



**State of Maryland**  
**State Board of Elections – January 16, 2020 Meeting**

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Attendees: 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  
Erin Perrone, Director, Election Reform and Management  
Donna Duncan, Assistant Deputy, Election Policy  
Tracey Hartman, Director of Special Projects  
Victorica Smith, Candidacy and Campaign Finance  
Shafiq Satterfield, Acting Voting Systems Director  
Keith Ross, Director of Project Management  
Cortnee Bryant, Deputy Director, Election Reform and Management

Also Present: Alysoun McLaughlin, Deputy Director, Montgomery County Board of Elections  
Kathleen Boucher, Special Assistant to the Director, Montgomery County Office of Intergovernmental Affairs  
Danielle Gaines, *Maryland Matters*  
Lynn Garland, Citizen

**DECLARATION OF QUORUM PRESENT**

Mr. Cogan called the meeting to order at 2:03 pm and stated that five members of the board were present. Mr. Cogan stated that there was a quorum present and the meeting was being recorded and live streamed.

**RATIFICATION OF MINUTES FROM December 2020 MEETING**

Mr. Hogan made a motion to ratify the approved minutes from the December 12, 2019 meeting, and Mr. Voelp seconded the motion. The motion passed unanimously.

**ADDITIONS TO THE AGENDA**

Mr. Cogan stated that Ms. Garland withdrew her request to speak, and that Ms. Boucher has been approved to speak.

**ADMINISTRATOR'S REPORT**

**1. Announcements & Important Meetings**

Welcome to SBE

Ms. Charlson welcomed Nikodimos Kassa (Niko), who joined SBE on January 06, 2020, as a contract Investigator to help the Candidacy and Campaign Finance Division. Mr. Kassa will be working with the Audit and Enforcement Unit staff. For the last five years, Mr. Kassa has been working as a Financial Analyst. His experience in accounting and auditing, as well as examining financial records, will be an excellent resource for the Unit while handling election year complaints and examination of submitted Campaign Finance Reports.

Mr. Satterfield welcomed Tivona McIntyre, who joined SBE on December 9, 2020, as an administrative assistant to support the Elections Temporary Staffing Contract. Ms. McIntyre is an experienced administrative assistant and will oversee the electronic

timekeeping system and will also provide support for budget related tasks associated with the temporary staffing contract.

### Election Directors' Meeting

Ms. Charlson reported that SBE hosted Election Directors' meetings on December 19th and January 16th. A summary of the December 19th meeting was provided in the board meeting folder, and a written summary of the January 16th meeting will be provided at the February meeting.

### Special Election for the 7th Congressional District - Updates

Ms. Perrone reported that on December 20th, SBE transmitted emails and SeaChange, the State's vendor for printing, inserting, and mailing absentee ballot packets, mailed ballots to requesting military and overseas voters. She was happy to report that SBE was in compliance with the deadline established in the federal Military and Overseas Voters Empowerment Act (MOVE) and in response to a request from the U.S. Department of Justice, supplied data on our compliance.

On December 26th, the first round of absentee ballots were transmitted to requesting domestic, civilian voters. This included ballots mailed by SeaChange and emails with ballot log-information sent by SBE.

As of January 13th, SBE has sent 136 emails with information about how to access SBE's online ballot delivery system. Over 60 voters have successfully logged into their accounts, and 52 voters printed their ballots. SeaChange has mailed 399 absentee ballot packets.

Ms. Duncan reported that the call center to support the Baltimore City Board of Elections, Baltimore County Board of Elections, and SBE's local and toll-free lines began January 13th. The call center representatives answer questions about voter registration, voting locations, and general election questions and refer other questions to the LBE or SBE.

Ms. Duncan stated that the voter registration deadline was January 14th, and SBE generated the precinct register on January 16th in the evening. The three local boards have started election judges' training.

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

### Election Judges' Training Evaluation

Ms. Perrone reported that she and Ms. Bryant will be evaluating election judge training classes at six different local boards prior to the 2020 Presidential Primary/Special General Election. She stated that all local boards are evaluated within a four year election cycle as part of SBE's post-election comprehensive audit. A report is issued to the Director and Deputy Director within one week after evaluating the training class. If necessary, SBE will notify the local board if any immediate corrective actions are needed.

In response to a question from Mr. Cogan, Ms. Charlson stated that SBE has not discussed increasing the frequency of election judge training evaluations, as the increasing the frequency is an issue of SBE staff capacity, but further stated that SBE is open to having that discussion in the future. In response to a follow up question from Mr. Voelp, Ms. Perrone stated that choosing which local boards to evaluate is partly random, but choosing which local board to evaluate is based on when each local board was previously evaluated. She explained that each local board has their election judge training evaluated

once in a four-year election cycle, so she will likely base which local boards to evaluate by which local boards were evaluated four years ago.

### **3. Voter Registration**

#### MDVOTERS

Ms. Duncan reported that the prior contract for providing database support and software development for MDVOTERS has expired. Moving forward, maintenance and development will be handled through a staffing contract, which was approved by the Board of Public Works last week. One of the winning bidders, Netorian, is working to onboard many of the same resources used by the previous contractor. This will ensure a smooth transition for voter registration, candidacy and the development of the election management module.

#### MVA Transactions

Ms. Duncan reported that during the month of December, MVA collected the following voter registration transactions:

New Registration - 7,793	Residential Address Changes - 19,987
Last name changes - 2,465	Political Party Changes - 4,965

#### Non-Citizens

Ms. Duncan reported the following summary of relevant activity from December:

Submitted to the Office of the State Prosecutor - 16
Removal of non-citizens - 16
Removal of non-citizens who voted - 3
Removal of non-citizens who voted multiple times - 0
Non-citizens reported by Immigration & Customs Enforcement - 0
Change in status from Office of the State Prosecutor - 0

#### New Party Petition Effort

Ms. Duncan reported that on January 6th, SBE received a petition to form a new political party - the Working Class Party. The petition pages were stamped and sorted by county, and State and local election officials are now verifying the signatures on the petition. SBE's voter registration staff are verifying the signatures from Baltimore City, Baltimore County and Howard County and other smaller jurisdictions. We expect a determination of the sufficiency of the petition in late January.

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

#### Candidacy

Ms. Charlson reported that currently, 272 candidates have filed at SBE for the 2020 election cycle.

Ms. Charlson stated that Maryland's Secretary of State is tasked with naming the Presidential candidates to appear on Maryland's primary election ballot. On January 2nd, Secretary of State John Wobensmith forwarded those names to SBE, and a copy of his letter was included in the board meeting folder. Although several of the named candidates have publicly withdrawn or suspended their campaigns, these candidates must submit by February 3rd (the candidate withdrawal deadline) a written withdrawal form or notarized statement to remove their names from the primary election ballot. Currently, there are 15 Democratic and 2 Republican named Presidential candidates.

### Enforcement Actions

Ms. Charlson reported that the CCF Division received the payments for the following civil penalties:

1. Laurie Halverson for Delegate paid a civil penalty of \$25.00 on December 23, 2019, for making a cash disbursement greater than \$25.00.
2. Citizens for Jeff Cline paid a civil penalty of \$300.00 on January 7, 2020, for failing to record all contributions and expenditures.

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

### Inventory Management

Mr. Ross reported that SBE continues to dispose of equipment via the State's disposal process that includes auctioning, recycling, transferring, or trashing of the items.

He stated that the PMO is finishing up the testing and preparation for the upgrade of the production inventory system this week.

In response to a question from Mr. Voelp, Mr. Ross stated that equipment disposal is an ongoing project.

### Procurements

Mr. Ross reported that the PMO continues to work on several procurements.

The Election Project and Other Resource Support Task Order Request for Proposal (TORFP) was approved by the Board of Public Works. This contract provides database support and software development for MDVOTERS and project support to prepare for the implementation of new electronic pollbooks and other projects and tasks. Efforts are now underway to bring on contract resources.

Maryland Correctional Enterprises has started delivery of the 219 additional black precinct carts to the local boards. The deliveries are expected to continue through mid-February.

Additional precinct voting booths have started to arrive and will be delivered to the local boards once the vendor performs a quality control check. The booths are scheduled to be delivered through mid-February.

### Other

Mr. Ross reported that underground construction work has started that will provide internet and network connectivity to SBE's Central Warehouse facility in Glen Burnie.

Mr. Ross stated that he, along with Ms. Lamone, David Walker, Gary Hastings, and Paula Paschall, attended the Belfer Center's Battle Staff Bootcamp. In addition to representatives from SBE and the various local boards, there were representatives from a number of other states. The purpose of this all-day event was to provide the participants insight into approaches that can be taken to enhance the election operations support efforts during the election periods with a focus on "effective preparation, communication, incident tracking, and team organization." SBE is looking to try some of the suggestions during the upcoming special primary election and then additional suggestions for the Presidential Primary Election in April.

## 6. Voting System

### Electronic Pollbooks

Mr. Satterfield reported that the final build of EZRoster (pollbook software) has been provided to the local boards to complete software upgrades on all pollbooks in preparation for the 2020 elections. SBE requested all pollbook upgrades be completed by January 2020.

Mr. Satterfield stated that SBE continues to work on implementing a wide area network on election day in six local jurisdictions. A third connectivity test was conducted on January 14, 2020. Twenty-one local boards participated and the test was successful. Mr. Satterfield stated that over 100,000 transactions were performed in three phases over the course of six hours.

With network configurations established, Mr. Satterfield stated that SBE plans to utilize the wide area network for the upcoming special election on February 4, 2020. For the April elections, SBE will be replacing the previous network devices utilized for early voting. The new hardware will be the same solution implemented for the election day wide area network.

### Voting System

Mr. Satterfield reported that SBE continues to work with ES&S to offer training to the local boards on the voting system database, voting equipment and associated applications for the voting system. Training will cover several election-related activities including creating media, conducting logic and accuracy testing, and uploading election results. Training began in January, and to date, over 65 training requests have been received of which, 32 have been delivered.

## 7. Legislation

Ms. Duncan reviewed the list of election-related bills. Ms. Duncan highlighted HB37/SB145, SB22, SB33, SB34, and SB89 as bills of particular interest to SBE.

- a. HB 22 - Campaign Material – Alteration of Definition: Clarifying the definition of “campaign material” so that the text, graphics, or other images contained in the material must primarily relate to campaign activity for an election; altering the definition of “campaign material” to include material that relates to a political party and include an automated or pre-recorded oral communication. Effective date January 1, 2021.
- b. HB 34/SB 87 - Contributions, Expenditures, or Donations by Foreign-Influenced Corporations or Foreign Principals: Prohibiting a foreign principal from making a contribution to any campaign finance entity. Prohibiting foreign influenced corporations from making a contribution to a campaign finance entity or making a donation to a person that makes independent expenditures or electioneering communications. Effective date January 1, 2021.
- c. HB 37/SB 145 - References to Absentee Voting in Communications – Mail-In Voting: Requiring SBE and the local boards to refer to absentee ballots as “mail-in ballots” and absentee voting as “mail-in voting” in all communications with voters and the general public; requiring SBE and the local boards to include in public communications regarding “mail-in voting” a statement that “mail-in voting” is referred to as absentee voting in the Annotated Code of Maryland and the Code of Maryland Regulations. Effective date of January 1, 2021.

- d. HB 41/SB 38 - Campaign Finance Violations – Injunctive Relief: Alters the right to seek an immediate injunction to injunctive relief against a violation of campaign finance laws and changes the authority from the Secretary of State to the Chairman or Vice Chairman of the State Board. Effective date January 1, 2021.
- e. HB 51/SB 91 - Individuals Released From Correctional Facilities – Voter Registration: Requiring a correctional facility, before releasing an inmate who has completed a sentence, to provide the inmate with information concerning the inmate's voting rights and voter registration requirements. Effective date October 1, 2020.
- f. SB 04 - Sports Betting – Implementation - Referendum: Authorizing certain license holders to accept wagers on certain sporting events from certain individuals and by certain methods; requiring the State Lottery and Gaming Control Commission to regulate sports wagering in the State. For the 2020 General Election Ballot.
- g. SB 10/HB 103 - Special Election to Fill a Vacancy General Assembly in Office: Amendment to the Maryland Constitution to require an individual appointed by the Governor to fill a vacancy in the office of Delegate or Senator in the General Assembly to serve for the remainder of the term if the vacancy occurs after a certain date; requiring that a special election be held at the same time as a certain regular statewide election to fill a vacancy if the vacancy occurs 21 days before the filing deadline. For the 2020 General Election Ballot.
- h. SB 22 - Polling Places at Continuing Care Retirement Communities: Requiring a local board to establish separate precincts at certain continuing care retirement communities that provides care to at least 200 individuals who are at least 60 years old. Requiring the continuing care retirement community to provide the local board a suitable facility for use as a polling place and provide assistance to the LBE in recruiting election judges from among the residents. Effective date January 1, 2021.
- i. SB 33 - Voting by Absentee Ballot (AB) – Prepaid Postage for Return of Ballots: Requiring that AB return envelopes include prepaid postage; requiring AB instructions include information regarding postage; requiring SBE to reimburse each LBE 50% of the cost of pre-paid postage. Effective date January 1, 2021.
- j. SB 34 - Scanning or Swiping Identification Cards and Driver's Licenses – Prohibition: Prohibiting the use of a scanning device to scan or swipe an identification card or a driver's license of an individual to obtain the personal information of the individual. Note: There are exceptions within this legislation but the same day registration process uses a license scanner. Effective date October 1, 2020.
- k. SB 56 - Petitions and Ballot Questions – Plain Language Requirement: Requiring a petition signature page to contain a plain language description of the subject and purpose of the petition written to be understood by an individual who has attained no higher than a grade 6 level reading comprehension. Effective date January 1, 2021.
- l. SB 58 - Expansion of Commercial Gaming – Referendum – Sports Wagering: The General Assembly may authorize the State Lottery and Gaming Control Commission to issue sports wagering licenses, that revenues be used for dedicated purposes funding of public education. For the 2020 General Election ballot.
- m. SB 89 - State Board of Elections – Certification of Voting Systems – Standards - Mandating that SBE may not certify a voting system unless the system accommodates multiple methods of voting including rank choice voting. Effective date October 1, 2020.

- n. SB 129 - Campaign Finance – Protection of Contributor Information: Prohibits a person from using contributor information from any report or statement for commercial solicitation purposes and may not publish any contributor in certain media facilitating commercial solicitation. Effective date October 1, 2020.

In response to a question from Mr. Hogan, Ms. Duncan stated that SB34 does not currently make an exception for the need to scan driver's licenses to perform same day registration and same day address change activities

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

Mr. Trento provided the following report.

1. *Fusaro v. Davitt et al.*, No: 1:17-cv-03582 (U.S. District Court, D. Md.). Plaintiff Dennis Fusaro brought a complaint in federal court alleging that Maryland violates the First and Fourteenth Amendments by limiting access to the voter list to Maryland voters and only for purposes related to the electoral process. On September 4, 2018, the State defendants' motion to dismiss the complaint was granted, and the plaintiff appealed. On July 12, 2019, the Fourth Circuit vacated the dismissal order, and remanded the case for further proceedings. The Fourth Circuit concluded that Mr. Fusaro had pled a cognizable claim under the First Amendment, but that the State would be entitled to a relaxed level of scrutiny as to whether the limitations violate Mr. Fusaro's rights on remand. The plaintiff has since filed a supplement to his complaint, and the parties have completed a brief period of discovery. Plaintiff filed a motion for summary judgment on December 20, 2019. Defendants' opposition to that motion and cross-motion for summary judgment is due January 24, 2019.
2. *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.
3. *Judicial Watch v. Lamone*, No. 1:17-cv-02006-ELH (U.S. District Court, D. Md.). No change from the last update. This case involves the denial of access to Maryland's voter registration database. Under Maryland law, access to the voter registration list is limited to Maryland registered voters and only for non-commercial, election-related uses. Judicial Watch—an elections watchdog group located in Tennessee—requested Maryland's voter registration "database" and was denied because it was not a Maryland registered voter. Judicial Watch filed suit, arguing that the database was required to be disclosed under the federal National Voter Registration Act. On 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. An August 8, 2019, the District Court awarded summary judgment to the plaintiffs, but requested further briefing on the issue of whether the State Board of Elections should be compelled to produce the dates of birth of voters along with the other voter information available on Maryland's voter

registration lists. On September 13, 2019, the parties filed simultaneous briefs on that remaining issue, and on September 20, 2019, filed simultaneous response briefs. The issue is fully briefed and awaiting determination by the Court.

4. *The Washington Post, et al. v. McManus, et al.*, No. 1:18-cv-02527 (U.S. District Court, D. Md.), *on appeal at* No. 19-1132 (U.S.C.A., 4th Cir.). 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. Oral argument was held on October 30, 2019, and on December 6, 2019, the Court issued an opinion affirming the entry of the preliminary injunction. We are currently discussing resolution of the case with the plaintiffs.
5. *Johnston, et al., v. Lamone*, No. 18-cv-3988-ADC (U.S. District Court, D. Md.), *on appeal at* No. 19-1783 (U.S.C.A., 4th Cir.). 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. On July 11, 2019, the district court dismissed the plaintiffs’ claims, and plaintiffs appealed. Oral argument in the Fourth Circuit has been scheduled for January 29, 2020.
6. *Phukan v. Maryland State Board of Elections*, No. C-2-CV-19-000192 (Cir. Ct. Anne Arundel Cnty.). No change from the last update. 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 April 15, 2019, the court granted the defendant’s motion to dismiss and dismissed the complaint with prejudice. On May 22, 2019, the court denied the plaintiff’s motion to vacate the judgment and motion for a new trial. On May 29, 2019, the plaintiff filed a notice for in banc review by the circuit court. Oral argument before the in banc panel of the circuit court took place on December 30, 2019. The court has not yet issued a decision.
7. *National Federation of the Blind, Inc., et al. v. Lamone et al.*, No. 1:19-CV-02228-ELH (U.S. District Court, D. Md.). On August 1, 2019, the National Federation of the Blind (“NFB”), NFB’s Maryland chapter, and three individual plaintiffs filed a lawsuit against the State



Administrator and the individual members of the State Board of Elections alleging that SBE's BMD policy has, in practice, violated the rights of voters with disabilities "to an equal opportunity vote in person by a secret ballot," in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Plaintiffs seek an order requiring the State Board "in all future elections to offer BMDs to every in-person voter as the default method of voting, with paper ballots offered only to those voters who affirmatively opt out of using the BMD or in cases where there are long lines of people waiting to vote." On September 3, 2019, defendants filed a motion to dismiss the complaint, and on September 20, 2019, plaintiffs filed a motion for a preliminary injunction. The Court also granted leave for Plaintiffs to take limited discovery in connection with their motion for preliminary injunction. The parties attended a settlement conference on January 7 and 13, 2020, before a federal magistrate judge but were not able to resolve the case. The motions to dismiss and for preliminary injunction are fully briefed, and a hearing is scheduled for January 17, 2020. Mr. Trento stated that prior to the January 17<sup>th</sup> hearing both parties, including Ms. Lamone, Mr. Charlson, and Mr. Cogan for the defendants, participated in two days of unsuccessful settlement negotiations.

8. *Hewes v. Alabama Sec'y of State et al.*, No. 1:19-cv-09158-JMF (U.S. District Court, S.D.N.Y.). On October 3, 2019, plaintiff Henry F. Hewes, a putative candidate for the Democratic nomination for President for the 2020 election, sued the unnamed Secretaries of State of 43 states, (including Maryland), alleging that state-imposed limitations on ballot access for federal presidential candidates violate the First and Fourteenth Amendments to the U.S. Constitution. Plaintiff seeks an order compelling the defendants to place the name of the plaintiff and any other candidate who has registered with the Federal Election Commission on the primary ballots of the states named as defendants. The Defendants jointly filed a motion to dismiss asserting common arguments for dismissal on December 19, 2019. The plaintiff's opposition is due January 23, 2020.
9. *Chong Su Yi v. Hogan*, Nos. 464985-V, 466396-V (Cir. Ct. Montgomery Cty.), *on appeal at* Nos. CSA-REG-1435-2019, CSA-REG-1437-2019 (Md. Ct. Sp. App.). On around March 28, 2019, plaintiff Chong Su Yi filed two complaints in the Circuit Court for Montgomery County challenging the results of Maryland's 2018 elections, naming Governor Larry Hogan as defendant. Specifically, Mr. Chong appears to be arguing in the first suit that the results are invalid because of the use of religious facilities as polling places, and in the second suit that the results are invalid because, under Maryland law, unvoters are unable to "negotiate" the terms of the ballots when they mark and cast them, and because the "digital format" of the ballot was not permitted by the U.S. Constitution. On August 8, 2019, the Circuit Court denied motions for default judgment in both cases on the ground that service on the defendant was improper. Plaintiff has appealed those rulings, and the defendant has moved to dismiss those appeals. In the meantime, plaintiff has effected proper service on the defendant and has amended his complaints. The defendant has moved to dismiss both complaints. Those motions are fully briefed and pending. Trial dates have been set for March 12, 2020, and March 26, 2020, respectively.
10. *Public Interest Legal Foundation, Inc. v. Lamone*, No. 1:19-cv-03564-ELH (D. Md.). On March 19, plaintiff Public Interest Legal Foundation, Inc., filed a lawsuit against the State Administrator, the members of the State Board, and Erin Dennis, seeking access to Maryland's list of registered voters pursuant to the public inspection provisions of the National Voter Registration Act. Plaintiff alleges that the District Court's published

decision in *Judicial Watch*, supra, entitles them to access, and that the issue left outstanding by the court in that case does not implicate their request since they are not seeking individuals' dates of birth as part of the information provided for each voter on the list. Plaintiffs filed a motion for summary judgment simultaneously with their complaint. The defendants' answer is due January 17, 2020, and response to the motion for summary judgment is due January 24, 2020.

### **APPROVAL OF LATE FEE WAIVERS**

Ms. Smith presented a request from four campaign committees to waive late fees incurred by the committee. Two campaign committees were denied waivers of late fees and were presented to the board for informational purposes.

The committees requesting a waiver of late filing fees were:

1. Dewees, (James) for Sheriff
2. Gibbs, Makeba Committee to Elect
3. Holtzman, Irene Friends of
4. Parson, Kevin W. Committee To Elect

In response to questions from Mr. Hogan and Mr. Voelp regarding why certain fees were reduced, Ms. Smith explained that the fees in question were assessed during a routine audit of already-filed reports, as opposed to fees assessed during a regular filing. Mr. Hogan noted that enforcement of fees needs to be stricter moving forward.

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

### **APPROVAL OF CONFIDENTIALITY REQUESTS**

Ms. Smith stated that COMAR 33.04.02.02 allows certain individuals to ask that their residence addresses and telephone numbers designated as confidential. The categories of individuals who may request confidentiality are law enforcement personnel, persons being threatened, victim of or witness to felony and others due to safety or serious invasion of privacy.

In response to a question from Mr. Cogan, Ms. Smith stated that the CCF Office verified that each of the individuals listed in the board members' meeting folder was eligible to have their residential address and telephone numbers be confidential.

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

### **ADOPTION OF FINAL REGULATIONS: SUBTITLE 10 - VOTING SYSTEMS (BALLOT STUBS)**

Ms. Perrone presented proposed regulations to COMAR 33.10 – Voting Systems for final adoption. These proposed regulations were approved by the Board at its September 2019 meeting and published in the November 8, 2019, issue of the *Maryland Register* (Vol. 46, Issue 23). The public comment period closed on December 9, 2019. Ms. Perrone stated that no public comments were received.

Ms. Perrone presented for final adoption the following regulations and recommendations:

1. **33.10.01.17F – In General:** No comments were received. *Recommend adopting as published.*
2. **33.10.01.17F(1) – In General:** No comments were received. *Recommend adopting as published.*
3. **33.10.01.17F(2) – In General:** No comments were received. *Recommend adopting as published.*

There was no discussion on the adoption of the proposed regulation as final. Mr. Hogan made a motion to adopt the proposed regulation for final publication, and Mr. Funn seconded the motion. The motion passed unanimously.

### **APPROVAL OF PROPOSED REGULATIONS FOR PUBLICATION: SUBTITLE 16 PROVISIONAL VOTING), SUBTITLE 17 (EARLY VOTING), AND SUBTITLE 19 (SAME DAY REGISTRATION AND ADDRESS CHANGES)**

Ms. Hartman presented proposed changes to COMAR 33.16.01 - Definitions; General Provisions; COMAR 33.17.01 - Definitions; General Provisions; and COMAR 33.19.01 - Definitions; General Provisions. Ms. Hartman explained that these proposed amendments further clarify procedures that were identified during the review process for regulations that the State Board has recently adopted.

The proposed amendments to COMAR 33.16, COMAR 33.17, and COMAR 33.19 were presented as follows:

#### **1. *Provisional Voting – In General (33.16.01(A)(4)(d))***

This proposed amendment clarifies that when an election judge is determining if a voter is eligible to vote a regular ballot that the restrictions in Subsection (4) apply only to when an individual is attempting to use the same day registration process during early voting, not the same day address change process.

#### **2. *Early Voting – Definitions; General Provisions (33.17.01.02A(3))***

This proposed amendment repeals the reference that early voting is applicable to Baltimore City primary and general elections. Election Law Article §§8-201(b) and 8-301(b) specify that Baltimore City municipal primary and general elections are held on the same days as the presidential primary and general elections, therefore the provision in COMAR 33.17.02A(3) is redundant and no longer necessary.

#### **3. *Same Day Registration and Address Changes – Definitions; General Provisions (33.19.01.01(C))***

House Bill 286 of the 2019 Legislative Session established the process for same day registration on election day. It is the advice of the Office of the Attorney General that this legislation require same day registration on election day for all elections, including special elections. This proposed amendment matches the emergency legislation that you approved in October and that the AELR Committee approved and became effective on Dec. 30, 2019.

There was no discussion about the proposed amendments. Ms. Howells made a motion to adopt the proposed regulation for final publication, and Mr. Hogan seconded the motion. The motion passed unanimously.

## **APPROVAL OF PROPOSED EMERGENCY REGULATIONS FOR PUBLICATION: SUBTITLE 19 (SAME DAY REGISTRATION AND ADDRESS CHANGES)**

Ms. Hartman presented proposed emergency changes to COMAR 33.19.01 - Definitions; General Provisions. Ms. Hartman stated that these proposed amendments are presented as emergency amendments so they can take effect in time for the special general election on April 28th.

Ms. Hartman explained that, at the October 2019 meeting of the State Board, the Board approved changes to Subtitles 17 and 19 that 1) allow for early voting for the special general election that will run concurrently with the 2020 Presidential Primary Election, and 2) allow for same day registration for the special primary and general elections. In its review of the emergency regulations approved by the State Board in October, analysts at the Administrative, Executive, and Legislative Review (AELR) Committee pointed out that COMAR 33.19.01A does not state explicitly that same day registration is available during early voting of special elections. While it could be presumed that early voting is available during the special general election because it is occurring concurrently with the presidential primary election, it is the advice of the AELR Committee analyst to make this temporary change in the regulations. The normal promulgation process will not allow this change to take effect in time for the April 28th election, therefore Ms. Hartman requested that the Board approve submitting the proposed changes via the emergency promulgation process.

The proposed emergency amendments to COMAR 33.19.01.01(D) were presented as follows:

1. ***Same Day Registration and Address Changes – Definitions; General Provisions***

This proposed emergency amendment allows for same day registration during early voting for the 2020 Special General Election that is occurring concurrently with the 2020 Presidential Primary Election.

There was no discussion on the approval of the proposed amendments. Mr. Hogan made a motion to adopt the proposed emergency regulation, and Mr. Voelp seconded the motion. The motion passed unanimously.

## **APPROVAL OF BYLAWS OF THE LOCAL BOARDS OF ELECTIONS**

Ms. Hartman stated that SBE recommends approving the proposed bylaws of the Baltimore City and Wicomico County Boards of Elections.

She stated that the bylaws adopted by the Wicomico County Board of Elections were identical to the model bylaws recommended by SBE, except for the few optional sentences regarding political activity and the meeting agenda and minutes. It is recommended that the State Board accept the Wicomico County Board of Elections' bylaws.

Ms. Hartman stated that the bylaws adopted by the Baltimore City Board of Elections were nearly identical to the model bylaws, including the few optional sentences regarding political activity and the meeting agenda and minutes. Ms. Hartman explained that in Section 2.2- Officers, Subsection C- Duties- President, the Baltimore City Board of Elections chose to make the Board President the sole spokesperson for the media inquiries. The language in the model bylaws states that this duty shall be shared with the Election Director. Ms. Hartman stated that Baltimore City Board of Elections provided a memorandum with their bylaws explaining their choice to make this change to Section 2.2(C), and that this memorandum was included in the board meeting folder. Ms. Hartman stated that SBE did not take issue with this change and recommended that the State Board accept the Baltimore City Board of Elections' bylaws.

In response to a question from Mr. Funn regarding who would take over as the media spokesperson in the event of an emergency which prevented the Board President from choosing an alternate spokesperson, Ms. Hartman stated that she could clarify with the Baltimore City Board of Elections what would happen in that specific instance, but Section 2.2(D)(2) of the bylaws state that the Vice-President shall "Perform the duties of the President if the President is unable to carry out the assigned duties..." Mr. Voelp stated that he prefers to defer to the local board decision in these operational decisions when possible, and noted that there may be occasions when a message for the media may need to be formulated by the Board instead of the election director.

Mr. Voelp made a motion to approve the bylaws for the Wicomico County and Baltimore City Boards of Elections, and Mr. Hogan seconded the motion. The motion passed unanimously.

### **OLD BUSINESS**

There was no old business to report.

### **NEW BUSINESS**

#### *Remarks from Alysoun McLaughlin*

Ms. McLaughlin, Deputy Director for the Montgomery County Board of Elections, on behalf of the Montgomery County Board President, James Shalleck, and Vice President, David Naimon, requested that Montgomery County be allowed to opt out of the election day network, noting that the Board's support in this request is unanimous. The reasons for the request, she stated, are: 1) the cost, 2) security concerns, and 3) the Board does not understand why this network is necessary. Ms. McLaughlin stated that Montgomery County Board of Elections does not have the funds to pay for the equipment for the network and requested that if Montgomery County cannot opt out of the network, that either State or federal funds be used for the network. Ms. McLaughlin stated that her county's chief information security officer has not been briefed on the technical details of the network. Regarding the necessity of the network, Ms. McLaughlin stated that her board has full confidence in the ability of Montgomery County staff to be able to meet the same deadlines that apply to smaller counties on election night, and to process a high volume of same day registration applications. She stated that Montgomery County's election judge training starts next Friday, January 24th, and that they would like to be able to opt out of the election day network before that training starts.

#### *Remarks from Kathleen Boucher*

Ms. Boucher, Special Assistant to the Director of the Montgomery County Office of Intergovernmental Affairs, stated that she was present to speak on behalf of Montgomery County Executive Marc Elrich and members of the Montgomery County Council. The request from Montgomery County to the State Board is to reconsider the decision for a mandatory implementation of the wireless network. She stated the following reasons for the request:

1. The County Executive and Council members believe that the election day network is unnecessary because the local board has not had issues with getting the data uploaded by the 3 am deadline. She stated that her office has not received any information or data that would lead them to believe that the local board staff would not be able to handle the same day registration volume. The local board has assured her that using the provisional ballot process will work fine.
2. Potential vulnerability to cyber threats both in terms of voter integrity and personal identifiable information.
3. Security issues related to mobile networks compared to landlines.

4. Physical site security- Ms. Boucher stated that a system like the election day network will require more staff to keep it safe and more staff will require more training. She said that more steps and more people involved can lead to mistakes.
5. System failure and lack of clarity on specific backup- Ms. Boucher stated that in the event of a failure of the network, she stated that there is confusion on what the preferred backup method of registering voters will be.
6. Montgomery County believes that is inappropriate to use county funds for this project due to the cost and the previously mentioned risks.

Ms. Boucher stated in closing that one benefit to opting out of the election day network is that opting out will give everyone the opportunity to evaluate the initial rollout after the 2020 cycle.

#### *Questions from Members of the State Board*

In response to a question from Mr. Funn regarding if the Montgomery County Board of Elections would still be opposed based on cost if they had been involved in the decisions about the election day network, Ms. McLaughlin stated that any information received subsequently can be used to form an opinion, but because election judge training starts on January 24th, at this point Montgomery County wishes to opt out.

In response to a question from Mr. Cogan, Ms. Charlson stated that Cradlepoint, the manufacturer of the wireless routers for the election day network, would be available next Thursday, January 23rd and is planning a technical briefing for the six local boards about the election day network.

In response to a question from Mr. Hogan regarding how many times Montgomery County has missed the 3 am data transfer deadline, Ms. McLaughlin stated that in the 2016 Primary Election, there was new equipment and election judges were not trained properly, but that there were no problems submitting the files by the deadline for the 2016 General, 2018 Primary, and 2018 General Elections.

Ms. Charlson stated that the deadline is not 3 am, that it is closer to 11 pm, and that Montgomery County did not meet this deadline in 2018. She explained that not meeting the 11 pm deadline is not a reflection on the Montgomery County election administrators, but is a factor of the size of the county, travel time, the number of precincts, and the number of pollbooks.

In response to a question from Mr. Hogan, Mr. Satterfield stated that the deadline times are set by external agencies and are not flexible.

In response to a question from Mr. Hogan, Ms. Boucher stated that Montgomery County has a new CIO as of a few months ago. She reiterated that the county IT office is very concerned as they do not have the information they need to guarantee security.

Mr. Hogan stated that he is very concerned about the possible risks that have been discussed and feels like we are exposing ourselves to risks to meet deadlines. In response to a question from Mr. Hogan asking if we have gone too far to turn back, Ms. Charlson stated that a more technical briefing would be provided in the closed session, but that the need to get the log files from election day uploaded in time is so that the local board staff and members can be prepared for the first canvass, which must start at 10 am on the Thursday after election day. She explained that the team at SBE has worked tirelessly to decide on a network that is secure, has been tested, and can handle the number of pollbook transactions, and has been working through all the "what if" scenarios to come up with the solution. In response to Mr. Hogan's question, Ms. Charlson stated

that the routers have been purchased, many have been configured and distributed to the local boards, and election judge training in Congressional District 7 is well underway.

In response to a question from Mr. Hogan, Ms. Charlson stated that it has not been determined whether the election day network will be implemented statewide for the general election. She explained that a decision will be made after the April 28th primary. She reminded the Board that this network is the same network used during early voting since 2010. The concept and principles have not changed since the first implementation. She stated that we are taking those principles and applying them to election day.

In response to a question from Mr. Hogan, Mr. Cogan stated that there is no question before the Board. The discussion arose from public speakers, but there is no agenda item related to the discussion.

In response to a question from Mr. Hogan, Ms. Charlson stated that there is a call next week with the U.S. Election Assistance Commission, and that we have asked the Maryland Department of Budget and Management if we can use federal funds to replace the county funds requested to pay for the network equipment and are awaiting a response.

Ms. Howells stated that, in response to Ms. McLaughlin's original request for the State Board to reverse its decision, the five-member oversight board called the State Board of Elections didn't know about this decision for months. She expressed her frustration with the timeline of when the members of the State Board were first briefed on the network. She explained that local boards were first briefed on February 21, 2019, and that Maryland Association of Election Officials sent a letter on March 1st, which the members of the State Board did not see. She stated that the members of the State Board were not briefed until its September meeting, when they received an oral briefing. She stated that the members of the State Board have never seen any data or analysis regarding the election day network. She said that the Board can't reverse its decision because they never made a decision. Ms. Boucher interjected that lack of communication with the local boards was part of the reason for Montgomery County's opposition to the network. Ms. Howells stated that she was shut down when she has asked about alternatives that had been considered regarding the network.

In response to Ms. Howell's comments, Ms. Boucher rephrased her original question to request that the members of the State Board assert its authority and not implement the election day network.

Mr. Cogan stated that all five members of the State Board and SBE staff take their jobs very seriously and that this is a matter that the members of the State Board would have to discuss, but that the Board would not be making any decisions today.

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

Mr. Hogan disclosed two contributions of \$500 each to Friends of Bill Ferguson and Friends of Adrienne Jones. Mr. Hogan explained that these contributions were both made on December 5<sup>th</sup>, but because he was unable to attend the December meeting of the State Board, he was unable to disclose the contributions previously.

No other Board members had any contributions to report.

#### **SCHEDULE NEXT MEETING**

The next meeting is scheduled for Thursday, February 27, 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 3:41 pm.

### **CLOSED SESSION**

Mr. Cogan requested a motion to close the board meeting under General Provisions Article, §3-305(b)(1), which permits closing a meeting to discuss compensation of individuals over whom the State Board has jurisdiction; (7) and (8), which permits closing a meeting to consult with counsel to obtain legal advice and with staff about pending litigation; and (15), which permits closing a meeting to discuss network architecture and security of election networks. Meeting in closed session allows the members to be briefed on a personnel matter and share their views without compromising the confidentiality of those discussions, consult with Board counsel without waiving attorney-client privilege and obtain information relevant to pending litigation, 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 under General Provisions Article, §3-305(b)(1), (7), (8) and (15), and Ms. Howells seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions defined in (b)(1), (7), (8), and (15) of Section 3-305 of the Open Meetings Act to discuss compensation of two individuals over whom the State Board has jurisdiction, pending litigation, and network architecture and security of election networks.

The closed session began approximately 3:45 pm. Mr. Cogan, Mr. Hogan, Ms. Howells, Mr. Voelp, and Mr. Funn attended the closed meeting. In addition to the board members, Ms. Lamone, Ms. Charlson, Vince Omenka, Mr. Satterfield, and Mr. Trento attended the closed meeting. Mr. Hogan left the closed meeting at approximately 4:15 pm.

The board members received a technical briefing on the architecture and security measures in place for an election day network, discussed and requested additional information about individuals' compensation, and received an update on pending litigation.

No action was taken.

The closed meeting adjourned at 5:22 pm.