees incurred by the committees. The committees requesting a waiver of late filing fees are listed below:

1. Bishop, John, Committee to Elect
2. Daras, Mike Friends of (Michael Daras)
3. Davis, Richard Vision
4. Gilford, Amy Friends of
5. Khorakiwala, Almina Friends of
6. Montgomery County NOW PAC

7. Pauler, Viki Citizens for
8. Womer, Scott Citizens for
9. Young, Brad Friends of

Mr. Hogan made a motion to approve the waiver requests from the nine committees, and Ms. Lawlah seconded the motion. The motion passed unanimously.

### **APPROVAL OF REQUESTS FOR CONFIDENTIALITY**

Mr. DeMarinis presented requests from 13 voters to designate certain information confidential and protected from public disclosure. Ten of the voters are sitting judges and one is a military trial judge. Ms. Lamone pointed out that one of the voters is not a sitting judge, but is a candidate for judge. Mr. Cogan stated that he did not recognize the name of one individual claiming to be a sitting judge. Mr. McManus proposed tabling the requests for these two voters in order to obtain additional information, and excluding them from the list of approved requests for confidentiality.

Ms. Lawlah made a motion to grant the confidentiality requests from the ten sitting judges and one military trial judge, and Mr. Hogan seconded the motion. The motion passed unanimously.

### **ADMINISTRATIVE CLOSURES**

Mr. DeMarinis presented two accounts that meet the requirements for administrative closure — Melissa Bagley for A Greater Baltimore and Friends of Jonathan Shurberg.

Ms. Howells made a motion to administratively close the two accounts in question, and Mr. Cogan 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)(1), which permits closing a meeting to discuss a personnel matter that affects a specific individual. Meeting in closed session allows the members of the State Board to discuss compensation of employees over whom the State Board has salary setting authority.

Ms. Howells made a motion to convene in closed session, and Ms. Lawlah seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(1) of Section 3-305 of the Open Meetings Act to discuss compensation for five individuals employed by local boards of elections.

The closed session began at 4:42 pm. In addition to the board members present at the open meeting, Ms. Lamone, Mr. Trento, and Ms. Charlson were present at the closed session. During the closed session, Ms. Charlson presented one-time step adjustments for the four individuals employed by local boards of elections and the proposed salary for the individual selected as the Deputy Director for the Queen Anne's County Board of Elections. Mr. Hogan made a motion to accept the requested one-time step adjustment for the four individuals, and Ms. Lawlah seconded the motion. The motion passed unanimously.

Ms. Lawlah made a motion to accept the proposed starting salary for Ms. Spence, and Mr. Hogan seconded the motion. The motion passed unanimously.

The closed meeting adjourned at 4:54 pm.

### **OLD BUSINESS**

### *Ballot Duplication Software – Certification & Contract Requirements*

Ms. Howells wanted to follow up on the issues with the ballot duplication software and requested information on the technical specifications of Runbeck's equipment. Ms. Howells was particularly interested in the speed of the equipment because some of the local boards stopped using ballot duplication equipment in 2012 due to issues with speed. Ms. Howells was concerned with the usefulness of Runbeck's ballot duplication software because she heard from Prince George's and Montgomery Counties that it is not very fast, and that there are cost issues as well.

Ms. Charlson stated that Runbeck will be at the MAEO Conference, so the board members are welcome to look at the equipment there. She believed Ms. Perrone reported last month that there weren't many specifications in the contract, but rather, it focused more on the functionality required of the system. Ms. Charlson verified that the counties are responsible for paying for the equipment themselves. In response to a question from Ms. Howells, Ms. Perrone confirmed that the software would cost approximately \$47,000 for each county.

Ms. Howells reported that the Prince George's County Board of Elections did not budget for this and that they said they could do three ballots by hand in the time it takes the machine to do one. While voter turnout will likely be lower for the Gubernatorial Primary Election, Ms. Howells voiced concern about the burden of ballot duplication on the local boards, especially as absentee voting grows.

Ms. Charlson explained that only one jurisdiction is currently considering using the ballot duplication software for the 2018 Primary Election, while the others might consider it for 2020, so we have time to sort out any issues. Ms. Perrone mentioned that this would allow local boards to budget for the ballot duplication software for future elections.

### *Non-Citizens – Registering and Voting*

Ms. Howells requested an update on the software change to MDVOTERS regarding tracking non-citizen removals. She expressed that it is important to track these removals and trends, and that she would like to know if there is a way to track other things, such as the number of people who have voted. Ms. Wagner clarified that it is a manual process to track who has voted and who has not.

Ms. Wagner informed the board that as of March 1<sup>st</sup>, "non-citizens" will be included as a cancellation reason in MDVOTERS. There will be an article in this week's Registrar and next week's County Bulletin, alerting the local boards to this new reason code and instructing them to use this code when cancelling someone due to him/her not being a U.S. citizen. This functionality will be utilized moving forward, but we are unable to make changes to records that have been previously cancelled in the database.

Ms. Wagner said she believed that MDVOTERS does capture the source of registration, and she will follow up to confirm. She stated that the majority of registrations are coming from the MVA. Another source is "NVRA by mail" which refers to paper applications that can be secured at any NVRA (National Voter Registration Act) agency. However, under NVRA, you cannot divulge the exact location where an individual registered. Ms. Wagner also stated that our online system could be an additional source, as she did see an instance of that in the database.

### *Online Ballot Delivery – Usage*

Ms. Charlson presented a table which displays rates of online ballot delivery usage since the 2012 Primary, by election and type of voter (domestic and civilian voters, military and overseas voters,

and all voters). The table is included in the meeting folder. In response to a question from Mr. McManus, Ms. Charlson stated that this is now public information, as of February 22<sup>nd</sup> and it will be included in the meeting materials that will be posted on our website. Ms. Howells noted that the numbers are increasing.

Ms. Howells requested to see the legal analysis that was done on Election Law Article, §9-306, the provision that makes ballot delivery over the Internet available to voters. She feels we should interpret this law as permissive, but it is currently being interpreted and implemented as a command.

Ms. Charlson thought the legal advice was sent by Jeff Darsie after last month's board meeting. Ms. Howells said that advice was regarding a separate issue – the ballot duplication software. This arose from a citizen letter, which questioned the compliance with the certification requirements and uniformity requirements for the voting system, since we are only offering the new ballot duplication software to five counties. Mr. Darsie sent an Attorney General opinion from 2012 regarding whether or not the online ballot marking tool needed to be certified and the conclusion was that it did not. However, Ms. Howells felt the Attorney General opinion focused only on the online tool, but it dismissed the equipment and software used for canvassing that would read barcodes and duplicate ballots, which is more aligned with the functionality of the ballot duplication software.

Ms. Howells would like to see the legal analysis that says §9-306 is a command, rather than permission. She believes we need to offer online ballot delivery only to those who need it (military and overseas voters and voters with disabilities), but it does not need to be made available to every registered Maryland voter, which is the current practice. She explained last month that she is highly concerned about the local boards being overwhelmed and also about the risk of any online system. If there is ambiguity in §9-306, this means the interpretation is up to the board of elections, and Ms. Howells believes the board will receive blame if any issues arise. She stated that we have been warned of the risks by local boards and computer science experts.

Ms. Howells stated that there is some legislation coming through (House Bill 1658 and Senate Bill 1126) that would change the law so that we are not permitted to make online ballot delivery available to every registered voter in the state. Instead, it would only be available to satisfy federal mandates.

Ms. Howells would also like to know if there is a legal definition for when a ballot is cast. Her opinion is that a ballot should be considered cast once it is no longer possible for a voter or a local board of elections employee to take it back.

Mr. Trento is currently looking into the two questions around the ballot duplication software issue, and will also look at the §9-306 issue, as well as the question about the definition of when a ballot is cast. In response to a question from Mr. McManus, Mr. Trento said memoranda that don't rise to formal Attorney General opinions are stored and should be retrievable if there is advice that already exists. If these issues have already been the subject of advice, Mr. Trento will track that down, and if not, he will work on answering the questions discussed. He thinks the definition of when a ballot is cast will factor into these legal analyses as a subsidiary question.

Mr. Trento understands there is a manual layer for comparing the duplicated ballot on the screen to the ballot submitted by the voter, so it can be determined by the election official if the

duplicated ballot reflects the intent of the voter. In Ms. Howell's opinion, the duplication equipment seems to assist in the casting of a ballot.

In response to a question from Ms. Howells, Ms. Charlson recalls Mr. Darsie saying that §9-306 was well debated and that the intent of the legislature was to allow any voter to obtain an absentee ballot online. Mr. McManus said it can be contentious to look at legislative intent rather than the language itself, but that is something that can be addressed in the legal memorandum.

#### *Declaratory Ruling Update*

Mr. DeMarinis reported that the Republican Governor's Association (RGA) submitted additional documents that SBE requested for their declaratory ruling request. The documents are under review by Mr. Trento and the recommendation will be provided to the board, prior to the March board meeting, for their review. Mr. McManus clarified that this declaratory ruling is regarding the issue with the firewall for fundraising. The board will anticipate the recommendation.

### **NEW BUSINESS**

#### *Letter to Voters Responding to new MVA Language*

In response to questions from Ms. Howells, Ms. Wagner explained that SBE noticed an increase in people indicating that they were not qualified to register to vote when registering at the MVA. Tom Surock at the MVA went out into the field to do an analysis and discovered that the screens (format and language) seemed to be the problem. Previously, the screen said "No, I do not meet all of the qualifications above" and SBE believes people were just checking this option in a rush to leave the MVA. SBE sent out letters to 100 registered voters who checked this option in order to verify their eligibility to vote; a copy of the letter was included in the meeting folder. As a solution, the MVA, in collaboration with SBE, revised the screen. With the new screen, the volume of "registered but not qualified" voters has decreased significantly. There has been only one referral from an LBE for an individual who replied to the letter, indicating that he/she is not a U.S. citizen. In response to a question from Ms. Howells, Ms. Wagner said the voter sent the letter back to the local board and the local board referred the individual to SBE as a non-citizen who was registered to vote. In response to a question from Mr. McManus, Ms. Wagner clarified that this individual was referred to the Office of the Special Prosecutor (OSP).

#### *Public Comment*

Melissa Youngbar, a resident of Baltimore City, described her negative experience while voting at the Waxter Center in the 2016 Election. She explained that there were four precincts in one building and that the building is shared with other organizations, all sharing the same entrance. Inside of the polling place, she felt that it was disorganized and that there was inadequate signage. She also said voters were taking photos inside of the polling place, which she did not agree with.

Ms. Youngbar also took issue with the presence of mounted police officers outside of the building entrance because she felt they were intimidating and unnecessary. She stated that there was campaign signage and people promoting candidates outside of the building as well. At the Waxter Center, she believed the Republican ballots were separate from the machine the Democrats were using. Ms. Youngbar was handed a packet that came with her ballot and a thick marker that bled through the ballot, and when she was directed to a certain table, a gentleman shouted "We have a Republican here!" When she asked where to cast her ballot, one of the election officials asked to see her ballot to see if she did it correctly and she refused to give it to him because she did not feel he had the right to see her ballot.

Ms. Youngbar stated that she made a past complaint via telephone to SBE about receiving voter registration cards for several voters other than herself when she lived at The Cecil Apartments, which are located in Baltimore City. When she would call SBE or the post office, she was told to throw the voter registration cards in the trash, but she felt this is a serious issue that needs more attention. She expressed concern that many individuals have registered to vote using her address, which she believes compromises the integrity of the election.

#### **DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

There were no campaign contributions to report.

#### **SCHEDULE NEXT MEETING**

The next meeting is scheduled for Thursday, March 22, 2018, at 4:00 pm.

#### **ADJOURNMENT**

Mr. Hogan made a motion to adjourn the open meeting, and Ms. Howells seconded the motion. The motion passed unanimously. Mr. McManus adjourned the meeting at 5:28 pm.