

State of Maryland 

State Board of Elections – October 4, 2018 Meeting

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, 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
Keith Ross, Assistant Deputy, Project Management
Jared DeMarinis, Director, Candidacy and Campaign Finance
Mary Wagner, Director, Voter Registration
Erin Perrone, Director, Election Reform and Management
Tracey Hartman, Director of Special Projects
Paul Aumayr, Voting Systems Director
Cortnee Bryant, Deputy Director, Election Reform and Management
Susan Tang, Database Administrator, Information Technology Division
Janey Hegarty, Information Technology Division

Also Present: Katie Brown, Director, Baltimore County Board of Elections
Nancy Stratton, Deputy Director, Baltimore County Board of Elections
Kevin Keene, Director, Harford County Board of Elections
Dale Livingston, Deputy Director, Harford County Board of Elections
Alisha Alexander, Director, Prince George's County Board of Elections
Ralph Watkins, League of Women Voters – Maryland
Lynn Garland
Holly Joseph, Montgomery County voter
Deborah C. Wilder, Delta Sigma Theta, Prince George's County
Danielle Gaines, Maryland Matters

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:00 pm and stated that there was a quorum present. Mr. McManus stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM AUGUST 2018 MEETING

Ms. Howells made a motion to ratify the approved minutes from the August 23, 2018 meeting, and Mr. Hogan seconded the motion. The motion passed unanimously.

ADDITIONS TO THE AGENDA

Ms. Duncan requested that the request by the Montgomery County Board of Elections to deploy additional ballot marking devices be added under agenda item 9.

ADMINISTRATOR'S REPORT

1. Introduction of New Employees

Gary Hastings joined SBE as the newest member of our Information Technology (IT) Division. Mr. Hastings started his service to the State of Maryland in 2008 with the Comptroller of Maryland as an IT Technical Support Specialist. He has a vast knowledge of system administration, application, and end-user support. With Mr. Hastings, SBE's IT Division is now fully staffed.

Susan Tang has also joined SBE, although she has been working as our database administrator under a contract. Ms. Tang has been an integral member of the Voter Services project and inventory system, and we look forward to her supporting elections into the future.

SBE Tabletop Disaster Recovery Exercise

On September 11, 2018, we participated in a tabletop exercise and practiced preparing for and conducting an election in the face of a hurricane. The Category 3 hurricane hit the Eastern Shore on the Friday before the voter registration deadline and moved inland as a Category 1 hurricane. It caused widespread damage, power outages, and closed roads. This type of tabletop exercise was a different approach than the hands-on exercise we provided for the local boards in August, but it is equally valuable. We worked through the entire election process under these conditions.

Pre-Election Meeting with Political Parties and Gubernatorial Campaigns

On September 12, 2018, we hosted a meeting for the political parties and gubernatorial candidates. We host this meeting before every election and share with the parties and campaigns information on how election litigation generally proceeds and other information relevant to the election. A summary of this meeting was included in the board meeting folder.

2. Election Reform and Management

2018 General Election - Absentee Ballots

On September 21, 2018, SBE transmitted emails to Election Systems & Software (ES&S), the State's vendor for printing, inserting and mailing absentee ballot packets to mail ballots to requesting military and overseas voters. We are happy to report that we complied with the deadline established in the federal Military and Overseas Empowerment Act (MOVE) and in response to a request from the U.S. Department of Justice, supplied data on our compliance.

On September 27, 2018, the first round of absentee ballots were transmitted to requesting domestic, civilian voters. This included ballots mailed by ES&S and emails with ballot log-in information sent by SBE.

As of September 30, 2018, SBE has sent 16,021 emails with information about how to access SBE's online ballot delivery system. Over 5,500 voters have successfully logged into their accounts, and over 2,500 voters printed their ballots.

Election Judge Training Evaluations

Ms. Perrone and Cortnee Bryant are in the process of evaluating the election judge training classes in nine different local boards of elections. All 24 local boards will have had their election judge training class evaluated between the 2016 and 2018 elections. Prior to the 2020 Primary Election, the election judge training class evaluations will begin again so that all 24 local boards of elections will be evaluated by the end of the 2022 General Election.

Mr. Cogan asked Ms. Perrone how election judge training evaluations are handled. Ms. Perrone explained that six local boards' trainings are evaluated each election cycle (six trainings before a primary election and six trainings before a general election), so that a training at each of the local boards will be evaluated at least once in a four-year period. In response to questions from Mr. Cogan and Mr. Hogan, Ms. Perrone stated that Baltimore City election judge training was evaluated on September 22nd and that the evaluation results would be forthcoming in the next comprehensive audit. In regards to election judge recruitment efforts, Ms. Perrone stated that all State employees are offered administrative leave if they choose to work as an election judge.

3. Voter Registration

National Voter Registration Day

Tuesday, September 25th was National Voter Registration Day. Both Facebook and Google heavily promoted this event. On that day, over 8,800 individuals used our online voter registration and ballot request system and the system saw steady traffic in the days before and after September 25th.

Voter Registration Deadline

The deadline to register to vote or change a current voter registration record is 9:00 p.m. on Tuesday, October 16th. This is a postmark deadline, so those paper applications that have a postmark on or before October 16th will be deemed timely and therefore processed. All election board offices, including SBE, will be open until 9:00 p.m.

MVA Electronic Records

SBE staff members and select local board employees are currently processing the electronic records that MVA failed to forward to SBE. Each record must be closely reviewed to make sure good data is not being overwritten by outdated information. To date of the 16,000 records needing close review and processing, under 2,000 remain. The records will be processed prior to the voter registration deadline.

MDVOTERS

On Saturday, October 20th, the electronic pollbooks will be populated with the most current voter registration information allowing the local boards to move forward with the Logic and Accuracy testing of the electronic pollbooks.

MVA Transactions

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

New Registration – 12,140	Residential Address Changes – 48,087
Last name changes – 2,407	Political Party Changes – 3,940

Non-Citizens

Due to staff being out on medical leave, there is no update.

Submitted to the Office of the State Prosecutor. 0

Removal of non-citizens - 0

Removal of non-citizens who voted - 0

Removal of non-citizens who voted multiple times - 0

Non-citizens forwarded to the Office of the State Prosecutor - unchanged since last reporting.

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

October 18th is the deadline for filing the certificate of candidacy for a write-in candidate.

Campaign Finance

October 12th is the deadline for all Gubernatorial election participating ballot issue committees to submit the Ballot Issue Report. Notices of the due date of the report were sent to the chair, treasurer and candidates for those committees. Failure to file timely will result in a fine of \$10 per day up to \$500. The late fee must be paid with campaign funds.

October 26th is the deadline for all Gubernatorial election participating political committees to submit the 2018 Pre-General 2 Report. Currently, the CCF Division has over 2,300 participating political committees in the gubernatorial election. Notices of the due date of the report were sent to the chair, treasurer and candidates for those committees. Failure to file timely will result in a fine of \$10 per day up to \$500. The late fee must be paid with campaign funds.

Mr. DeMarinis presented the Board members with a list of late fees for failing to file a timely campaign finance report. Mr. Hogan made a motion to accept the late fees, and Ms. Howells seconded the motion. The motion passed unanimously. Mr. DeMarinis noted that to date, the State has collected approximately \$37,000 in late fees.

Public Financing Program

As of August 31, 2018, Montgomery County disbursed \$395,974 to the nine qualified candidates for the 2018 General Election. Two candidates are not eligible for disbursements because they are unopposed. Montgomery County received \$29,876 in unspent funds from the 2018 Primary Election.

The audit of the Madaleno-Jenkins gubernatorial ticket committee is underway. The audit staff is working closely with committee to receive all the necessary documents.

Campaign Finance Enforcement

The following committees had an Election Law Article violation(s) and paid a civil penalty as noted:

1. Friends of Steven Biddle: On August 14, 2018, paid a civil penalty of \$250.00 for an authority line violation.
2. Kyle Sefcik for Council: On August 20, 2018, paid a civil penalty of \$100.00 for making a cash disbursement greater than \$25.00.
3. Maryland Realtors Political Fund: On August 20, 2018, paid a civil penalty of \$16,626.17 for failing to timely file an independent expenditure report.
4. Friends of Ernest Canlas: On August 22, 2018, paid a civil penalty of \$200.00 for making a cash disbursement greater than \$25.00 and failing to maintain expenditure records.
5. Citizens for Rod McMillion: On August 22, 2018, paid a civil penalty of \$250.00 for an authority line violation.
6. 1199 SEIU NYS Political Fund: On August 27, 2018, paid civil penalties of \$8,580.00 for failing to register timely and late filing of reports.
7. Friends for Wayne Foote; Friends of Bob Farrell; and David Bohn for Board of Ed: On August 29, 2018, paid a civil penalty of \$250.00 for an authority line violation.
8. Elect Doug (Jeffrey) Rathell: On September 7, 2018, paid a civil penalty of \$250.00 for an authority line violation.
9. Democratic Central Committee Member Candidate – Jared Schablein: On September 10, 2018, paid a civil penalty of \$50.00 for an authority line violation.
10. Friends of Debbie Haddaway Ruzicka: On September 12, 2018, paid a civil penalty of \$250.00 for an authority line violation.
11. Friends of Sharon McCollough: On September 17, 2018, paid a civil penalty of \$100.00 for making a cash disbursement greater than \$25.00.

International Election Missions

Per the delegated authority from 2016, the CCF Division is reviewing requests for international election observation missions for the 2018 General Election. Currently, the following organizations or entities have asked to observe the elections in Maryland:

1. Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODHIR) (approved in 2016)
2. OSCE/ODHIR Parliamentary Assembly (approved in 2016)
3. Central Election Commission of Bulgaria (At request of U.S. State Department)
4. United States International Center for Electoral Support (USICES)

Before approval, Mr. DeMarinis conducts the necessary background checks with the appropriate federal, State, and local agencies. Mr. DeMarinis has communicated with the U.S. State Department regarding all four groups. If any additional organizations or entities seek to observe an election in Maryland, we will inform the Board members.

5. Project Management Office (PMO)

Inventory: Excess Equipment Disposal

The PMO continued 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. Currently, SBE is reconciling the reports from the recycler for the TS-R6 and TSX units. In addition, SBE continues to work with DGS to auction off, recycle, or send to trash the other types of equipment that still remain at the central warehouse.

After making several attempts to sell the TS-R6 black cases, SBE is using the DGS trash contractor for the disposal of the black cases. To date, 2,276 of the 17,200 black cases have been picked up by the trash contractor.

Inventory System Updates

The required annual reports for equipment and for supplies were both submitted to DGS in September. Keith Ross and Vince Omenka completed DGS's annual Property Officer training, held at the Maryland Department of Transportation Headquarters on October 1st.

Other

SBE continues to work with the Worcester County Board of Elections and Worcester County concerning the financial concerns as it pertains to the replaced equipment. The uncleaned equipment, still located at the SBE Central Warehouse, will be disposed of according to DGS' disposal requirements.

In addition, SBE has received reports and corrective actions that were received from other local boards pertaining to leaks or other issues in their warehouses. There was no report of damage to any of the equipment.

6. Voting Systems

Ballot Printing

SBE's ballot printing vendor has been printing and delivering ballots for early voting, Election Day, provisional voting, and some absentee voting (*e.g.*, the nursing home and assisted living program, in-person requests, and ballot packets mailed after ES&S stops mailing), in addition to test decks. Approximately 10.3 million ballot sheets are being printed and is scheduled to be completed this weekend. This large number of ballots is due to the fact that Montgomery County

and Prince George's County have three-page ballots, and seven other jurisdictions have two-page ballots.

Test decks are sets of pre-marked ballots that include each ballot style and at least one vote for each candidate. The test decks include marked pre-printed ballots and ballot activation cards marked by the ballot marking device. Ballot activation cards for the test decks are created using the touchscreen interface and the headset and keypad. The ballots in the test decks are used during pre-election testing to validate the tabulation of the voting system.

SBE has ordered ballot activation cards for use with the ballot marking devices. These cards have been delivered to the local boards.

Logic and Accuracy Testing

The local boards have started the pre-election Logic and Accuracy testing of the voting equipment for the 2018 General Election, and this will continue for the next three weeks. For each voting location, the local board will test one or more scanners and one ballot marking device. Each scanner will tabulate ballots in a test deck and generate results. The results are compared against the expected results to verify accurate tabulation. The local board of elections then clears the test results and seals the unit for the election.

Transportation

The transportation vendor is finalizing the schedule for delivery and pick up of equipment for the 2018 General Election. SBE is meeting with the transportation vendor to discuss issues arising from the large amounts of ballots, which will likely increase in the number of trucks used, especially for early voting.

Delivery of early voting equipment will start up to three days before early voting begins, but early voting equipment must be picked up after voting ends on the last day of early voting. Delivery of Election Day equipment typically starts eight days before Election Day and the return of the Election Day equipment typically takes a similar time.

7. Information Security & Technology

Cybersecurity Training for Election Officials

In August, the Center for Technology and Civic Life offered an online, interactive cybersecurity course for election officials. SBE and almost all of the local boards participated in this three class course, which included guides for future reference. The topics ranged from the basics of hacking to press communications during a cyber threat, and beyond. The technical topics were explained in layman's terms, and gave fictional and real-life examples as they related to election security.

State's Online Cybersecurity Training Program

The State Department of Information Technology has introduced a new online cybersecurity training program. All SBE employees and all local board employees with a maryland.gov email account are required to participate in this program. It includes a monthly, interactive online lesson on cybersecurity and how to protect the systems and data we use in State government.

New Computers at SBE

SBE has procured and deployed 20 Microsoft Windows 10 Professional computers. The new computers have replaced old Microsoft Windows 7 Professional computers. The goal is to replace and/or upgrade all the computers at SBE to Windows 10 Professional before the end of 2019. There is also improved performance and security with Windows 10. Microsoft has announced

that they will no longer support Windows 7 systems and will stop providing security updates after January 20, 2020.

Emergency Generator

An emergency standby generator has been rented for the 2018 General Elections in the rare occurrence of a power outage at SBE. The emergency standby generator will be delivered, installed, and tested on October 22, 2018. Within seconds of a power outage, an automatic transfer switch senses the power loss and commands the standby generator to start and then transfers the electrical load to the generator. The emergency standby generator is scheduled to be returned on November 19, 2018.

ASSISTANT ATTORNEY GENERAL'S REPORT

Mr. Trento provided the following report.

1. *Benisek v. Lamone*, No. 1:13-cv-03233 (U.S. District Court, D. Md.). No change from the last update. This case involves claims that the State's congressional districting map is an unconstitutional political gerrymander. On June 18, 2018, the Supreme Court affirmed the denial of the preliminary injunction entered by the three-judge district court, holding that the court below did not abuse its discretion in concluding that the balance of the equities and the public interest both weighed in favor of the denial. The Court did not discuss the merits of the case. After remand, the parties submitted supplemental briefing on the impact of *Gill v. Whitford*, No. 16-1161, slip op. (June 18, 2018) and other late-term Supreme Court rulings on the issues in this case. On the morning of October 4, 2018, a hearing was held on the parties' fully briefed, cross-motions for summary judgment.
2. *Fusaro v. Davitt et al.*, No: 1:17-cv-03582 (U.S. District Court, D. Md.). Plaintiff Dennis Fusaro brought a complaint in federal court alleging that Maryland violates the First and Fourteenth Amendments by limiting access to the voter list to Maryland voters and only for purposes related to the electoral process. On September 4, 2018, the State defendants' motion to dismiss the complaint was granted, and the case was dismissed. On September 26, 2018, the plaintiff appealed.
3. *Johnson v. Prince George's County Board of Elections*, No. CAL16-42799 (Cir. Ct. Prince Georges Cnty.). No change from the last update. This case involves a challenge under the U.S. Constitution and Maryland Constitution and Declaration of Rights to the SBE's alleged failure to provide information and access to voter registration and voting resources to eligible voters detained by the Prince Georges County Department of Correction during the 2016 election. The case had been originally filed in the Circuit Court for Prince Georges County but was removed on the basis of the federal claims asserted by the Plaintiffs. On February 27, 2018, the U.S. District Court for the District of Maryland granted SBE's motion to dismiss the Plaintiffs' federal claims, declined to exercise jurisdiction over the state claims, and remanded the case to the Circuit Court for further proceedings. The parties are awaiting further direction from the court.
4. *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. The appeal is fully briefed, and the case is scheduled for argument in February 2019.

5. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). No change from the last update. This case involves the denial of access to Maryland’s voter registration database. Under Maryland law, access to the voter registration list is limited to Maryland registered voters and only for non-commercial, election-related uses. Judicial Watch—an elections watchdog group located in Tennessee—requested Maryland’s voter registration “database” and was denied because it was not a Maryland registered voter. Judicial Watch filed suit, arguing that the database was required to be disclosed under the federal National Voter Registration Act. On June 4, 2018, the district court denied our motion to dismiss, concluded that it is plausible that voter registration lists have to be provided under the NVRA, but also concluded that it was unclear whether the “database” that Judicial Watch sought was the same thing as the voter registration “list.” The court issued a scheduling order and the case is currently in discovery. Ms. Wagner will be deposed next week.
6. *Egbuonu v. Lamone*, No. CAL18-26458 (Cir. Ct. for Prince George’s Cnty.). On July 25, 2018, four Prince George’s County voters filed a petition for judicial review of the State Board’s acceptance and processing of the nomination of April Ademiluyi by the Libertarian Party for the contest for Judge of the Circuit Court for Prince George’s County, alleging that the nomination was not made in accordance with the Libertarian Party of Maryland’s constitution and therefore was not proper under Maryland law. On August 24, the court entered a preliminary injunction prohibiting the State defendants from certifying ballots containing Ms. Ademiluyi’s name. An emergency appeal was taken directly to the Court of Appeals, which affirmed the entry of the preliminary injunction on September 6. A final hearing on the merits was held on September 14, and judgment was awarded to the plaintiffs.
- 6A. *Libertarian Party of Maryland v. Lamone*, No. 1:18-cv-02825 (U.S. District Court, D. Md.). On September 11, 2018, the Libertarian Party of Maryland brought an action challenging the removal of Ms. Ademiluyi’s candidacy for Judge of the Circuit Court for Prince George’s County as a violation of the party’s constitutional rights under the First and Fourteenth Amendments. Initially, the party sought unsuccessfully to stay the state court proceedings in *Egbuonu v. Lamone*, and then, after judgment was entered in that state proceeding, sought to enjoin the State defendants from following the judgment in *Egbuonu*. On September 20, 2018, the Court held a hearing on the party’s motion for preliminary injunction was held, and denied the motion. No appeal has been filed. The State Defendants’ answer is due on November 12.
7. *The Washington Post, et al. v. McManus, et al.*, No. 1:18-cv-02527 (U.S. District Court, D. Md.). This case presents a challenge by a coalition of newspaper publishers that maintain an online presence to certain provisions of the recently-passed Online Electioneering Transparency and Accountability Act (the “Act”). Specifically, the plaintiffs challenge the constitutionality of the Act’s imposition of disclosure obligations on newspaper publishers that accept online political ads, its use of terms in defining those obligations that are allegedly vague and overbroad, and its empowerment of the Attorney General to pursue injunctive remedies for violations of the Act. The plaintiffs also contend that the Act is preempted by the federal Communications Decency Act. The plaintiffs filed their complaint along with a motion for preliminary injunction on August 17, 2018, naming the individual members of the State Board, the State Administrator, and the Attorney General as

defendants. On September 12, 2018, the Defendants filed an opposition to the motion for preliminary injunction. On September 24, Campaign Legal Center and Common Cause of Maryland filed an amicus brief in support of the defendants. The Court revised its original scheduling order and Plaintiffs are required to submit their reply on October 12. A hearing is set for November 16, 2018.

8. *Hanna v. Maryland State Board of Elections*, No. C-02-CV-002660 (Cir. Ct. Anne Arundel Cnty.). On September 5, 2018, plaintiff Willie Hanna filed suit to challenge the State Board's rejection of his petition candidacy for the contest for Delegate representing the 40th legislative district, on the ground that he had not submitted sufficient verifiable signatures in support of his petition. Mr. Hanna used a petition form that omitted several components that are required by Maryland law. On September 11, a summons was issued but to date only the complaint has been served on the Defendant.
9. *Segal v. SBE*: Jerome Segal was a Democratic candidate for U.S. Senate in the 2018 Primary Election but did not win the nomination. Mr. Segal submitted a petition for a new party (Bread and Roses) and filed as the new party's candidate for U.S. Senate. The new party petition did not have enough number of signatures, and the new party was not recognized. Mr. Segal sued challenging the procedures related to verifying signatures (i.e., the name standard) and the "sore loser" law which prevents him from being a candidate in the general election. The court denied his request for a preliminary injunction, and Mr. Segal has appealed to the 4th Circuit. No argument has been scheduled.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented requests from 28 campaign committees to waive late fees incurred by the committees. The committees requesting a waiver of late filing fees are listed below:

- | | |
|--|---|
| 1. Arikan, Lauren Friends of | 17. Jones, Ricarra Friends of |
| 2. Baltimore City Orphans' Court Campaign Slate | 18. Loewenthal, Michele E. Committee to Re-Elect |
| 3. Banach, Richard Citizens for | 19. Mack-Boyd, Angel Friends for |
| 4. Bernstein, Charles "Chuck" Friends of | 20. Oxenham, Christopher for Central Committee |
| 5. Blue, Michael for County Council, Citizens of | 21. Roche, (Winifred) Wini Friends of |
| 6. Cochran, Susan Citizens for | 22. Schneckenburger, Dan Friends of |
| 7. Collins, Cynthia Friends of | 23. Skovron, Kate for Delegate |
| 8. Cooper, Tyrone for the People | 24. Strickland Lucas, (JoWanda) for Register of Wills |
| 9. Crawford, Tim for Sheriff | 25. Thornton, Autrese Elect SB |
| 10. Dixon, Felicia A. Friends of | 26. Waugh, Steve Friends of |
| 11. Fiotes, Chris Citizens for | 27. Wicomico Co. Fraternal Order of Police Lodge III PAC Fund |
| 12. Friends of HoCo Slate 6 | 28. Yoho, Karen Citizens for |
| 13. Garrett, Lewyn Scott Committee to Re-Elect | |
| 14. Goddard, Urcille Friends of | |
| 15. Harbaugh, Jeremy Friends of | |
| 16. James, Jr. Walter Lee Friends of | |

Ms. Howells made a motion to approve the 28 waiver requests, and Mr. Funn seconded the motion. The motion passed unanimously.

Mr. DeMarinis stated that to date, \$37, 299.00 in late fees have been collected.

APPROVAL OF REQUESTS FOR WAIVERS OF TITLE 14 LATE FEES

Mr. DeMarinis presented a request from Zuckerman Spaeder LLP to waive late fees incurred under Title 14 of the Election Law Article and recommended that \$1,000 of the entity's late fees be waived but the remaining \$1,500 remain. Mr. DeMarinis noted that four entities requested waivers, but these requests were denied.

Mr. Funn made a motion to approve the recommended waiver, and Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF VOTING LOCATION CHANGES FOR 2018 GENERAL ELECTION

Request from the Baltimore City Board of Elections (1)

Ms. Perrone presented a request for a change in an early voting center for Baltimore City from Dr. Carter G. Woodson Modular Building School #160 to Patapsco Elementary School. Ms. Perrone stated that the reason the change is needed is because the current location is under construction. The proposed location is less than one mile away, is accessible for early voting, allows for electioneering, has adequate parking, is large enough to handle peak voting hour volume, and is close to public transit.

Mr. Cogan made a motion to approve the recommended change, and Ms. Howells seconded the motion. The motion passed unanimously.

Request from the Baltimore City Board of Elections (2)

Ms. Duncan presented several emergency polling place location changes due to the closing of several schools for renovations or demolition. The requested changes would still result in Baltimore City having 296 polling places. Those locations are:

1. Precincts 03001 & 03002
Old: School # 734 Baltimore Alternative Learning Academy 1601 Lombard Street, 21231
New: School #8 City Spring Elem/Middle 100 S. Caroline Street 21231
2. Precinct 26024
Old: School #49 Northeast Middle 5001 Moravia Road, 21206
New: School #431 Maritime Industries Academy, 5001 Sinclair Lane 21206
3. Precinct 26025
Old: School #206 Furley Elementary 4633 Furley Avenue 21206
New: Furley Recreation Center 4633 Furley Avenue 21206
4. Precincts 28007 & 28008
Old: Liberty Recreation Center 3901 Maine Avenue, 21207
New: Liberty Elementary School 3901 Main Avenue 21207

Ms. Duncan stated that these location changes have already been approved over email by the Board members. Mr. Funn made a motion to ratify the approval to move the polling places for these six precincts, and Mr. Hogan seconded the motion. The motion passed unanimously.

Request from the Baltimore County Board of Elections

Ms. Duncan presented a request for an emergency change to the polling place for Precinct 15-01 from Colgate Elementary to the Department of Economic and Workforce Development – Career Center at Eastpoint, 7930 Eastern Avenue, Baltimore, MD 21224. The reason for the request is that the current location is under construction and will not be available for the general election.

Katie Brown, Election Director for the Baltimore County Board of Elections, was present at the meeting and was introduced by Ms. Duncan.

Ms. Duncan stated that this location change had already been approved over email by the Board members. Ms. Howells made a motion to ratify the approval to move the polling place for one precinct, and Mr. Cogan seconded the motion. The motion passed unanimously.

Request from the Prince George's County Board of Elections

Ms. Duncan presented a request for an emergency change in polling place location for Precinct 06-05 from District Heights Elementary School, 2200 County Road, District Heights, MD 20747, to Spauldings Branch Road, 5811 Old Silver Hill Road, District Heights, MD 20747. The reason for the requested change is due to black mold contamination at District Heights Elementary School. The proposed site is accessible, meets the needs for space, electrical, and other polling place requirements. The old location is approximately 0.5 miles from the proposed location. Alisha Alexander, Election Director for the Prince George's County Board of Elections, was present at the meeting and introduced by Ms. Duncan.

Ms. Duncan stated that this location change had already been approved over email by the Board members. Mr. Hogan made a motion to ratify the approval to move the polling place for Precinct 06-05, and Ms. Howells seconded the motion. The motion passed unanimously.

USE OF BALLOT MARKING DEVICES – REQUEST FOR ADDITIONAL DEVICES

Request from the Wicomico County Board of Elections

Ms. Duncan explained that the Board's email approval of Wicomico County Board of Elections' request to deploy an additional ballot marking device at its early voting center required ratification. Mr. Hogan made a motion to ratify the approval of an additional ballot marking device at the early voting center in Wicomico County, and Ms. Howells seconded the motion. The motion passed unanimously.

Request from the Prince George's County Board of Elections

Ms. Duncan presented a request from the Prince George's County Board of Elections to deploy six to eight additional ballot marking devices at their early voting centers and noted that Alisha Alexander, Election Director for the Prince George's County Board of Elections, was at the meeting. Ms. Alexander explained that lines for the ballot marking devices in the 2018 Primary Election exceeded 45 minutes and that the majority of voters who vote during early voting are 60 years old and older. These voters are asking to use the ballot marking device. She noted that she expects voters to take longer to vote in the 2018 General Election due to the number of ballot questions.

Ms. Charlson distributed a spreadsheet showing the usage of ballot marking devices from early voting centers in the 2018 Primary Election. Ms. Howells expressed her concern that tearing three ballot pages from three stubs would cause a bottleneck for paper ballot voters and once a line forms, there would be pressure to move paper ballot voters to the ballot marking devices. Ms. Alexander responded that early voting centers always have a line at the ballot table on day one, but this typically works itself out by the second day when judges become aware of frequently requested ballot styles. In response to questions, Ms. Alexander stated that sample ballots are available at early voting centers, although she noted that many of the voters who need to use the ballot marking devices are unable to read the sample ballot. Ms. Alexander also stated that there are a sufficient number of election judges to support the extra ballot marking devices and the early voting centers have sufficient space for the additional ballot marking devices.

Mr. Hogan made a motion to authorize the Prince George's County Board of Elections to deploy five ballot marking devices at each early voting center for the 2018 General Election, and Mr. Funn seconded the motion. The motion passed unanimously.

Request from the Howard County Board of Elections

Ms. Duncan presented a request from the Howard County Board of Elections to deploy one additional ballot marking device at two early voting centers and eight precincts and noted that Guy Mickley, Election Director for the Howard County Board of Elections, was at the meeting. Mr. Mickley explained that his request is based on the high turnout at the two early voting centers, expected higher turnout in the 2018 General Election, and the county's first time with a two-page ballot. Mr. Mickley also explained that one of the early voting centers is located in a senior center and seven of the eight precincts are consolidated precincts with 4,500 to 6,000 voters.

Mr. Hogan made a motion to approve Howard County Board of Elections' request to deploy an additional ballot marking device at two early voting centers and eight precincts, and Mr. Funn seconded the motion. The motion passed 4-0, with Mr. Cogan abstaining.

Request from the Montgomery County Board of Elections

Ms. Duncan presented a request from the Montgomery County Board of Elections to deploy one additional ballot marking device at all early voting centers and eleven precincts.

Ms. Howells made a motion to approve Montgomery County Board of Elections' request to deploy an additional ballot marking at all early voting centers and eleven precincts, and Mr. Hogan seconded the motion. The motion passed 4-0, with Mr. Cogan abstaining.

Mr. Cogan made a motion to reconsider the motion related to Howard County Board of Elections' request, but the motion failed for a lack of a second.

APPROVAL OF SBE 2018-01: CONTINGENCY PLAN FOR THE 2018 GENERAL ELECTION

Ms. Charlson presented SBE Policy 2018-01: Contingency Plans for the 2018 General Election. This policy makes several changes to the prior contingency plan policy in response to Chapter 524 of the 2018 Laws of Maryland (HB 1331). Ms. Charlson explained that the changes will require the local boards to deploy the electronic pollbook supplies with the election judges, instead of allowing these supplies to be deployed only if needed.

Mr. Hogan made a motion to approve SBE Policy 2018-01 Contingency Plans for the 2018 General Election, and Ms. Howells seconded the motion. The motion passed unanimously.

Mr. Funn left the meeting at 4:15 pm.

APPROVAL OF PROPOSED REGULATIONS

Post-Election Audit and Access to Provisional Ballot Applications

Ms. Charlson presented proposed regulations to implement the post-election ballot tabulation audit required by House Bill 1278 of the 2018 Legislative Session. This law (codified in Election Law Article, §11-309) requires that election officials perform an automated software audit of all electronic images after each election and a manual audit of paper ballots after each general election. A manual audit of paper ballots is optional after a primary election. This law also requires SBE to adopt regulations to implement the requirements of §11-309.

Ms. Charlson explained the proposed regulations to the Code of Maryland Regulations (COMAR) 33.08.05.

1. Regulation .01 – Definitions: Four terms related to the audit requirements are defined. Three of the terms – “manual audit,” “previous comparable audit,” and “voter-verifiable record” are defined in §§ 9-102 or 11-309 of the Election Law Article.
2. Regulation .08 – Post-Election Audit – Ballot Tabulation Audit – In General: This new regulation explains that SBE performs the automated software audit, and the local boards perform the manual audits. The regulation requires SBE to post certain reports after each audit.
3. Regulation .09 – Post-Election Audit – Ballot Tabulation Audit – Manual Audit: This new regulation requires, to the extent practicable, public observation of the manual audit and requires a manual audit after a primary election under certain circumstances. For the manual audit after a general election, this proposed language defines when the State Board selects precincts and contests to be audited manually and how many ballots shall be audited.
4. Regulation .10 – Post-Election Audit – Ballot Tabulation Audit – Automated Audit: This new regulation defines when SBE must complete the automated audit of early voting and election day results and absentee and provisional results.

In addition to these regulations, Ms. Charlson proposed a change to COMAR 33.16.07.02 to resolve a conflict between COMAR 33.08.03, which allows for observers at a canvass to visually inspect provisional ballot applications, and 33.16.07.02, which – as currently written – prohibits public access to provisional ballot applications. The proposed changes allow visual inspection by the public observing a canvass of provisional ballot applications presented at that canvass.

In response to questions from Ms. Howells, Ms. Charlson explained that the proposed regulations do not repeal any existing regulations requiring post-election audits but supplement the post-election audit regulations. She stated that the term “precinct” includes “early voting center” elsewhere in COMAR 33.08.05 but that she could clarify that “precinct” for these regulations does not include “early voting center” and that the requirement that SBE does not provide the vendor performing the automated software audit with the results from the voting system until the vendor provides its results can be included. Ms. Charlson explained that during the legislative session, there were discussions about the possibility of excluding from the manual audit the smallest and largest precincts and the proposed regulations allow for that possibility. Mr. Cogan stated that codifying the rules of the audit makes it more likely that a bad actor could circumvent the rules.

Mr. McManus stated that Lynn Garland had asked to address the board members on these proposed regulations. Ms. Garland shared her experience with post-election audits and stated that the proposed regulations do not include best audit practices. She stated that the individuals performing the audit should not know the outcome when performing the audit, the audit of early voting ballots should be performed at the scanner level (not the early voting center), the regulations should provide more detail than just repeating the statutory language, and the automated audit should be defined. Ms. Garland noted that she is providing her comments now so she can provide more input and offer her assistance and the assistance of another individual in this process.

Mr. McManus stated that he prefers that the regulations mirror the law and considers that a strength of the regulations.

Mr. Hogan made a motion to approve the submission of these regulations for publication and public comment, and Mr. Cogan seconded the motion. The motion approved unanimously.

Campaign Finance Regulations

Mr. DeMarinis presented proposed regulations to COMAR 33.13 and explained that a version of these regulations were previously submitted and discussed at the August meeting. Mr. DeMarinis explained the proposed regulations to COMAR 33.13:

1. 33.13.10.03 – Prohibited Expenditures: The proposed regulation clarifies the prohibition on the method of payment for walk-around services. The regulations codifies that payment to a vendor who employs other individuals for the performance of walk around services must be paid by check. Cash payments are strictly prohibited.
2. 33.13.21.01 through .04 – Online Platforms: In 2018, the General Assembly passed the Online Electioneering Transparency and Accountability Act, which requires certain disclosures made by political committees and online platforms with the placement of a qualifying paid digital communication. The proposed regulations establish the responsibilities for the purchaser of the political advertisement, the online platform, and any other intermediaries used in the placement of the advertisement before reaching a publicly facing website. The proposed regulations define an ad network and the requirements for the public database of all qualifying paid digital communications. The proposed regulations also establish safe harbor provisions for an online platform to rely on the information provided by the purchaser as well as a method for refusal to accept political advertisements and reiterate the statutory civil and criminal penalties for noncompliance of an Election Law Article violation.

In response to a question from Mr. McManus, Mr. Trento stated the proposed regulations are not enforceable and will not impact the related litigation and suggested that further discussion about the impact on litigation be conducted in closed session. In response to a question from Mr. Hogan, Mr. DeMarinis confirmed that these proposed regulations would not be in effect for the 2018 General Election.

Mr. McManus tabled the discussion of the proposed regulations until after the closed session.

APPROVAL OF DEPARTMENTAL LEGISLATION

Mr. DeMarinis presented proposed changes to the Election Law Article in the form of three departmental bills. Mr. DeMarinis also stated that the Maryland Green Party has requested that the State Board include in its departmental legislation replacing “Chairman” with “Chair.” Ms. Howells stated that she would oppose this change.

Summary of Bill #1:

1. Removes the provision that the local board provide the State Board with a copy of the complaint by certified mail. (§2-105)
2. Defines the nomination process for a new political party in the year of an election (§4-102)
3. Establishes a deadline for presiding officers of a national nominating Presidential convention to file a certificate of nomination with the State Board. § (5-301)
4. Removes the provision on Anne Arundel County Board of Education. The provision is obsolete because the Anne Arundel holds non-partisan elections for Board of Education rather than continuance in office elections. (§5-301)
5. Provide for the State Administrator the ability to designate satellite locations to receive a certificate of candidacy. (§5-302)

6. Conforms the statute to the regulations that only the last four digits of a Social Security number is required for the online absentee ballot application. (§9-305)

Mr. Hogan made a motion to approve Departmental Bill #1 for the 2019 Legislative Session, and Ms. Howells seconded the motion. The motion passed unanimously.

Summary of Bill #2

1. Changes the power to investigate a potential violation of Election Law Article §13-249 to the State Administrator or designee. The State Board normally delegates this authority to staff as a duty of its functions. (§13-249)
2. Provides subpoena power to the State Administrator in the course of an investigation regarding a potential violation of Election Law Article §13-249. This is similar to powers already bestowed on staff under Election Law Article §13-405.1 (§13-249)
3. Limits when a campaign finance entity is required file a final campaign finance report and terminate to certain dates. The payment of a final debt associated creates too much uncertainty for enforcement actions. (§13-310)

Mr. Hogan made a motion to approve Departmental Bill #2 for the 2019 Legislative Session, and Mr. Cogan seconded the motion. The motion passed unanimously.

Summary of Bill #3

1. Changes the voter registration deadline from 9pm to 5pm for in-person applications and until 11:59pm for online transactions. (§3-302)
2. Provides for the State Board to adopt regulation on the storage and security of voter registration information received by an applicant. Additionally, the applicant if breached, shall disclose the breach of the information to the State Administrator within 4 days. Establishes a penalty for failure to report breaches. (§3-506)

Mr. Hogan made a motion to approve Departmental Bill #3 for the 2019 Legislative Session, and Ms. Howells seconded the motion. The motion passed unanimously.

SECURITY BRIEFING – PART I

Ms. Charlson stated that she would be providing updates to the April 2018 security briefing on how we protect, monitor and restore election systems. She highlighted a poster that Ms. Hartman and the Department of Homeland Security developed to highlight election cybersecurity activities in Maryland. Ms. Charlson noted that each local board will receive a version of this poster.

Ms. Charlson stated that SBE continues to perform regular software updates and monthly computer assessments on computers accessing State systems. State and local election officials participated in a 3-class course on cybersecurity for election officials offered by the Center for Technology and Civic Life. The State's Department of Information Technology recently restarted its online cybersecurity training program. All SBE and local board of elections' employees with a State email address must participate in the State's training program. Ms. Charlson noted that SBE and all 24 local boards are members of the Multi-State Information Sharing Analysis Center (MS-ISAC) and the Election Infrastructure ISAC. The MS-ISAC provides to members technical information, and the EI-ISAC provides to members non-technical information about technical topics.

SBE's website continue to be scanned weekly by the Department of Homeland Security (DHS), and DHS's Hunt Incident Response Team continues to evaluate the integrity of the SBE systems

hosted at ByteGrid. The onsite portion of support is complete and off-site data analysis continues. DHS' report is expected in five to seven weeks, but to date, no evidence of an adversary presence in the networks. Ms. Charlson stated that SBE has expanded its monitoring and reporting of systems hosted by ByteGrid and has had exploratory conversations with the Maryland National Guard on the services they may be able to provide.

Ms. Charlson noted that the revised contingency policy approved earlier in the meeting requires that the paper or electronic back-up to electronic pollbooks be available at all voting location during voting hours. State and local election officials participated in two different types of table top exercises, one of which was hosted by DHS and the other by SBE. SBE also participated in a table top exercise for SBE and worked through preparing for an election with a Category 3 hurricane impacting the State 3 weeks before election day.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan disclosed the following campaign contributions:

1. Friends of Wes Adams, \$400.00
2. National Republican Senatorial Committee (NRSC), \$100.00
3. Republican National Committee, \$100.00
4. Harris for Congress, \$100.00
5. Friends of Andy Harris, \$100.00
6. Larry Hogan for Governor, \$370.00
7. Friends of Steve Hershey, \$200.00
8. Larry Hogan for Governor, \$185.00
9. National Republican Senatorial Committee (NRSC), \$100.00
10. Maryland Republican Party, \$100.00
11. National Republican Congressional Committee (NRCC), \$100.00
12. Friends of Wes Adams, \$100.00

Ms. Howells disclosed one contribution of \$150.00 to Friends of Big Ed Reilly. No other Board members had any contributions to report.

SCHEDULE NEXT MEETING

The next meeting is scheduled for November 29, 2018, at 2:00 pm.

CLOSED MEETING

Mr. McManus requested a motion to close the board meeting under General Provisions Article, §3-305(b)(8), which permits closing a meeting to conduct with staff, consultants, or other individuals about pending or potential litigation, and §3-305(b)(10) and (13), which permits closing a meeting to discuss sensitive issues related to ongoing efforts to enhance election security. Meeting in closed session allows the members of the State Board to discuss the security of election information systems discuss and consult with staff and counsel on pending litigation.

Mr. Hogan made a motion to convene in closed session, and Ms. Howells seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(8), (10), and (13) of Section 3-305 of the Open Meetings Act to receive information about the security of election information system and consult with staff and counsel on pending litigation.

The closed session began at 4:50 pm. In addition to the board members present when the closed meeting convened the following individuals were present at the closed session: Ms. Lamone, Mr. Trento, Ms. Charlson, Mr. Aumayr, Vincent Omenka, and Gary Hastings.

Security Briefing

During the closed session, Ms. Charlson, Mr. Omenka, and Mr. Aumayr provided updates to how the critical election systems are protected, monitored and restored and steps to test and secure the equipment and data for the upcoming election. The election systems discussed were the voting system networks, electronic pollbooks, the statewide voter registration, candidacy and election management system, election results reporting, the online campaign finance system, and SBE's internal infrastructure. No action was taken.

Campaign Finance Regulations

Mr. Trento provided advice on the impact of these proposed changes to COMAR 33.13.10 and .21 on pending litigation. No action was taken.

The closed meeting adjourned at 5:17 pm.

The open meeting reconvened at 5:18 pm.

APPROVAL OF PROPOSED REGULATIONS: CAMPAIGN FINANCE REGULATIONS

Mr. Cogan made a motion to approve the submission of these regulations for publication and public comment, and Mr. Hogan seconded the motion. The motion approved unanimously.

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 5:19 pm.