

**State of Maryland**   
**State Board of Elections – July 19, 2018 Meeting**

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Attendees: David McManus, Chair  
Patrick J. Hogan, Vice Chair  
Michael R. Cogan, Member  
Kelley A. Howells, Member  
Malcolm L. Funn, Member  
Linda Lamone, Administrator  
Nikki Charlson, Deputy Administrator  
Adam Snyder, Chief Counsel  
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  
Tracey Hartman, Director of Special Projects

Also Present: Armstead B. Jones, Director, Baltimore City Board of Elections  
Kevin Keane, Director, Harford County Board of Elections  
Dale Livingston, Deputy Director, Harford County Board of Elections  
Allison McCord, Vice-President, Harford County Board of Elections  
Mary Ann Keeffe, Secretary, Montgomery County Board of Elections  
Alisha Alexander, Director, Prince George's County Board of Elections  
Patricia Jackson, Director, Worcester County Board of Elections  
Lou Ann Trummel, President, Worcester County Board of Elections  
Ron Jacobs, Venable LLP  
Sean Wright, Venable LLP  
Brandon Wong, Venable LLP  
Jake Tully, Venable LLP  
Robert Ferraro, SAVEourVotes  
Ralph Watkins, League of Women Voters – Maryland  
Bruce DePuyt, Maryland Matters  
Kunta Stanley, WJZ-TV  
Jennifer Hosey, Montgomery County, MCDCC  
Sarah McGee, Citizen  
Steve Gladstone, Citizen  
Lynn Garland, Citizen

**DECLARATION OF QUORUM PRESENT**

Mr. McManus called the meeting to order at 2:00 pm and stated that there was a quorum of four members present. He reported that Mr. Hogan would be joining the meeting late. Mr. McManus stated that the meeting was being recorded.

**RATIFICATION OF MINUTES FROM MAY 2018 MEETING**

Ms. Howells made a motion to ratify the approved minutes from the May 31, 2018 meeting, and Mr. Cogan seconded the motion. The motion passed unanimously.

## **ADDITIONS TO THE AGENDA**

Ms. Charlson requested that the board add to the agenda remarks from Worcester County Board of Elections staff. Mr. McManus approved the proposed change to the agenda and asked Worcester County to make their remarks at this time. Patricia Jackson, the Election Director for the Worcester County Board of Elections, and Lou Ann Trummel, the President of the Worcester County Board of Elections, thanked SBE staff for their help in finding a solution to the mold issue in their previous office and warehouse. They stated that they have now moved to a new office and warehouse and expressed their appreciation for the support provided by Keith Ross, Nikki Charlson, and Linda Lamone throughout the entire process. Ms. Jackson and Ms. Trummel shared that Mr. Ross provided very useful guidance and was particularly instrumental in facilitating the move to their new space.

## **ADMINISTRATOR'S REPORT**

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

#### Introduction of New Employees - Tracey Hartman & Christina Lohr

On June 20, 2018, Tracey Hartman started working at SBE. Tracey will be managing several projects at SBE, including post-election auditing, compliance with federal and State audits, and generally supporting election efforts. Tracey joins SBE from the Office of the Attorney General, where she managed the home builders registration unit. Although starting less than a week before an election, Tracey has jumped right in and is already well versed in the post-election ballot tabulation audit.

Christina Lohr began working at SBE on July 18, 2018. Christina joins SBE from the Maryland Department of Health and will be working in Human Resources to fill Joanne Blackwell's position, as Joanne will be retiring in September. Joanne and Christina will have two months of overlap, to facilitate a smooth transition of responsibilities.

#### Federal Election Security Funds

In response to Maryland's allocation of federal funds to improve election security, we submitted to the U.S. Election Assistance Commission (EAC) a draft narrative and budget plan for these funds. As Congress intended, we allocated these funds to enhancing the information security practices we currently have in place and provide more security training for State and local election officials. Once the EAC accepts the plan, we will post it online.

#### Department of Homeland Security (DHS) – Protective Security

On June 7, 2018, a representative of the U.S. Department of Homeland Security offered an active shooter training for SBE employees. This training was very informative and emphasized the importance of "say something if you see something."

We have also signed up for a DHS assessment of our offices. This is the same assessment that many of the local boards of elections have received, and our assessment is scheduled for July 26, 2018.

#### Joint Working Group to Secure Election Systems

Working with the Maryland Association of Election Officials and the Maryland Association of Counties, we have created a joint group to focus on securing election systems. The purpose of this group is to collaborate to enhance the security posture of State and local election

officials (directly) and State and county networks and systems (indirectly). With this group, we would like to identify local boards of elections' IT support needs and develop plan to address them, develop a communications plan to share information among and between State and county election officials and county governments, and identify resources that both State and county governments can use to improve security of IT systems and response if systems are compromised. The first meeting was held on June 7, 2018, and the focus of this meeting was on sharing information, election security issues reported by other states, and the importance of stable networks through election day. We expect to convene this group once a quarter.

#### Annapolis City Board of Election Supervisors

On July 19, Jared DeMarinis appeared before Annapolis City Board of Election Supervisors to discuss campaign finance issues that the city encountered during its last election.

## **2. 2018 Primary Election Overview**

### Pre-Election Emergency Management and Weather Briefing

Before each election, the Maryland Emergency Management Agency hosts for State and local election and emergency management officials a conference call to receive threat and weather information for the election period. This call was held on June 11, 2018, and State and local election officials were well represented on the call. We shared with emergency management officials key election dates and voting locations so the State's Joint Operations Center could map the voting locations. The Maryland Coordination and Analysis Center reported that it had no information to indicate a specific, credible threat to the election.

### Ballots

SBE's ballot printer, Single Point Sourcing, printed 3.8 million ballots, including test decks. They also supplied the local boards of elections with blank ballot paper for ballot duplication.

### Election Equipment Transportation.

Delivery of equipment for early voting started two days prior to early voting and equipment pickup was completed after early voting centers closed on June 21, 2018.

Equipment delivery for election day started on June 18, 2018, and while equipment pickup was scheduled to be completed by July 5, 2018, it was completed on July 6, 2018. Because a school custodian was not available, a handful of pickups from schools were not timely. During this time, all equipment was locked and sealed and the voted ballots and thumb drives had been returned by election judges election night.

### 2018 Primary Election Equipment.

The number of early voting centers increased from 68 centers in 2016 to 78 centers in 2018. During early voting, 543 electronic pollbooks, 213 ballot scanners, and 102 ballot marking devices were used.

On Election Day, 5,673 electronic pollbooks, 2,446 ballot scanners, and 1,847 ballot marking devices were deployed. Eleven ballot scanners and seven ballot marking devices were replaced, and it is widely thought that the equipment performed well. Reports of jamming ballots were significantly less than the 2016 General Election. Equipment with reported issues will be inspected once the equipment is released, which will likely be next week.

MVA Change of Address Issue

Several days before the primary election, we learned that MVA had not transferred to SBE voter registration transactions. The transactions at issue were transactions performed online or at a self-service kiosk by MVA customers who had a new address and did not request a new license, ID card, vehicle registration, etc. The voter registration information that was not transferred included: (1) information for MVA customers who were not yet registered to vote but wanted to register; (2) information for MVA customers who wanted to update their existing registration address; and (3) information for MVA customers who wanted to update their existing registration address and change their party affiliation. Included in the board meeting folder was a table showing SBE actions in response to this issue and a document summarizing the numbers of records and voters impacted by the issue.

Ms. Charlson stated that SBE's emails and media outreach efforts seemingly lead to increased usage of SBE's Online Voter Lookup and Polling Place Locator. On election day, we saw over 100,000 voters using these resources, and the day before the election, there were 57,000 voters using them. SBE believes we generated a good amount of that traffic, as we made an effort to inform voters of what would happen on election day and where they needed to go.

Mr. McManus asked if the number of Voter Lookup and Polling Place Locator users was higher than in the last comparable election. Ms. Charlson stated that we did not track this information in 2014, so we can only compare to the 2016 Presidential General Election, and while the numbers were about 30% higher in 2016, the numbers for the 2018 Gubernatorial Primary Election were much higher than we would have expected them to be for a gubernatorial primary.

Mr. McManus asked how the number of voted provisional ballots in this election compared to that of past elections. Ms. Charlson explained that we had 22,000 provisional votes in the 2018 Primary and 14,000 in the 2014 Primary, so that is an apparent increase. However, she noted that only about 3,500 of the provisional voters were due to the MVA issue, and of those 3,500 ballots, 3,200 were accepted in full or in part. This leaves about 300 voters whose ballots were rejected, but most of these were rejected because the voter voted the wrong primary ballot, which is the most common rejection reason in a primary election. Therefore, the reason that a voter's ballot was rejected was most likely not the result of the MVA issue.

In response to a question from Mr. McManus, Ms. Charlson stated that the acceptance rate of provisional ballots in this election was similar, and perhaps a little higher, than that of past elections.

On July 12, 2018, the Senate's Education, Health and Environment Committee and House's Ways and Means Committee held a joint briefing on the issue. The committees requested that Christine Nizer, Administrator of the Motor Vehicle Administration, and Linda Lamone attend the briefing and provide information. Ms. Nizer explained that a software programming error in 2017 meant these transactions were not forwarded to SBE and the error has since been corrected and SBE is receiving all voter registration transactions. Ms. Nizer shared that MVA's internal auditors are now sampling transactions weekly to verify that all types of transactions are forwarded to SBE and that SBE and MVA are developing audit procedures to ensure that all files sent by MVA and received by SBE. Nikki Charlson and Linda Lamone answered questions from the committee members, including why SBE did not detect the missing

files. The number of MVA transactions we receive each day varies greatly. For example, over the last three years, the daily number of transactions has varied from 88 to 2,600 transactions. We will develop audit procedures for electronically submitted transactions from MVA and other State agencies to sample transactions sent.

### Election Results

On election night, the local boards of elections promptly reported results, with the smaller local boards finishing about 9:30 pm. As expected, the larger local boards took longer to report but were generally finished around midnight. The local boards also uploaded pollbook log files on election night, and this took somewhat longer. We are looking to speed this up for the 2018 General Election.

### Election Auditing

After each election, SBE performs a comprehensive audit of various aspects of the election. The Voting System Division reviews data associated with the pre-election logic and accuracy testing, opening times of the election day polling places, reviewing discrepancies between the number of voters checked in to vote and the number of ballots cast, and performing the voting system verification.

Erin Perrone and Cortnee Bryant are collecting various documentation from the local boards to complete other auditing tasks, including the polling place evaluation forms and ballot accounting forms. An audit is also performed on absentee and provisional ballots from each local board and the canvassing minutes.

### Recounts

On July 11th, the Howard County Board of Elections conducted a recount of the Democratic nomination for County Council District 1. There was a two-vote difference between the two candidates for this nomination, and because of the closeness of the results, the candidate requesting the recount did not have to pay the costs. Erin Perrone, Cortnee Bryant, Sylvia Brown, Ebony Parran, Erin Dennis, Sharon Tolson-Feemster and Megan Marano assisted with this recount. Tracey Hartman and Sarah Thornton attended the recount to observe and document. At the end of the recount, the vote difference had increased to four and the same individual remained the Democratic nominee for this office.

From July 12th - 14th, the Baltimore County Board of Elections conducted a recount of the Democratic nomination for County Executive. There was a nine-vote difference between the top-2 vote getters for the nomination. Again, because of the closeness of the results, the candidate requesting the recount did not have to pay the costs. Erin, Cortnee, Sylvia, Sharon, Megan and Mary Wagner assisted with this recount or the preparation for the recount. At the end of the recount, the vote difference had increased to 17 and the same individual remained the Democratic nominee for this office.

Additional recounts, including the Democratic nomination for Montgomery County Executive and Democratic nomination for Legislative District 16, are expected. Both recounts are expected to be a manual recount of the voted ballots.

Mr. McManus asked if there was any pattern to the change in votes at the recounts and SBE replied that they were unsure if any patterns were observed.

For the expected recounts, Mr. Hogan asked if there is a deadline to file petitions. Ms. Charlson clarified that today, July 19<sup>th</sup>, is the deadline for Montgomery County candidates (for county office) to file recount petitions, so we expect to see the Montgomery County Executive petition to be filed today. The state office deadline is three days from today, once the State Board certifies the election results. SBE already has the petition for Legislative District 16, but the results first need to be certified by the State Board in order to be considered official; we expect to see the petition for Legislative District 16 to be filed tomorrow, July 20<sup>th</sup>.

In response to a question from Mr. Cogan, Ms. Perrone and Ms. Charlson confirmed that the Howard County and Baltimore County recounts were manual and that the results were audited before the recounts took place, so we had an indication of which votes might change when reviewed by a human.

### **3. Election Reform and Management**

#### **Ballot Duplication Software**

Erin Perrone has been in contact with Tony Barnfield, Regional Sales Manager at Runbeck Election Services, about the automated ballot duplication software solution proposed for Anne Arundel, Baltimore, Montgomery, Prince George's Counties and Baltimore City. Runbeck would like to hold another demonstration of the software to show the improvements that were made from the previous software version in the coming weeks. Erin has not contacted the local boards because of the various recounts at some of the affected local boards.

In response to a question from Ms. Howells, Ms. Perrone clarified that none of the local boards have committed to using Runbeck's ballot duplication software in the upcoming general election, as the local boards and SBE would like to first see another demonstration of the software to determine if the issues have been resolved since the demonstration that took place in December. Originally, Baltimore City planned to use the software in the primary election, but Runbeck was not able to make the necessary improvements in time for the primary election. Runbeck claims to have now completed the improvements, so SBE would like to observe another demonstration to verify.

Ms. Howells expressed her reservations around the ballot duplication software, stating that the State Board has not seen a full demonstration of the software. Ms. Howells only saw a partial demonstration where she was able to see the monitor and what the software looks like when it is on the screen, but she did not get to see the actual duplication of ballots. She is not comfortable with last-minute software improvements, especially when she does not understand what is being changed. Ms. Howells also stated that she feels that the matter should be opened up to public comment, saying that it would be beneficial to discuss at an open meeting and to seek out expert opinion.

Ms. Charlson proposed that we first see the demonstration with the counties to determine if the software improvements have resolved the issues, and if not, then none of the counties will be using the software.

In response to a question from Mr. McManus, Ms. Charlson said SBE will do its own set of testing, in addition to the local boards. The State Board will have some input, but the local boards are the ones who are driving this because they want a system that will speed up the ballot duplication process, so SBE is facilitating that. If SBE is not happy with the software and it doesn't function correctly, then it is not going to be used.

In response to a question from Mr. McManus, Ms. Perrone stated that the demonstration has not yet been scheduled, since some counties are still conducting recounts. It will likely take place in Anne Arundel's facility, and once it has been scheduled, the board will be notified in case any members would like to attend.

In response to a question from Mr. Funn, Ms. Charlson stated that SBE has not made any payments to Runbeck and will not make any payments unless they are able to deliver a product that meets the local boards' needs.

In response to a question from Ms. Howells, Ms. Charlson assured the State Board that they would have an opportunity to observe a demonstration of the software and hear feedback from the local boards.

#### **4. Voter Registration**

##### MVA Electronic Records

SBE staff is currently processing the electronic records that were not forwarded by MVA. Each record must be closely reviewed to make sure good data is not being overwritten by outdated information. Discussion with The Canton Group and the MDVOTERS software development team is to take place to see if there is a script that can assist with the processing of the records.

##### MDVOTERS

On Tuesday, July 17, 2018, the primary election was closed in MDVOTERS. This applies voting credit to a voter's record. Public service requests (PSRs) can now be fulfilled.

##### MVA Transactions

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

New Registration - 2,350	Residential Address Changes - 3,291
Last name changes - 448	Political Party Changes - 585

##### Non-Citizens

No information was submitted to the Office of the State Prosecutor. Submissions will resume in August 2018.

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

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

##### Candidacy

The deadline for non-principal political party and petition candidates to file a declaration of intent was Monday July 2, 2018. August 6th is the deadline for filing the certificate of candidacy.

##### Campaign Finance

On June 15th, the 2018 Pre-Primary 2 Report was due for all political committees participating in the gubernatorial election. Currently, the CCF Division has over 2,300 participating political committees in this election. 82% of the committees filed timely, and approximately 4% of the committees have not filed the report. Notices have been 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.

### Public Financing Program

Marylanders for Madaleno-Jenkins received an aggregate total of \$335,828.14 in public contributions for the Primary election. The CCF Division has started the audit process of the committee, which is expected to take two months.

As of June 30, 2018, Montgomery County disbursed \$3,997,426 to qualified candidates. 23 candidates qualified for the program, and eight publicly financed candidates won the primary election.

### Campaign Finance Enforcement

- 1) Friends of Nate Loewentheil paid a civil penalty of \$250.00 on June 1, 2018, for an authority line violation.
  - 2) Friends of Anees Abdul Rahim made a cash disbursement greater than \$25.00. The Chairperson paid the civil penalty of \$100.00 on June 4, 2018.
  - 3) Carroll County FOP Lodge 20 PAC Fund was cited for failure to maintain account books and records and record contributions and expenditures on a campaign finance report and for filing an Affidavit of Limited Contributions instead of a campaign finance report for the 2018 Annual Report. On June 12, 2018, the Treasurer paid \$1,250.00 in penalties.
  - 4) Vote Helga Luest paid a civil penalty of \$250.00 on July 3, 2018, for an authority line violation.
6. **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. To date, the recycler has picked up 18,207 of 18,940 TS-R6 units. SBE continued to work with DGS to auction different types of equipment to include servers, workstations, monitors, and printers.

#### Inventory System Updates

Officially, the FY2018 Inventory Audit period has ended. The statewide inventory audit compliance is currently at 94.82%. SBE will continue to work with the local boards to reconcile the outstanding issues in preparation for the annual reporting due to DGS in August and September.

#### Other

SBE continued its 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, that is still located at the SBE Central Warehouse, will be disposed of according to DGS' disposal requirements.



**7. Voting Systems**

Ballots

In the preparation for the November general election, SBE, with Single Point Sourcing, the ballot printer, will order ballot paper this month.

**ASSISTANT ATTORNEY GENERAL'S REPORT**

Mr. Adam Snyder presented 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. Oral argument took place on March 28, 2018. 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. Summary judgments motions are currently pending and fully briefed. Plaintiffs are seeking an accelerated trial schedule so that the matter may be presented to the Supreme Court sufficiently in advance of the 2020 elections.
2. *Fusaro v. Davitt et al.* (U.S. District Court, D. Md.). No change from the last update. 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 moved to dismiss the complaint in January, and their reply in support of that motion was filed February 23, 2018. The motion is fully briefed and awaiting ruling by the Court. Assistant Attorney General John Grimm is representing the State Board in this litigation.
3. *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. Ms. Barber's opening appeal brief has been filed. The Appellees' brief is due on August 6, 2018. Assistant Attorney General Andrea Trento will represent the State Board in the appeal.
4. *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. Assistant Attorney General Andrea Trento will represent the State Board in this matter going forward.

5. *Kreamer v. Maryland State Board of Elections*, No. C-02-CV-18-000629 (Cir. Ct. Anne Arundel Cnty.). This case involves a challenge by one of the candidates for the Democratic nomination for Senate District 34 (Harford County) to the eligibility of the other candidate for that nomination. The challenged candidate was not named as defendant in the case. On May 21, 2018, the Circuit Court granted the State Board's motion to dismiss, ruling that laches barred Ms. Kreamer's claims and that Ms. Kreamer's failure to name a necessary party as a defendant in the lawsuit also required dismissal. That afternoon, Ms. Kreamer filed a petition for certiorari to the Court of Appeals. On June 25, 2018, Ms. Kreamer's petition was denied.
6. *Ervin v. Lamone*, No. C-02-CV-18-001565 (Cir. Ct. Anne Arundel Cnty.). This case, filed on May 29, 2018, involved a challenge by gubernatorial candidate Valerie Ervin to the State Administrator's determination that there was not sufficient time to reprint ballots to reflect the filling of the vacancy caused by former gubernatorial candidate Kevin Kamenetz's death on May 10, 2018, by Ms. Ervin and her running mate, Marisol Johnson. On June 4, 2018, a hearing on Ms. Ervin's motion for preliminary injunction was held. After the hearing, the Court denied Ms. Ervin's motion for preliminary injunction and granted the State Board's motion for summary judgment.
7. *Ficker v. Crow et al.*, No. 449743-V (Cir. Ct. Montgomery Cnty.). On June 15, Mr. Ficker filed a complaint challenging the denial by the State Board of Elections and Montgomery County that Mr. Ficker had submitted sufficient documentation indicating that he had satisfied the fundraising threshold requirements for participating in the Montgomery County Public Election Fund. David Crow, Fiscal Projects Manager for the Department of Finance of Montgomery County, and Jared DeMarinis were named as defendants in the case. Mr. Ficker filed a motion for preliminary injunction and a hearing date on the motion was scheduled. After further evaluation of the claims, SBE and Montgomery County determined that Mr. Ficker had provided sufficient documentation regarding his eligibility to participate in the Public Election Fund, and Mr. Ficker was so informed. Shortly thereafter, Mr. Ficker voluntarily dismissed his lawsuit.
8. *Johnson v. Prince George's County Board of Elections et al.*, No. \_\_\_ (PG Cnty). On June 26, 2018, Bruce Johnson filed an action challenging the PG County Board of Elections' rejection of his declaration of intent to seek a nomination for State's Attorney of PG candidate as an unaffiliated candidate. At the time of the filing of the declaration of intent, Mr. Johnson was still formally registered as a Republican. Moreover, because registration had been closed since June 5 and would not reopen until July 6, Mr. Johnson was unable to change his party affiliation before the July 2 deadline for the filing of his declaration of intent. After further evaluation, the State and Local Boards determined that Mr. Johnson's filing of a declaration of intent to run as an unaffiliated candidate, when he was still formally affiliated with a party, did not violate any requirement or duty imposed by law, and that therefore his declaration should be accepted. The deadline for submitting a certificate of candidacy and petition in support of an unaffiliated nomination is August 6. Mr. Johnson has voluntarily dismissed his lawsuit.
9. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). 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 moving into the discovery part of the litigation.

### **DECLARATORY RULING – PETITION SIGNATURES**

On May 15, 2018, SBE received a petition for a declaratory ruling from Steve Gladstone, an unaffiliated candidate for the U.S. Senate. Mr. Gladstone seeks to be nominated by petition and proposed to gather the necessary petition signatures through a web-based petition form that would require electronic signatures. Mr. Gladstone requested a declaratory ruling that the Uniform Electronic Transactions Act requires the State Board to accept petitions completed with electronic signatures and, if not, that the State Board exercise its discretion to do so.

The Office of the Attorney General analyzed the issue and concluded that the State Board is not required to accept electronic signatures under the Uniform Electronic Transactions Act. The recommendation of SBE staff was for the State Board to issue a declaratory ruling, stating that the State Board is not required to accept petitions with electronic signatures and declining to exercise its discretion to accept electronic signatures through a declaratory ruling, as it is not the proper mechanism for making such a wide-ranging change in the State Board’s procedures.

Ronald Jacobs, counsel for Steve Gladstone, gave a presentation to the State Board, explaining Mr. Gladstone’s request. Mr. Jacobs stated that while the Attorney General’s opinion doesn’t say the State Board has to accept electronic signatures, the law doesn’t say the State Board can’t accept electronic signatures and he hopes they will consider doing so. He specified that Mr. Gladstone is seeking a declaratory ruling for his own petition and that if other individuals decide they would like to use electronic signatures, they could also seek a declaratory ruling. Mr. Jacobs also expressed that a declaratory ruling might open the State Board to further consideration of these issues and they might decide they want to issue a broader rule. Mr. Gladstone believes electronic signatures would be more efficient and that they are widely used in many transactions. He would like the State Board to consider electronic signatures valid, as they would other signatures.

The members of the State Board expressed concerns around the security of an online form used to collect electronic signatures for a petition and stated that a declaratory ruling is not an appropriate vehicle for a policy change of this nature. Instead, the State Board felt this should be a legislative or regulatory decision.

Mr. McManus made a motion to issue a declaration in response to Mr. Gladstone’s petition, stating that the Uniform Electronic Transactions Act does not require the State Board to accept electronic signatures on a petition and that it is not an appropriate exercise of their discretion to accept electronic signatures on a petition via a declaratory ruling. Mr. Hogan seconded the motion and the motion passed unanimously.

**State of Maryland** 

**State Board of Elections – July 19, 2018 Meeting**

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**CERTIFICATION OF 2018 PRIMARY ELECTION RESULTS**

Ms. Duncan explained that the members of the State Board of Elections certify election results for State offices in a gubernatorial primary election. Ms. Duncan presented the results from the 2018 Primary Election and asked each board member to sign the certification pages.

In response to a question, Ms. Duncan explained that the State Board is certifying only state races at this time, not local races.

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

Mr. DeMarinis presented requests from 30 campaign committees to waive late fees incurred by the committees. The committees requesting a waiver of late filing fees are listed below:

- |   |  |
|---|--|
| 1. Almond- Cooper, Sandres Friends of           | 16. Jarboe-Duley, Toni Friends of                        |
| 2. Amato, Bob Friends of                        | 17. Jenkins, Luwanda Marylanders for                     |
| 3. Bair, Margaret Peggy Citizens for            | 18. Jones, William H. for State's Attorney               |
| 4. Bowers, (Richard) Rick Friends of            | 19. Kaufman, Aaron Friends of                            |
| 5. Coates, Thomasina Vote                       | 20. Lee, Mike for Baltimore County<br>Council District 2 |
| 6. Cook, Richard Committee for                  | 21. Leight, Elizabeth Ysla Friends of                    |
| 7. Davis, Ulysee Friends                        | 22. Magnani, Joan Citizens for                           |
| 8. Dawson, Michael W. Committee to Re-<br>Elect | 23. Manning, Michael Friends of                          |
| 9. Green, (Paula) Missi Friends of              | 24. Petrella, Michael Friends of                         |
| 10. Grossnickle, Bret Citizens for              | 25. Republican House Caucus Committee                    |
| 11. Haynie, Ted (Theodore) Friends of           | 26. Simon, Laura for BOE                                 |
| 12. Hubbard, Sheri Citizens for                 | 27. Smith, Regina A. Citizens for                        |
| 13. Inya-Agha Unu for Education                 | 28. Sophocleus, Theodore Committee to<br>Elect           |
| 14. James, Michael Committee to Elect           | 29. Stires, John Committee to Elect                      |
| 15. Janosky, Joseph for Better<br>Government    | 30. Webster, Kevin B. Citizens for                       |

Included in the State Board meeting folder, for the Board's information, was a list 16 campaign committees who were denied a waiver of late filing fees. The committees denied a waiver of late filing fees are listed below:

- |  |   |
|--|---|
| 1. Antal, Jim Harford Citizens for       | 9. Joyner-El, Brendon Citizens for        |
| 2. Barre, Mumin Friends of               | 10. Owens, (Hubert) for Senate 32         |
| 3. Bolourian, Neda Friends of            | 11. Patchell, George Committee to Elect   |
| 4. Change Annapolis PA                   | 12. Richardson, Ava Friends of            |
| 5. Clarke, Ed Citizens For               | 13. Rothchild, Devon Citizens for         |
| 6. Holliday, Samuel Justin Friends of    | 14. Slocum, Albert Citizens for           |
| 7. Howell, Adrion for Clerk Committee    | 15. Solesky, Tony the Write Committee for |
| 8. Jackson, Emily for Board of Education | 16. Wilson, Tom Citizens for              |

Mr. DeMarinis stated that SBE has collected over \$32,000 in late fees this year to-date.

Mr. Cogan stated that he served with Rick Bowers (#4) and was a friend of Theodore Sophocleus (#28), so he would recuse himself of voting on those two committees, since there is a quorum present.

Ms. Howells did not recuse, but disclosed that Richard Cook's (#6) wife is her doctor, though she has never met Mr. Cook.

In response to a question from Mr. McManus regarding the increased number of requests for waivers of late filing fees, Mr. DeMarinis explained that this election year has seen more committees than ever before and also that this list essentially covers the April, May, and June reports, since there is some time between when the late fees are billed and when the waiver requests are made.

Mr. Hogan made a motion to approve the waiver requests for #4 and #28, and Ms. Howells seconded the motion. The motion passed unanimously.

Mr. Hogan made a motion to approve the remaining 28 committee waiver requests, and Mr. Funn seconded the motion. The motion passes unanimously.

#### **APPROVAL OF NEW ABSENTEE BALLOT LANGUAGE REQUIRED BY HB 1331**

Ms. Perrone presented the updated absentee ballot application, explaining that House Bill 1331 requires SBE to add fields for a Maryland driver's license number or ID card number, and the last four digits of a Social Security number, effective July 1, 2018. These two fields have been added to the application, under the "About you" section. All other fields on the form remain the same.

In response to a question from Mr. Hogan, Ms. Perrone clarified that the applicant is required to provide either his/her driver's license number or ID card number, *and* the last four digits of his/her Social Security number.

Mr. Cogan pointed out that HB 1331 states that if an applicant is a military or overseas voter, or a voter with a disability, and does not have a Maryland driver's license or ID card, only the last four digits of a Social Security number are required. Ms. Perrone stated that this absentee ballot application is intended for domestic civilian voters, as military and overseas voters complete a different application form; however, SBE will incorporate this information for voters with disabilities in the instructions if it is not already included.

In response to a question from Mr. McManus, Ms. Charlson explained that although HB 1331 states that a Social Security number is required, SBE only wants the last four digits of the Social Security number, as a result of our legislative audit, regardless of what the code says. This requirement will be reflected in subsequent legislation.

Mr. Hogan made a motion to approve the updated absentee ballot application, and Ms. Howells seconded the motion. The motion passed unanimously.

**RATIFICATION OF EMERGENCY POLLING PLACE CHANGES FOR 2018 PRIMARY ELECTION**

*Ratification of Vote on Baltimore City Request*

Ms. Duncan presented a request that was approved by the State Board via email from the Baltimore City Board of Elections for three emergency polling place changes for the 2018 Primary Election. The emergency polling place changes included 26-014, which was moved from the Community Building to Armistead Garden Elementary School due to no water in the building; 25-009, which was moved from Cherry Hill Elementary School to Carter G. Woodson due to fleas and mice; and 15-002, which was moved from Friendship Academy to James Mosher Elementary School, because two polling places were assigned to the same site.

Ms. Duncan requested that the State Board ratify Baltimore City's request for the polling place changes. Mr. Funn made a motion to ratify Baltimore City's request for the three emergency polling place changes, and Mr. Hogan seconded the motion. The motion passed unanimously.

*Ratification of Vote on Baltimore County Request*

Ms. Duncan presented a request that was approved by the State Board via email from the Baltimore County Board of Elections for an emergency polling place change for the 2018 Primary Election. District 15-012 was moved from the Essex Co-Op to Eastern Technical High School due to no power in the building.

Ms. Duncan requested that the State Board ratify Baltimore County's request for the polling place change. Mr. Cogan made a motion to ratify Baltimore County's request for the emergency polling place change, and Ms. Howells seconded the motion. The motion passed unanimously.

**APPROVAL OF POLLING PLACE CHANGES FOR 2018 GENERAL ELECTION**

*Approval of Frederick County Request*

Ms. Duncan presented a request from the Frederick County Board of Elections for a polling place change for the 2018 General Election. Precinct 07-001 was moved to the Urbana Volunteer Fire Department for the primary election due to renovations at the original location, and they would like to move it to the new Sugarloaf Elementary School for the general election, as it has better accessibility than the fire hall.

Ms. Duncan requested that the State Board approve Frederick County's request for the polling place change. Mr. Hogan made a motion to approve Frederick County's request for the polling place change for the general election, and Mr. Funn seconded the motion. The motion passed unanimously.

*Approval of Montgomery County Request*

Ms. Duncan presented the first request from the Montgomery County Board of Elections for a polling place change for the 2018 General Election. The Montgomery County Board of Elections would like to move Precinct 04-017 from the Kennedy Shriver Aquatic Center to the B'nai Israel Social Hall for the general election, due to space issues.

Ms. Duncan requested that the State Board approve Montgomery County's request for the polling place change. Mr. Hogan made a motion to approve Montgomery County's request for the polling place change for the general election, and Mr. Cogan seconded the motion. The motion passed unanimously.

Ms. Duncan presented a second request from the Montgomery County Board of Elections for a polling place change for the 2018 General Election. The Montgomery County Board of Elections would like to move Precinct 04-030 from Richard Montgomery High School back to its original location at St. Elizabeth Catholic School for the general election, as it is a more convenient location for voters.

Ms. Duncan requested that the State Board approve Montgomery County's request for the polling place change. Mr. Hogan made a motion to approve Montgomery County's request for the polling place change for the general election, and Ms. Howells seconded the motion. The motion passed unanimously.

### **OLD BUSINESS**

#### *Spanish Translations*

In response to a question from Ms. Howells, Ms. Duncan confirmed that Schreiber Translations will be translating the statewide ballot questions on the two constitutional amendments for the general election. Ms. Duncan stated that she was not sure if Schreiber Translations has our new and improved glossary, but that she would ensure they receive it.

### **NEW BUSINESS**

#### *Public Comment – Lynn Garland*

Lynn Garland communicated her concerns regarding the security of Maryland's Online Ballot Delivery (OBD) system. Ms. Garland stated that in 2012, 2014, and 2016, computer scientists wrote to warn SBE about the vulnerabilities of the OBD system. She feels that this system's front-end authentication is weak, as hackers can obtain information such as Social Security numbers or driver's license numbers, and that back-end authentication is lacking because Maryland does not compare the signature on the absentee ballot oath to the signature on record.

Ms. Garland claimed that despite the vulnerabilities of the OBD system, it is used by thousands of Maryland voters, and since each ballot obtained through online delivery must be duplicated manually, it is burdensome to the local boards and presents potential for error and fraud.

Ms. Garland expressed that the OBD system came from a place of good intentions and was created to increase voter participation; however, she questioned its effectiveness, citing that OBD ballots are returned at a 12% lower rate than those delivered by mail. Ms. Garland also voiced concern over the recent discovery that Maryland's Online Voter Services are hosted by a contractor whose connections to Russia are suspect.

Ms. Garland urged the State Board to limit the use of the OBD system to those who really need it, namely voters with disabilities and military and overseas voters, and to discourage voters from choosing to have their absentee ballots delivered online.

#### *Public Comment – Robert Ferraro, Co-Director of SAVEourVotes*

Mr. Ferraro presented suggestions for administrative procedures to the State Board to improve transparency, the secrecy of ballots, and security.

To improve transparency, Mr. Ferraro stated the following:

- The transcription of ballots should be publicly viewable, as it is sometimes done in other rooms without public observation;
- The scanning of ballots should be publicly viewable in the canvass room where the public can observe the counting; and
- The public should be able to record and photograph canvasses and recounts, according to the requirements of the Open Meetings Act.

Mr. Ferraro stated that procedures for transcribing and canvassing ballots should protect the secrecy of the ballot. He believes that absentee ballots should be opened in batches of about 25, checking the envelope and the oath signature, then extracting the ballot and placing it into a pile. He feels the judges transcribing the ballots should not be the same judges who opened the envelopes. He claimed that in Montgomery County, most of the teams of ballot transcribers were opening and transcribing the ballots one at a time, so they could potentially know the identity of the voter whose ballot they were transcribing.

To improve security, Mr. Ferraro stated the following:

- Prevention of error and fraud is more important than ever before. Black pens should not be used in the transcription of ballots, and duplicated ballots should be marked with a different ink color so the marks of election officials are distinguishable from those made by the voter. Colorado uses green ink for ballot transcription.
- The accuracy of ballot transcriptions should be verified. The duplicated ballot should be kept with the original ballot. Montgomery County stamps each side of the original ballot and numbers both the original and the duplicate with yellow highlighter pens.
- The accuracy of each transcription should be checked by a different team than the team that transcribed it.
- Audits and recounts should use the original ballot marked by the voter, which is the only ballot the voter has verified.

Mr. Ferraro also expressed concern that there are so many ballots to be duplicated due to the availability of the OBD system. When using OBD, the ballot and oath go in the same envelope, which is different than a regular mailed absentee ballot, where the oath can be checked separately from the ballot. He feels the ballot and oath should not be in the same envelope.

In response to a question from Ms. Howells, Ms. Charlson assured the State Board that SBE will remind the local boards that the public is allowed to photograph a canvass or recount, according to the Open Meetings Act.

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

There were no campaign contributions to report.

#### **SCHEDULE NEXT MEETING**

The next meeting is scheduled for August 23, 2018, at 3:00 pm.

#### **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, §3-305(b)(10) and (13), which permits closing a meeting to discuss sensitive issues related to ongoing efforts to enhance election security, and §3-305(b)(7), which permits



closing a meeting to obtain legal advice about the two matters being discussed in closed session. 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, receive information about and discuss the security of election information systems, and discuss legal advice on these topics.

Mr. Hogan made a motion to convene in closed session, and Mr. Funn seconded the motion. The motion passed unanimously. The motion having passed, the Board met in closed session in accordance with exemptions (b)(1), (7), (10) and (13) of Section 3-305 of the Open Meetings Act to discuss compensation for one individual employed by a local board of elections, receive information about the security of election information systems, and discuss legal advice on these topics.

The closed session began at 3:36 pm. In addition to the board members present at the open meeting, the following individuals were present at the closed session: Ms. Lamone, Mr. Snyder, Ms. Charlson, Mr. Aumayr, and Mr. Omenka.

#### *Personnel Action*

Ms. Charlson presented one-time step adjustments for an employee of a local board of elections. Mr. Hogan made a motion to accept the requested one-time step adjustment for the employee, and Mr. Funn seconded the motion. The motion passed unanimously.

#### *Security Briefing*

SBE staff members reviewed recent findings from internal and external security scans, how critical election systems are backed up, and how critical election systems and processes are monitored and audited and the steps taken when unexpected behavior is noticed.

Ms. Charlson provided an update and overview on the U.S. Department of Homeland Security's assessments of the local boards of elections and SBE's upcoming assessment.

Ms. Lamone summarized the information SBE recently learned about Russian investment in ByteGrid LLC. There was a discussion about what steps could be taken, and Mr. Snyder provided advice on the options.

No action was taken.

The closed meeting adjourned at 4:30 pm.

#### **ADJOURNMENT**

Mr. Cogan made a motion to adjourn the open meeting, and Mr. Hogan seconded the motion. The motion passed unanimously. Mr. McManus adjourned the meeting at 3:35 pm.