

State of Maryland 
State Board of Elections – May 16, 2019 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
Nikki Charlson, Deputy Administrator
Andrea Trento, Assistant Attorney General
Donna Duncan, Assistant Deputy, Election Policy
Keith Ross, Assistant Deputy, Project Management
Jared DeMarinis, Director, Candidacy and Campaign Finance
Erin Perrone, Director, Election Reform and Management
Tracey Hartman, Director of Special Projects
Paul Aumayr, Voting Systems Director
Mary Wagner, Director, Voter Registration
Sarah Thornton, Technical Writer, Project Management Office

Also Present: David Garreis, Deputy Director, Anne Arundel County Board of Elections
Joe Torre, Director, Anne Arundel County Board of Elections
Armstead Jones, Director, Baltimore County Board of Elections
Keith Scott, Anne Arundel County Board of Elections
Katherine Berry, Director, Carroll County Board of Elections
Paula Troxell, Deputy Director, Carroll County Board of Elections
Gwendolyn Dales, Director, Dorchester County Board of Elections
Guy Mickley, Director, Howard County Board of Elections
Christine Jones, Director, Queen Anne’s County Board of Elections
Kim Spence, Deputy Director, Queen Anne’s County Board of Elections
Ben Frey, Somerset County Board of Elections
Jeri Cook, Director, Talbot County Board of Elections
Anthony Gutierrez, Director, Wicomico County Board of Elections
Phil Dacey, MDOT/MVA
Ralph Watkins, League of Women Voters – Maryland
Nathan Magniez, MoveAmerica
Danielle Gaines, MDMatters.org
Amlyv Norris, 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 present. Mr. McManus stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM APRIL 2019 MEETING

Mr. Funn made a motion to ratify the approved minutes from the April 24, 2019 meeting, and Mr. Hogan seconded the motion. The motion passed unanimously.

ADDITIONS TO THE AGENDA

There were no additions to the agenda.

ADMINISTRATOR'S REPORT

1. Announcements & Important Meetings

Personnel

Mr. DeMarinis welcomed Lisa Hanzook to the auditing department of our Candidacy & Campaign Finance Division at SBE. Lisa comes to us from the Comptroller's Office where she enhanced her knowledge of finance and auditing for four years. She will help candidates and their campaigns to ensure reports are filed timely and monies are recorded correctly. This newlywed and her husband reside on the eastern shore.

U.S. Election Assistance Commission's (EAC) Board of Advisors - 2019 Meeting

As mentioned at last month's meeting, the EAC's Board of Advisors met on April 24th and 25th in Salt Lake City. Linda Lamone and Alysoun McLaughlin, the Deputy Director for the Montgomery County Board of Elections, are members of this board. Since the agenda of this meeting was substantially similar to the agenda for the Standards Board meeting, the summary Ms. Charlson provided at last month's meeting also summarizes the Board of Advisors' meeting.

League of Women Voters – Kent, Queen Anne's and Mid-Shore Chapters

The Kent County Chapter of the League of Women Voters invited Ms. Charlson to its annual meeting to discuss how Maryland's election officials secure our election systems and data. Approximately 50 individuals, including local election officials from Caroline, Kent, and Worcester Counties, attended this presentation. A copy of a "Letter to the Editor" published in the May 1st edition of the *Kent County News* was included in the meeting folder.

Maryland Association of Election Officials (MAEO) - 2019 Annual Meeting

MAEO's 2019 Annual Meeting is scheduled for May 22nd and May 23rd in Ocean City. Several SBE staff members and Mr. Trento are participating in the conference. We will provide an overview at next month's meeting.

SBE Biennial Conference

SBE's Biennial Conference will be held on October 17th at the Crowne Plaza Hotel located at 173 Jennifer Road, Annapolis. Reservation information and a draft agenda will be distributed soon. Attendance is mandatory for board members, board counsel, election directors, and designated staff members unless excused by the State Administrator. If someone cannot attend the conference, the individual must submit to Ms. Wagner a waiver request.

Baltimore City - Ransomware Attack

During the afternoon of May 8th, we learned that the Baltimore City government fell victim to a ransomware attack. After speaking with the Baltimore City Board of Elections, we disconnected their access to our network and notified our vendors. Each vendor reviewed its system and equipment looking for any indications of unusual activity, and none were found. We also alerted the local boards to be cautious with emails sent from a Baltimore City email address. We and the employees of the Howard County Board of Elections have processed the City's MDVOTERS work.

Based on recent reports, we understand that it will take up to four weeks for the City to restore access to various City systems. In the meantime, Ms. Wagner arranged for employees

of the Baltimore City Board of Elections to use computers in Baltimore and Harford Counties to process MDVOTERS work. SBE will also serve as an alternate site for candidates for Baltimore City offices to file for office.

2. Election Reform and Management

New Social Media Accounts

We are happy to announce that the Baltimore and Cecil Boards of Elections now have Twitter and Facebook accounts. Social media continues to be a main source of information for our voters. Cortnee Bryant works closely with representatives from Twitter, Facebook, and the National Association of State Election Directors to get social media accounts verified.

Survey to Assess the Accessibility of Voting Locations

Ms. Bryant revised the survey used by the local boards to evaluate a new early voting center or polling place to determine whether the new location is accessible for voters with disabilities. Ms. Bryant worked with Joelle Ridgeway, Director of Disability and Community Services in Anne Arundel County, to ensure the survey included the most recent changes to the federal Americans with Disabilities Act. The improved form will be available to the local boards by the end of May.

Informational Videos

Ms. Bryant has been working on numerous informational videos to assist voters and election judges. Currently, she is working on a series of absentee videos, including how to complete the request for an absentee ballot for military and overseas voters, domestic voters, and college students and how to use the online ballot delivery system. Ms. Bryant will also be working on interactive videos for election judges. Finally, she will be working on an informational video showing voters what to expect when they vote during early voting or on election day.

Election Judges' Manual

Ms. Perrone received from the local boards minimal edits to Chapters 1 through 4 of the Election Judges' Manual. Chapters 1 through 4 cover basic information, such as the dates and times of the election, how election judges should interact with voters with disabilities and cross-cultural communication, and the roles and responsibilities of election judges. These chapters will be sent to SBE's Assistant Attorney General for approval and then posted to our Online Library for the local boards to begin customizing. Work on the remaining chapters continues and must be posted to the Online Library by the beginning of September so that local boards can customize the chapters, submit them to SBE for approval, and then begin printing for training classes.

Senate Bill 364 - Election Law - Election Day Page Program - Establishment

During the 2019 Legislative Session, SB364 was passed. SB364, now Chapter 468 requires SBE to establish an Election Day Page Program, develop and implement a training program for use by the local boards, and adopt regulations. The Page Program is for 14 and 15-year old students who are interested in assisting a local board and election judges in performing duties in a polling place on election day. Ms. Perrone is working with a number of local boards who already have young persons assisting election judges on election day to formulate the training program and regulations.

Post-Election Tabulation Audit Legislative Report

In accordance with § 2-1246 of the State Government Article, we submitted to the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee a report that describes the resources required to complete the audit required under this Act following the 2018 General Election. The report includes the amount of time, the number of personnel required, and any other costs incurred by SBE or the local boards of elections to complete the audit. The report also lists other administrative obstacles to completing the audit. A copy of the report was provided in the board members' meeting folder, and a PDF of the report can be found by clicking on "Ballot Audit Plan" under the "Hot Topics" side menu on SBE's website.

3. Voter Registration

MDVOTERS - Joint Application Design (JAD) session

We want to thank all that participated in the recent two-day JAD session. Issues were prioritized and assigned to upcoming software releases.

MVA Transactions

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

New Registration - 11,773	Residential Address Changes - 19,191
Last name changes - 2,238	Political Party Changes - 5,728

Non-Citizens: This will be updated next month.

Submitted to the Office of the State Prosecutor – 0

Removal of non-citizens – 11

Removal of non-citizens who voted - update to come

Removal of non-citizens who voted multiple times - update to come

Non-citizens forwarded to the Office of the State Prosecutor – update to come

Non-citizens reported by Immigration & Customs Enforcement – 0

Change in status from Office of the State Prosecutor - 0

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

The 2020 candidate filing period opened in February. Currently, 16 candidates have filed at SBE for the 2020 election cycle.

Campaign Finance

The Contribution Disclosure Statement is due on May 31, 2019, for persons doing public business and persons who employ lobbyists and make applicable contributions. Over 810 statements were filed in November 2018. Since the last report was due, 45 new businesses have registered.

Since October 1, 2017, governmental entities are required to forward on a quarterly basis contact information for any vendors with contracts of \$200,000 or more to SBE. SBE receives quarterly information from only a few governmental entities, notably the Office of the Secretary of State, Montgomery County Pensions System, and the Maryland State Retirement and Pension System.

Enforcement Actions

The CCF Division received the payments for the following civil penalties:

1. Palko, Barb 4 CCBOE paid a civil penalty of \$ 50.00 on 04/23/2019 for failing to maintain a campaign bank account.
2. Osorio, Dalbin 4MoCo Council paid a civil penalty of \$ 100.00 on 04/18/2019 for making a cash disbursement greater than \$25.00.
3. Gannon, (Holton) Joe Friends of paid a civil penalty of \$ 100.00 on 04/04/2019 for making a cash disbursement greater than \$25.00.
4. Taylor, Rodney C. Citizens for paid a civil penalty of \$ 100.00 on 04/26/2019 for making a cash disbursement greater than \$25.00.

5. Project Management office (PMO)

Inventory Management

The FY2019 Annual Inventory Audit for equipment and supplies continues at SBE and at the local boards. June 30th is the deadline for everyone to complete their inventory audit. At present, 63.79% of equipment and supplies across the state have been inventoried. This includes the 14 local boards that are 100% compliant with their inventory audits.

Additional Space

The PMO continued coordinating and scheduling work with the additional office space in addition to the work that is required in the existing office space per the newly signed lease. The permits have been secured and we expect work to begin in the next couple of weeks.

6. Voting System

Electronic Pollbooks

SBE continues to work with ES&S on the software update for the implementation of same day registration on election day and have finalized the specifications. We are still looking to have a testable version of the updated software in late summer, with an intermediate release to demonstrate update screenshots for election judges' documentation.

Electionware Update

SBE continues the planning process for a possible software and firmware upgrade that will include all components of the voting system. SBE received a beta version on May 1st, for review and familiarization - including updates to the ballot scanners and the ballot marking device. ES&S has submitted the software to the voting system testing lab for examination for federal certification.

Ms. Charlson announced that Mr. Aumayr was leaving SBE and would be heading to work for the EAC testing and certification program. She thanked him for his 16 years of service at SBE and his valuable contributions to the agency.

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 November 7, 2018, the court granted the

plaintiffs' motion for summary judgment, denied that of the defendants, and awarded judgment to the plaintiffs. Defendants appealed to the Supreme Court, and the ruling was stayed during the pendency of the appeal. On March 26, 2019, the appeal was argued to the Supreme Court, which should rule on the appeal by the end of June 2019.

2. *Fusaro v. Davitt et al.*, No: 1:17-cv-03582 (U.S. District Court, D. Md.). No change from the last update. 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 plaintiff appealed. The Fourth Circuit heard argument on the appeal on March 20, 2019. The court has not yet ruled.
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. *Barber v. Maryland Board of Elections*, No. C-02-CV-17-001691 (Cir. Ct. Anne Arundel Cnty.) No change from the last update. 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 on December 18, 2018 the Court of Special Appeals ordered that the appeal would be adjudicated without oral argument.
5. *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 April 24, 2019, Judicial Watch filed a reply in support of its motion for summary judgment. On May 8, 2019, the defendants filed a reply in support of their cross-motion for summary judgment. The motions for summary judgment are now fully briefed.

6. *The Washington Post, et al. v. McManus, et al.*, No. 1:18-cv-02527 (U.S. District Court, D. Md.). This case presents a First Amendment 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”). On January 4, 2019, the district court granted the plaintiffs’ motion for preliminary injunction on the ground that the plaintiffs’ “as applied” constitutional challenge to the statute was likely to succeed. On February 2, 2019, the defendants appealed that ruling to the Fourth Circuit. On April 12, 2019, the defendants filed their opening appellate brief. On April 19, 2019, the Campaign Legal Center and Brennan Center for Justice filed *amicus curiae* briefs in support of the appellants. The plaintiffs’ response brief is due May 31, 2019.
7. *Segal v. Maryland State Board of Elections*, No. 1:18-cv-2731 (U.S. District Court, D. Md.). No change from the last update. On September 5, 2018, Jerome Segal filed a complaint seeking a preliminary and permanent injunction requiring the State Board of Elections to accept the petition filed in support of the creation of the Bread and Roses party, and to include plaintiff’s name on the general election ballot as the Bread and Roses Party’s nominee for the U.S. Senate contest. On September 18, 2018, the court denied plaintiff’s requested preliminary injunction, on October 11, 2018 the court of appeals affirmed that ruling, and on November 14, 2018, the court of appeals denied plaintiff’s request for *en banc* review. On January 4, 2019, the district court ordered plaintiff to submit a status report by January 18, 2019, indicating if the case can be dismissed as moot. The court reissued the order on April 9, 2019.
8. *Johnston, et al., v. Lamone*, No. 18-cv-3988-ADC (D. Md.). No change from the last update. On December 28, 2018, the Libertarian Party of Maryland (the “Party”) and its Chairman, Robert Johnston, filed a lawsuit alleging that the statutory scheme governing the official recognition of minor parties in Maryland, as applied to the Party, was unconstitutional in at least two ways. They alleged that the scheme violates their First Amendment speech and association rights by requiring the Party to undertake the petition process to re-obtain formal recognition under State law, when there are already over 22,000 Maryland voters currently registered as Libertarians. They also alleged that the standard by which Maryland verifies petition signatures is unconstitutionally strict, in that it requires the rejection of signatures of known Maryland voters due to technical noncompliance with the statutory standard. Plaintiffs moved for a preliminary injunction, which was denied at a hearing on January 31, 2019. Subsequently, the defendant filed a motion to dismiss, which is fully briefed and pending before the court.
9. *Phukan v. Maryland State Board of Elections*, No. C-2-CV-19-000192 (Cir. Ct. Anne Arundel Cnty.). On January 23, 2019, Anjali Reed Phukan, who was the Republican nominee for Comptroller in the 2018 election, filed a lawsuit against the State Board of Elections seeking a writ of mandamus directing the State Board of Elections to decertify Comptroller Peter Franchot’s campaign committee, an injunction requiring Mr. Franchot and his campaign committee to file corrected campaign finance reports, a declaratory judgment that Ms. Phukan is entitled to examine the documentation supporting any corrected campaign finance reports that Mr. Franchot or his committee files, and a declaratory judgment that Ms. Phukan be issued the oath of office as Comptroller and be awarded back pay and the costs of suit, should Mr. Franchot or his committee fail to file corrected

campaign finance reports. On March 22, 2019, the defendant filed a motion to dismiss the complaint. On April 5, 2019, the plaintiff filed an opposition to the motion to dismiss, and a motion for summary judgment. On April 15, 2019, the court granted the defendant's motion to dismiss and dismissed the complaint with prejudice. On April 24, 2019, Ms. Phukan filed a motion to vacate the court's dismissal order and a motion for a new trial.

10. *Women Against Private Police, et al. v. State Board of Elections*, No. C-2- CV-19-001327 (Cir. Ct. Anne Arundel Cnty.). On April 29, 2019, plaintiffs Women Against Private Police and its chairperson, Jillian Aldebron, filed a complaint for judicial review and declaratory judgment against the State Board of Elections and the Administrator of Elections regarding an advance determination issued by Administrator as to the sufficiency of the format of a proposed petition seeking to place that portion of SB 793, the Community Safety and Strengthening Act, authorizing Johns Hopkins University to establish a private police force, to the voters at referendum. The defendants have filed a motion to dismiss. That motion will be argued May 21, 2019. The plaintiffs have filed a motion for summary judgment, a brief on the merits of their petition for judicial review, and a motion for preliminary injunction, to which the defendants' responses (if the case is not dismissed) will be due May 23, 2019. The merits hearing, as well as the hearing on plaintiffs' motions for summary judgment and preliminary injunction (again, if the case is not dismissed), will take place on May 28, 2019.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Mr. DeMarinis presented requests from three campaign committees to waive late fees incurred by the committees. Two campaign committees were denied waivers of late fees and were presented to the board for informational purposes. The three committees requesting a waiver of late filing fees are listed below:

1. Goldberg, Scott Friends of
2. Lipscomb, Lauren Friends of
3. Young, Calvin Supports of

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

APPROVAL OF REQUESTS FOR CONFIDENTIALITY OF CERTAIN INFORMATION

Mr. DeMarinis presented four requests for confidentiality of certain information. He stated that these requests met the requirements for confidentiality. In response to a question from Mr. Cogan, Mr. DeMarinis confirmed that the second requestor is a circuit judge.

Ms. Charlson noted that SBE will edit the language for the law enforcement checkbox on the confidentiality form to include judiciary personnel.

Mr. Funn made a motion to approve the four requests for confidentiality, and Mr. Hogan seconded the motion. The motion passed unanimously.

APPROVAL OF ADMINISTRATIVE CLOSURE OF CAMPAIGN ACCOUNT

Mr. DeMarinis presented a request for administrative closure of one campaign account. He explained that the Office of the State Prosecutor has determined that the campaign account has a

zero cash balance and any violations that may have occurred are now outside the statute of limitations. The Office of the State Prosecutor has recommended closing the account.

In response to a question from Mr. Hogan, Mr. DeMarinis stated that there will be a record of this noncompliance if the individual files to run for office at a later date and that closing the account now does not affect the Office of the State Prosecutor's ability to pursue this committee later on. If the individual files to run for office within five years, we can request for the fees to be paid at that time. The individual can file for candidacy after six years without paying the fees, but there will still be a public record of the outstanding fees in the database.

Mr. Hogan made a motion to approve the request for administrative closure of the campaign account, and Ms. Howells seconded the motion. The motion passed unanimously.

APPROVAL OF REGULATIONS – FINAL APPROVAL: TITLE 8 POST-ELECTION VERIFICATION AND AUDITS

Ms. Charlson explained that these regulations were published and public comments were received. She provided a summary of the public comments and the recommended actions for each comment.

Mr. McManus recognized Ms. Howells for her close review of the regulations. In response to a question from Mr. McManus, Mr. Trento and Ms. Charlson stated that Mr. Trento's legal advice does not impact the State Board's ability to move forward on the regulations because the regulations are not incorrect or inconsistent with the Assistant Attorney General's advice. Ms. Charlson recommended adopting the regulations and later adding more detail to clarify the interpretation issue regarding auditing absentee ballots. Mr. Trento advised that the discussion on his legal advice should take place in closed session. Mr. Cogan expressed that he was uncomfortable waiving the attorney-client privilege and agreed that they should discuss Mr. Trento's legal advice in closed session rather than in the open meeting. Mr. McManus stated that after the board has determined its interpretation of the regulations, that information will be made public.

Ms. Howells presented her feedback on the public comments that were received regarding the post-election audit regulations:

- a. 33.08.05.01B(3) – The definition of “precinct” includes early voting centers. However, the State Board approved in November a change to the definition of “precinct” to include early voting centers for the remaining regulations, but it did not include early voting centers for the audit. Ms. Howells noted that it does not make sense to approve incorrect regulations and amend the language later.
- b. 33.08.05.08B(2) – In the election law, it says following each primary election, the State may complete a manual audit at the State Board's discretion, but the regulation says it is at the State Administrator's discretion. Ms. Howells stated that 33.08.05.09 gives an advance directive that requires SBE to perform a manual audit if there is a discrepancy greater than 0.5 percent, but she believes the regulations should be clear that the State Board retains the power to decide if a manual audit should be conducted after a primary election for other circumstances. Ms. Charlson encouraged the board to retain the automatic trigger for a manual audit when there is a discrepancy greater than 0.5 percent.

- c. 33.08.05.08C(2) – In response to a question from Ms. Howells, Ms. Charlson clarified that when Clear Ballot audits ballots from the ballot marking devices, the ballots are reviewed manually because their system cannot read the barcode; they manually look at the text on the ballot and enter that information into the system. Ms. Charlson stated that we do not know what happens when the ballots from the ballot marking devices are automatically adjudicated, so that is a question we will need to discuss with Clear Ballot.
- d. 33.08.05.09A(2) – This regulation gives authority to the State Administrator, while the election law gives authority to the State Board. Ms. Howells proposed removing (c) and (d) from this regulation. The State Board had a discussion about what authority they wish to retain and what authority they wish to delegate to the State Administrator, so that the Administrator may perform necessary operations. In response to a question from Mr. McManus, Mr. Trento stated that the removal of (c) and (d) from this regulation would restrict the State Administrator’s ability to conduct the audit, and Ms. Charlson added that in this case, the State Board would need to be able to meet to make decisions and vote by majority on short notice. Mr. Hogan expressed concern that taking away delegated authority would tread on micromanagement and would burden the State Board. Mr. McManus noted that the Election Law Article made the distinction that the State Board has the authority, and Ms. Charlson stated that the statutes often use “State Board” even when they don’t necessarily mean the actual State Board, which is why delegation came about. Mr. Cogan proposed retaining (c) and (d) in the regulation and adding a savings clause that states that the State Administrator can act when necessary, but that the State Board reserves the right to step in under unforeseen circumstances. Ms. Charlson agreed to draft a savings clause to include in the regulation. The State Board determined that the savings clause should be included at the beginning of Title 33, rather than only applied to the post-election audit.
- e. 33.08.05.09C(2)(b) – Ms. Howells expressed that the selection is not truly random if some precincts are excluded, though she recognized that the statute does not say “all precincts.” If some precincts are excluded, she stated that we either place those precincts at risk of tampering by telling the public which ones were excluded, or do not tell the public and thus, compromise transparency. Ms. Howells also recommended looking at alternate methods for randomly selecting precincts in the future so that it is random and more transparent. Ms. Charlson stated that SBE could look into other options for selection methods, but that the audit takes place after the election and certification of results, so it does not actually matter if we disclose the excluded precincts and it remains the State Board’s discretion.

Mr. Cogan requested that SBE create a single document of the regulations with the proposed changes incorporated, so the State Board can see what the regulations will ultimately look like. Ms. Charlson agreed to provide the requested document. Mr. Cogan proposed tabling the approval of these regulations until they have the document that outlines the proposed changes.

Mr. Cogan made a motion to table the adoption of the COMAR 33.08.05 regulations, and Ms. Howells seconded the motion. The motion passed unanimously.

REVIEW OF CAMPAIGN FINANCE GUIDANCE

Mr. DeMarinis presented campaign finance guidance that will be posted on SBE’s website. The guidance focuses on allowable expenses in a campaign finance context, and it is based on inquiries SBE has received from candidates.

Mr. DeMarinis explained that the use of campaign funds for child care expenses is permitted under Maryland law, if the child care expenses have an electoral purpose. For example, it is a permissible expenditure to hire a babysitter to care for the candidate's children while the candidate attends a campaign fundraiser event.

Additionally, expenditures in support of cybersecurity countermeasures to protect emails, storage of voter data, and other campaign information would have to have an electoral purpose in order for them to be permissible. For example, the use of an IT Specialist to enhance the security of campaign servers and systems is a permissible expense.

DISCUSSION OF USE OF BALLOT MARKING DEVICES IN 2020 ELECTIONS

The ballot marking device policy from 2016 and 2018 was included in the board meeting folder. The policy required the check-in judge to inform every voter that "if needed, there is an accessible way to read or mark your ballot," an explanation of the accessibility features if the voter wanted to use the ballot marking device, at least two voters to use the ballot marking device, and the deployment of one ballot marking device per voting location.

In response to a question from Mr. McManus, Mr. Trento stated that the State Board, Ms. Lamone, and Mr. Trento received a letter from the National Federation of the Blind's (NFB) counsel asking the State Board to commit to certain steps or face legal action. They asked for a response to the letter by next week. Mr. Trento said he could discuss with the board the litigation risk in closed session, but changes to the policy could be discussed in open session if the board wishes to change the policy.

Ms. Charlson stated that there is not a specific internal deadline that mandates the State Board modify the policy in a certain time frame; however, this policy has implications for a number of internal deadlines, including finalizing training materials, procuring additional equipment, and modifying contracts.

Mr. Hogan expressed that he feels action on this policy is dependent on the ES&S software that is in development. If ES&S is able to deliver the software in time for the 2020 election, then the ballot marking device issue will be a moot point because the navigation problems will be addressed. However, if ES&S is not able to deliver in time, then we will need to determine if the policy needs to change. Mr. McManus proposed provisionally making a decision on the policy, pending ES&S's solution. The revised policy would be conditioned on continuing with the existing software.

Ms. Charlson explained that SBE received a beta version of ES&S's new software this month and is in the process of evaluating the software's features, which go beyond the navigation aspect and have a major impact on how we conduct elections. She stressed that we cannot wait until we have a final product from ES&S to move forward on the policy.

Mr. McManus stated that the State Board has issues with the current policy, especially regarding how inconsistently it has been implemented across the counties. The State Board is committed to revisiting and changing the policy, but they are not in a position to do so today.

In response to a question from Mr. Funn, Ms. Charlson said we could discuss the policy at SBE's Biennial Conference if we have a decision on the policy, to promote more consistent implementation.

Mr. McManus deferred any further discussion on this topic to the closed session.

OLD BUSINESS

MAEO Personnel Proposal

Mr. McManus stated that the State Board received a number of responses from county governments regarding mandating pay raises. Some counties approved the pay raises and other counties said they could support the three percent cost of living adjustment (COLA) for fiscal year 2020, but they were uncomfortable with mandating salary increases on a longer-term basis. They committed in writing that they agreed with the suggestion that employee salaries should be revisited and that they should be consistent with the duties of the position. The county governments expressed in their responses that they are willing to work with the State Board on this matter in the future.

Ms. Charlson stated that the job classifications do not necessarily need to be attached to salary increases, as the job classifications can be revised and linked to the current salary structure.

In response to a question from Mr. Cogan, Ms. Charlson clarified that the State Board does not need to authorize the three percent COLA because that will be done by the State and all State employees will receive the COLA automatically.

Mr. Cogan proposed that the State Board commit to making salary determinations by January of each year, so that counties have time to factor them into their budgets. Mr. Hogan agreed that the State Board should revisit the salaries each year, but also proposed implementing a two percent increase in addition to COLA for fiscal year 2020 to make salaries more competitive and to promote staff retention. He noted that this increase would only apply to fiscal year 2020 and not future years beyond that. Ms. Howells agreed with Mr. Hogan's proposal for a two percent increase and expressed that the increase was both reasonable and warranted.

Mr. Cogan stated that the memo that was sent to the county governments from the State Board suggested that the State Board would approve a three percent COLA and not anything beyond that. He indicated that he was uncomfortable approving anything beyond the COLA, since their communication did not specify that they would do that for fiscal year 2020. He was concerned that the county governments would feel as if the State Board has not been forthright if they were to approve an additional increase. Mr. Hogan expressed that he understands Mr. Cogan's concerns, but that he was disappointed with the lack of response from the counties and that ultimately it is the State Board's decision.

Mr. McManus proposed sending another memo to the counties, stating that they intend to issue an additional two percent increase unless the county governments provide a compelling reason not to, which would push this process back another month. Ms. Charlson stated that the county budgets will likely be finalized by then.

Mr. Hogan made a motion to mandate a two percent increase on top of the three percent COLA and Mr. Funn seconded the motion. Three board members voted in favor of the motion and two board members were opposed. Because all motions by the State Board must be approved by a supermajority, the motion did not carry.

Mr. Cogan made a motion to send another memo to the counties, stating that the State Board intends to approve an additional two percent increase on top of COLA. Mr. Mc Manus seconded the motion. Four board members voted in favor of the motion and one board member opposed. The motion passed.

Ms. Charlson agreed to draft and circulate the memo to the board members.

NEW BUSINESS

MVA Issuance of REAL ID Licenses

Mr. Phil Dacey explained on behalf of the Motor Vehicle Administration (MVA) regarding Real ID licenses. He explained that the Real ID Act of 2009 modified the security, authentication, and issuance procedures standards for state driver's licenses. In October 2017, the US Department of Homeland Security informed the MVA that existing customers who received the new ID would need to have certain documentation on file. As a result, the MVA has been requiring the requisite documentation for license renewals and new issuances, and they are starting to bring customers back in who are missing the appropriate documentation. Mr. Dacey noted that customers can schedule an MVA appointment online and will be seen within 15 minutes. The compliance deadline is October 2020, at which point non-compliant IDs will no longer be accepted for certain activities, such as air travel and entry into government buildings. There will be no extensions made by the federal government.

Mr. Cogan asked if SBE would be able to determine if customers who provide non-compliant documentation at the MVA are on the voter rolls. Mr. Trento and Ms. Wagner stated that they are not sure SBE has the authority to receive that information or to remove voters from the voter roll on that basis. Mr. Trento added that federal law very clearly states when someone can be removed from the voter registration database, and he is not sure if this constitutes grounds for removal. Ms. Wagner stated that she will have to meet with the MVA and Mr. Trento to discuss Mr. Cogan's question and to determine if this type of coordination is possible and permissible.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Mr. Cogan disclosed a contribution of \$150 to Queen Anne's County Republican Central Committee. Mr. Hogan disclosed contributions of \$100 to Marylanders for Leslie Lopez and \$125 to Friends of Alice Cain. No other Board members had any contributions to report.

SCHEDULE NEXT MEETING

The next meeting is scheduled for Thursday, June 27, 2019, at 2:00 pm.

ADJOURNMENT

Mr. Hogan made a motion to adjourn the open meeting, and Ms. Howells seconded the motion. The motion passed unanimously. Mr. McManus adjourned the meeting at 4:40 pm.

CLOSED MEETING

Mr. McManus requested a motion to close the board meeting under General Provisions Article, §3-305(b)(7), which permits closing a meeting to consult with counsel to obtain legal advice, 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 consult with counsel and receive legal advice about potential litigation concerning the use of the ballot marking device and discuss the security of election information systems and prevent the public disclosure of security information.

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)(7), (10), and (13) of Section 3-305 of the Open Meetings Act to be briefed and consult with counsel and receive legal advice about potential litigation concerning the use of the ballot marking device and receive information about the security of election information system.

The closed session began at 4:48 pm. In addition to the board members present when the closed meeting convened, Ms. Lamone, Mr. Trento, Ms. Charlson, Mr. Aumayr, and Mr. Omenka attended the closed meeting.

Security Briefing

During the closed session, Ms. Charlson, Mr. Aumayr, and Mr. Omenka provided updates to how the critical election systems are protected, monitored, and restored. The election systems discussed were the statewide voter registration, candidacy and election management system; the voting system; the online campaign finance and business contribution filing system; the online voter registration system; voter look-up; and polling place locator. Mr. Omenka also shared the results of a recent assessment by the U.S. Department of Homeland Security. No action was taken.

Consult with Counsel about Potential Litigation

Mr. Trento suggested the content for a response to a letter from the National Federation of the Blind requesting expanded use of the ballot marking device.

No actions were taken.

The closed meeting adjourned at 5:25 pm.