

State of Maryland 
State Board of Elections – April 13, 2020 Meeting

Attendees (via conference call):

Michael R. Cogan, Chair
Patrick J. Hogan, Vice Chair
William G. Voelp, Member
Kelley A. Howells, Member
Malcolm L. Funn, Member
Linda Lamone, Administrator
Andrea Trento, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy, Election Policy
Shafiq Satterfield, Regional Manager Supervisor
Jared DeMarinis, Director, Candidacy and Campaign Finance
Fred Brechbiel, Chief Information Officer
Art Treichel, Chief Information Security Advisor
Erin Perrone, Director, Election Reform and Management
Tracey Hartman, Director of Special Projects

Attendees (at SBE Office): Gary Hastings, IT Division

DECLARATION OF QUORUM PRESENT

Mr. Cogan called the meeting to order at 10:02 am. After taking roll, he stated that all members were present and that there was a quorum. He stated that the meeting was being livestreamed.

ADDITIONS TO THE AGENDA

Mr. Cogan stated that under agenda item 4, regarding the Special General Election in the 7th Congressional District, the Board would discuss how those three local boards of elections are preparing for that election.

CLOSED SESSION

Mr. Cogan requested a motion to close the board meeting under General Provisions Article, §3-305(b) (7) and (8), which permits closing a meeting to consult with counsel to obtain legal advice and with staff about pending or potential litigation. Meeting in closed session allows the members to consult with Board counsel without waiving attorney-client privilege and obtain information relevant to pending or potential litigation. Mr. Hogan made a motion to convene in closed session under General Provisions Article, §3-305(b)(7) and (8), and Mr. Voelp seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions defined in (b)(7) and (8) of Section 3-305 of the Open Meetings Act to receive advice from counsel and consult with staff about pending or potential litigation.

The closed session began at 10:04 am. Mr. Cogan, Mr. Hogan, Ms. Howells, Mr. Voelp, and Mr. Funn attended the closed meeting. In addition to the board members, Linda Lamone, Nikki Charlson, Donna Duncan, and Andrea Trento attended the closed meeting.

Mr. Trento provided advice on a legal matter and on pending and potential litigation concerning the upcoming elections.

No action was taken.

The closed meeting adjourned at approximately 10:55 am.

Mr. Cogan reconvened the public meeting at 10:58 am. After confirming that all Board members were present, he stated that there was a quorum and that the meeting was being livestreamed.

SPECIAL GENERAL ELECTION FOR THE 7TH CONGRESSIONAL DISTRICT (April 28, 2020)

Written Determination Authorized under §IV of Governor's Proclamation

In response to a question from Mr. Hogan, Mr. Cogan clarified that the §IV of Governor's Proclamation ("the Proclamation") dated April 10, 2020, which permitted the Board to proceed with conducting the special general election exclusively by mail provided it made certain written determinations and transmitted those determinations, was open for discussion. At the end of the discussion, if there was a motion to vote to make the determinations called for in the Proclamation for submission to the Governor, the Board would have a vote. Conversely, if there was no motion, there would be no vote. In response to a question from Mr. Cogan, Mr. Trento concurred with Mr. Cogan's approach to the agenda item. In response to a question from Mr. Voelp, Mr. Trento confirmed that if the Board does not vote to make a written determination, the provisions of §III(B) of the Proclamation requiring in-person vote centers for the special general election would be in effect, and the Board did not need to vote to authorize §III(B).

Mr. Hogan stated that he felt that Governor Hogan has managed the State's response to the pandemic better than any state in the country. He stated that, according to the Institute for Health Metrics and Evaluation¹, that Maryland is not predicted to have zero deaths related to COVID-19 until May 10th, and that Johns Hopkins University ranks Maryland as 12th in the nation in total hospitalizations for COVID-19. He stated that he considers the possibility of someone contracting COVID-19 from in-person voting to be a substantial risk to public safety. He stated that local boards believe they will have a difficult time staffing vote centers and reiterated that Dr. Mitchell of the Maryland Department of Health (MDH) stated that MDH could not guarantee personal protective equipment for poll workers at vote centers.

Mr. Cogan asked Ms. Charlson to provide information relevant preparations for the special general election. Ms. Charlson stated the following regarding the special general election:

- 1) Approximately 500,000 ballots for the 7th Congressional District (CD7) were mailed last Wednesday (April 8, 2020).
- 2) Although they are authorized to start canvassing on April 16th, all three CD7 local boards will likely defer the start of their vote by mail canvass to next week. SBE was able to order masks, gloves, and hand sanitizer for the CD7 canvasses, but the supplies will not arrive in time for the local boards to start canvassing on April 16th, and the local boards do not expect to have enough voted ballots by then to make it worth starting. Ms. Charlson commended Shelly Holland and Whitney LeRoux from SBE's Budget and Procurement Division for their quick and diligent effort to find and order the supplies.
- 3) All three CD7 local boards each have a plan to livestream their canvasses so the public can observe the process.
- 4) The local board members are getting sworn in this week and at least one of them will be sworn in remotely.
- 5) The local board members and counsel will participate in the canvass remotely.

¹ <http://www.healthdata.org/>

- 6) SBE is moving some equipment to SBE's warehouse to provide a local board with more space to canvass.
- 7) Ballot drop off containers have been ordered. These containers will be placed outside of the three local board offices so that voters can drop off voted ballots on election day.

In response to a question from Mr. Hogan, Ms. Charlson clarified that the masks, gloves, and hand sanitizer ordered are to support the CD7 local boards for their canvasses.

Mr. Hogan stated that regarding §IV(B) of the Proclamation, this was a difficult decision to make, as ultimately only a court could decide if conducting the special general election without voting centers complies with the Constitutions of Maryland and the United States, and any other federal law. However, he stated that as a member of the Board, he could make that determination based on the following factors:

- 1) Anyone can register to vote and be mailed a ballot if they register by April 21st.
- 2) Any voter can ask for assistance in completing and mailing a ballot.
- 3) Any voter with a disability can request that a ballot be delivered electronically and use the online ballot marking tool with or without assistance.

Mr. Hogan stated that with those three conditions and given the severity of the COVID-19 pandemic, he believed that the special general election can be conducted without vote centers and comply with federal law. Mr. Funn stated that he seconded Mr. Hogan comments.

Mr. Voelp stated that he agreed in principle with Mr. Hogan and Mr. Funn but would support one vote center per county for election day. Through social media and the press, he stated that the State Board of Elections and the local boards should promote the one vote center per county for individuals who must vote in person or who did not receive a ballot.

Ms. Howells stated that she was in favor of opening vote centers at the March 25th meeting of the Board, and that her opinion has not changed. She stated that, historically, there is low interest in special elections and that every registered voter will receive a ballot in the mail. The only difference now is there is a directive from the Governor to open at least one vote center in each county, unless the Board can substantiate its findings that vote centers cannot be utilized in a matter that does not threaten public safety. She pointed to the measures that grocery stores have taken as an example of how the risks to public health can be minimized. Ms. Howells emphasized that for those individuals who need to vote in person, having an open vote center is the difference between them voting and not voting.

Mr. Cogan stated that the Board is not discussing the right to vote, but rather the availability of modes or ways of voting. Regarding §IV(A) of the Proclamation, he stated that we cannot preclude the risk of infection, but we can mitigate it. He stated that §IV(B) of the Proclamation was the issue to debate and pointed out that "to the extent practicable" was not included in §IV(B). He stated that we do not know what the turnout will be and how many voters may show up at a vote center and that uncertainty is the core issue. He stated that it is fine to advocate for things under the law, but then the question becomes how many people have to die or suffer for an individual to have a particular mode of voting. That, however, is not the question before the Board, which Mr. Cogan stated is if the Board is complying with the law. He stated that he feels he has no choice but to make a statement that he knows to be false.

Mr. Hogan made a motion to submit a determination to the Governor pursuant to §IV(A) and §IV(B) of the Proclamation, and Mr. Funn seconded the motion. Mr. Cogan called for a vote by roll

call. Mr. Voelp and Ms. Howells opposed the motion, and Mr. Hogan and Mr. Funn supported the motion. Mr. Cogan abstained. With two opposed, two in favor, and one abstention, Mr. Cogan announced that the motion failed. He stated that the Board will not submit a determination to the Governor.

Emergency Changes to COMAR 33.08.01.02: Board Responsibilities

Ms. Charlson stated that the proposed emergency changes to COMAR 33.08.01.02 would allow for the canvass of votes without the local board members being present during the entire canvass. If adopted, the members would be required to be present (via videoconferencing) when the canvass starts, when the canvass ends, and for all decision sessions. This proposed change is consistent with the Board's comprehensive plan for the 2020 Presidential Primary Election.

In response to a question from Mr. Voelp, Ms. Charlson stated that there is nothing precluding local board members from being present (via videoconferencing) during the entire canvass if they wanted to be present.

Mr. Hogan made a motion to adopt the emergency regulations to COMAR 33.08.01.02, and Ms. Howells seconded the motion. The motion passed unanimously.

Emergency Changes to COMAR 33.11.04.05 & 33.11.04.07: Canvassing Process

Ms. Charlson stated that the proposed changes alter the requirement that a team of two individuals perform certain canvassing tasks. Under the proposed changes, one individual can perform these canvassing tasks. These proposed changes are consistent with the Board's comprehensive plan for the 2020 Presidential Primary Election.

In response to a question from Mr. Voelp, Ms. Charlson stated that the local boards are working to livestream both the canvassing room and the board table. Mr. Voelp stated that he was concerned with the transparency of the canvasses if a livestream feed stopped working. In response, Ms. Charlson stated that the CD7 local boards have plans in place and will be testing their livestreaming during the public demonstration of voting equipment, and that if a livestream feed were to stop functioning, the canvass would stop until the livestream was functioning again.

After a short discussion regarding the proper procedure for including a provision that local boards must stop a canvass if the livestream feed has stopped, Mr. Cogan stated that the Board would defer a decision on emergency changes to COMAR 33.11.04.05 & 33.11.04.07 until the end of the meeting, pending advice from Mr. Trento.

Emergency Changes to COMAR 33.21.05.01

Ms. Charlson stated that current regulation states that all procedures that are in place for early voting and election day apply to a vote center, including the requirement that local board staff to be present at opening and closing. The proposed change removes the requirement for a representative of the local board to be physically present to open or close the vote center but requires the local board to provide remote support as needed.

Mr. Voelp made a motion to adopt the emergency changes to COMAR 33.21.05.01, and Mr. Hogan seconded the motion. The motion passed unanimously.

Emergency Changes to COMAR 33.21.06.01: Vote Center Evaluation Program

Ms. Charlson stated that the proposed change removes the requirement for the formal evaluation program for voting centers. The purpose of this evaluation is to collect information on-site about the operation and management of the vote centers, but with the current public health emergency, she stated that it seems prudent to limit individuals at vote centers for the next two elections.

Mr. Funn made a motion to adopt the emergency change to COMAR 33.21.06.01, and Mr. Voelp seconded the motion. The motion passed unanimously.

PRESIDENTIAL PRIMARY ELECTION (JUNE 2, 2020)

Request to Extend Voter Registration and Related Deadlines (May 27, 2020)

Ms. Charlson requested that the Board extend the voter registration and related deadlines for the June 2, 2020 Presidential Primary Election. This request parallels the action taken for the special general election for the 7th Congressional District. She stated that the requested deadline is May 27th, which is 15 days later than the current voter registration deadline of May 12th. She stated that the extended deadline will benefit voters but still enable SBE and the local boards to mail ballots in time or for voters to receive a ballot electronically.

Mr. Hogan made a motion to extend the voter registration and related deadlines for the June 2, 2020 Presidential Primary Election to May 27, 2020, and Ms. Howells seconded the motion. The motion passed unanimously.

In response to a question from Mr. Voelp, Ms. Charlson stated that the addition of vote centers to the April 28th Special General Election does not impact the voter registration deadline for that election. She stated the pollbook team believes they have enough time to prepare the pollbooks for election day after voter registration closes.

PRESIDENTIAL GENERAL ELECTION (NOVEMBER 3, 2020)

Request to Extend Deadline to Submit Signatures for Charter Petitions (August 3, 2020)

Mr. Trento stated that there have been several requests to the procedures regarding petitions, including a request to extend the deadline to submit petitions to support an amendment to a municipal or county charter. This deadline is statutory and is currently July 27, 2020. Mr. Trento stated that the Board was given the authority to extend the deadline in the Governor's Executive Order of March 12, 2020. Any authorized extensions granted through the Executive Order expire on the 30th day after the date by which the state of emergency is terminated. The risk is that if the Board extended the submission deadline and the state of emergency expires prior to 30 days before the current deadline, the Board's deadline extension would be nullified by the terms of the Executive Order.

Mr. DeMarinis recommended extending the deadline by one week, which is the same deadline for candidates and party petitions. This proposed new deadline would still meet the petition verification timeline, gives enough time to certify the ballot, and enables compliance with the federal Military and Overseas Voter Empowerment Act. Mr. DeMarinis stated that extending the deadline any further would have a ripple effect on other statutory deadlines.

In response to a question from Mr. Voelp regarding the possible scenario that Mr. Trento described, Mr. Trento stated that additional action would need to be taken in order to extend the submission deadline. Mr. Voelp stated his concern for individuals who would be planning for an

extended deadline, only to have the extension possibly nullified. Mr. Cogan reiterated Mr. Voelp's concern.

Mr. Cogan stated that the Board needs to do what they think is appropriate now, and that the issue could be addressed by the Board down the road if the scenario that Mr. Trento described became reality.

Mr. Voelp made a motion that the Board table the discussion of extending the deadline to submit signatures for charter petitions until it's meeting on April 22, 2020 and obtain more information during that time regarding how to make § II of the Governor's Executive Order dated March 12, 2020 not applicable to such an extension. Mr. Hogan seconded the motion. The motion passed unanimously.

SPECIAL GENERAL ELECTION FOR THE 7TH CONGRESSIONAL DISTRICT (April 28, 2020)

Emergency Changes to COMAR 33.11.04.05 & 33.11.04.07: Canvassing Process (Continued)

Mr. Trento stated that COMAR 33.08.01.07 requires that canvass proceedings be open to the public and the media. He explained that if the requirement for public participation is being met through livestreaming, that the absence of the livestream or the failure of it to work is already a violation of an existing regulation. Therefore, Mr. Trento stated, the Board can instruct a local board to cease the canvass until the livestream is properly functioning. Mr. Voelp stated that, given the new information, a directive from Board to the local boards to stop a canvass if the livestream is malfunctioning should be enough.

Mr. Funn made a motion to adopt the changes to COMAR 33.11.04.05 & 33.11.04.07, and Mr. Hogan seconded. The motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

No Board members reported contributions.

SCHEDULE NEXT MEETING

The next meeting is scheduled for Wednesday, April 22, 2020, at 2:00 pm.

ADJOURNMENT

Mr. Voelp made a motion to adjourn the open meeting, and Mr. Hogan seconded the motion. The motion passed unanimously. Mr. Cogan adjourned the meeting at 12:06 pm.