

State of Maryland 
State Board of Elections – April 24, 2019 Meeting

Attendees: David McManus, Chair
Patrick J. Hogan, Vice Chair
Michael R. Cogan, Member
Kelley A. Howells, Member
Malcolm L. Funn, Member
Andrea Trento, Assistant Attorney General
Nikki Charlson, Deputy Administrator
Donna Duncan, Assistant Deputy, Election Policy
Jessica Perkins, Staff Assistant, Candidacy and Campaign Finance Division
Mary Wagner, Director, Voter Registration
Erin Perrone, Director, Election Reform and Management
Tracey Hartman, Director of Special Projects
Paul Aumayr, Voting Systems Director
Keith Ross, Director of Project Management
Chris Lohn, Human Resources Division

Also Present: Christine Jones, Queen Anne’s County Board of Elections
Kim Spence, Queen Anne’s County Board of Elections
Gwen Dales, Dorchester County Board of Elections
Joe Torre, Anne Arundel County Board of Elections
David Garreis, Anne Arundel County Board of Elections
Joshua Ramos, Anne Arundel County Board of Elections
Margaret Jurgensen, Montgomery County Board of Elections
Mary Ann Keeffe, Montgomery County Board of Elections
Jackie Phillips, Montgomery County Board of Elections
Paula Troxell, Carroll County Board of Elections
Katie Berry, Carroll County Board of Elections
Cindy Remmey, Harford County Board of Elections,
Ralph Watkins, League of Women Voters – Maryland
Lynn Garland, Citizen

DECLARATION OF QUORUM PRESENT

Mr. McManus called the meeting to order at 2:01 pm and stated that there was a quorum of five present. Mr. McManus stated that the meeting was being recorded.

RATIFICATION OF MINUTES FROM MARCH 2019 MEETING

Mr. Cogan made a motion to ratify the approved minutes from the March 29, 2018 meeting, and Mr. Funn 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 Changes

Ms. Charlson reported that Sylvia Brown, Director of Human Resources for SBE and 20 local boards has returned to her home state of South Carolina. Sylvia served Maryland’s

election personnel for close to four years. We wish her the best with her new position as Human Resources Director for the South Carolina State Board of Education.

Ms. Charlson also reported that Mequanenet T. Abaineh has accepted the position of Internal Auditor Program Supervisor for the Audit and Enforcement Unit of the Candidacy and Campaign Finance Division. Meq has been with the Audit Unit of the Division since early 2018 and has served as Acting Supervisor since the position became vacant in October. We congratulate Meq on his new position.

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

Ms. Charlson reported that MAEO's 2019 Annual Meeting is scheduled for May 22nd and May 23rd in Ocean City. A draft agenda was placed in the meeting folder. Please let Ms. Charlson know if you would like to attend this meeting.

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

The Standards Board was created by the Help America Vote Act to advise the EAC on voting system standards and is comprised of one state and one local election official from each state. Ms. Charlson reported that she and Guy Mickley, the Election Director for the Howard County Board of Elections, are Maryland's representatives on the Standards Board. Ms. Charlson attended its annual meeting on April 11th and 12th in Memphis. At the meeting, the representatives of the EAC updated the members on the EAC's 2018 work and the current status of the voting system standards. A summary of the meeting was included in the meeting folder.

EAC's Board of Advisors - 2019 Meeting

The Help America Vote Act also created a Board of Advisors to the EAC. This board has 37 members appointed by various entities, including the National Association of State Election Directors (NASED) and the National Association of Counties. Ms. Charlson reported that Linda Lamone is NASED's appointment to the Board of Advisors and Alysoun McLaughlin, the Deputy Director for the Montgomery County Board of Elections, is the National Association of Counties' appointee. The Board of Advisors is meeting on April 24th and 25th in Salt Lake City.

2. Election Reform and Management

Sexual Harassment Prevention Training

Ms. Perrone reported that she, Ms. Brown, and Ms. Lohr completed sexual harassment prevention training for the majority of our agency's State employees. A total of ten classes were held (five classes at the SBE warehouse in Glen Burnie, one class at the Frederick County Board of Elections, one class at the Queen Anne's County Board of Elections, and three classes at the SBE main office). Approximately 220 employees were trained.

Ms. Charlson thanked Ms. Perrone, Ms. Brown, and Ms. Lohr for all of their hard work in planning and running the sexual harassment prevention training classes.

3. Voter Registration

MDVOTERS

On April 25th and 26th, a Joint Application Design session will take place at SBE to prioritize current MDVOTERS enhancement requests as well as discuss MDVOTERS issues reported by local boards.

MVA Transactions

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

New Registration – 18,969	Residential Address Changes – 20,538
Last name changes – 2,217	Political Party Changes – 6,290

Non-Citizens

Combined February and March numbers

Total submitted to the Office of the State Prosecutor - 32

Removal of non-citizens - 32

Removal of non-citizens who voted - 1

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

4. Candidacy and Campaign Finance (CCF) Division

Candidacy

The 2020 candidate filing season has officially opened. Currently, 13 candidates have filed at SBE for the 2020 election cycle.

Enforcement Actions

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

1. DeCarlo, Diane Voter's Committee to Elect made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 3/25/2019.
2. Robertson, Allen E. Friends of failed to maintain account books and records and paid a civil penalty of \$ 150.00 on 03/27/2019.
3. Bradley, Shawn Friends Of failed to maintain account books and records and paid a civil penalty of \$ 100.00 on 04/01/2019.
4. Lane, Bonnie People for made a cash disbursement greater than \$25.00 and paid a civil penalty of \$ 61.00 on 04/08/2019.
5. Cager, Chezia Friends of made a cash disbursement greater than \$25.00 and paid a civil penalty of \$ 100.00 on 04/10/2019.
6. Kathuria, Raj Friends of made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 4/23/2019.
7. Spruill, Melody Friends of made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 4/5/2019.
8. Bartz, Norman for Commissioner made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 4/16/2019.
9. Purnell, (Tamara) for 7th District made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 4/23/2019.
10. Woodruff, Maureen Friends to Elect made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 4/18/2019.
11. Bishop, Dante Vote made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 4/18/2019.
12. White, Kathleen Friends of Dr. made a cash disbursement greater than \$25.00 and paid a civil penalty of \$100.00 on 04/18/2019.

5. Project Management office (PMO)

Inventory: Excess Equipment Disposal

SBE continued to work with the Department of General Services (DGS) to auction off, recycle, or send to trash the equipment and supply items located in the central warehouse.

After making several attempts to sell the TS-R6 black cases. SBE is using the DGS trash contractor for the disposal of the black cases. All 17,386 black cases have been picked up by the trash contractor.

Inventory Management

The FY2019 Annual Inventory Audit for equipment and supplies started on April 1 at SBE and at the local boards. June 30 is the deadline for everyone to complete their inventory audit. At present, across the state 35.98% of equipment and supplies have been inventoried. This includes the 10 local boards that are 100% compliant with their inventory audits.

Additional Space

The PMO continued its coordination 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.

Permits are now being secured by the landlord which when received will lead to the actual construction work in the additional space. Painting of all walls in the existing office space is currently scheduled to begin in early June.

Other work includes identifying the furniture and equipment needs, working with the Department of General Services and the landlord on the numerous tasks, moving unused furniture and equipment to the central warehouse, and ensuring that everyone impacted is aware of what is happening and what they must do when the work being performed impacts them directly.

6. Voting System

Post-Election Maintenance

As with every election, post-election maintenance was performed on the equipment. Mr. Aumayr reported that the local boards are required to complete this within 120 days of the release of the equipment following the election. About 2.5% of the total pieces of equipment required some sort of attention or repair from the local board, SBE or ES&S.

Electronic Pollbooks.

Mr. Aumayr reported that with the passage of HB286/SB449 requiring same day registration on Election Day, SBE has drawn up specifications and requirements for changes required in the pollbook software to enable this change. With a couple of other minor changes to the software, Mr. Aumayr stated that it is anticipated that SBE will have a testable version of the updated software in late summer.

Electionware Update

SBE has been planning for a possible upgrade to the Electionware software as well as firmware for the ballot scanners and ballot marking devices. My Aumayr reported that SBE is due to receive a beta version of the software on May 1st for review and familiarization.

ES&S also expects this software to be submitted to the voting system testing lab in May for examination for federal certification.

Ms. Howells asked whether the electronic pollbook software must be federally certified. Mr. Aumayr stated that it does not.

7. Legislation

Ms. Duncan provided the Board with the following list of election-related bills have passed the General Assembly:

1. HB 71/SB184 - Video Streaming and Recording State Board of Elections Meetings: Requires DoIT assistance with requirement. Effective 10/1/19.
2. HB 172 - Departmental - Voter Registration Deadlines: With the majority of voter registration transactions submitted electronically, this legislation alters the hours that SBE and the local boards must be open on the voter registration deadline. Effective 10/1/19.
3. HB174 - Departmental - Absentee Ballot Requests - Last Four Digits of Social Security Number: Conforms law with practice of only requesting the last four digits of a Social Security number on an absentee ballot application. Effective 7/1/19.
4. HB176 - Departmental - Candidates - Revisions: Allows a new political party to file paperwork for the nomination of candidates by the new party. Effective 10/1/19
5. HB177 - Departmental - Judicial Proceedings Involving Local Board Notice: Allows a local board to notify SBE of judicial proceedings by email instead of by certified mail. Effective 10/1/19.
6. HB237 - Early Voting Centers - Establishment: Allows every county the option of having one additional early voting center. This legislation was amended from its original introduction that altered the time of early voting. Effective 10/1/19
7. HB286/SB449 (Not crossfiled but same topic) - Registration and Voting at Precinct Polling Places: Provides that, if an individual provides proof of residency, the individual may register and vote on election day at the polling place. Effective 10/1/19.
8. HB830 - County Public Campaign Financing - Administration: Requires a county government to provide funding and staff for the operation, administration and auditing of a county public financing system. Effective 10/1/19.
9. HB878 - Campaign Finance - Late Fees and Certificates of Nomination: Alters the fees that are due for failure to file a campaign finance report, an affidavit, or an amended report and prohibits issuing a certificate of nomination if a candidate owes late fees. Provides a scale for late fees, increases the fines up to \$1,000. Effective 10/1/19.
10. HB1025/SB123 - Coordinated Expenditures and Donations - Investigation: As previously designated, alters the duty to investigate potential coordinated expenditure violations to the State Administrator or designee and allows the issuance of a subpoena for records or testimony. Effective 10/1/19.
11. SB230 - Canvassing of Absentee Ballots - Reporting Unofficial Results: Requires local boards to release unofficial absentee results at the end of each day of canvassing. Effective 10/1/19.
12. SB364 - Election Day Page Program - Establishment: Requires SBE develop an Election Day Page Program and requires the local boards, in collaboration with the local school systems, to establish a procedure for selecting pages and authorizing community service hours for service as an Election Day Page. Effective 10/1/19.

13. SB651 - Local Boards of Elections - Membership: Except for Montgomery and Prince George's Counties, alters the membership of all local boards from 3 full members and 2 substitute members to 5 full members effective June 1, 2019. (Impacts Anne Arundel, Baltimore County, Calvert, Dorchester, Howard, and St. Mary's Counties)
14. SB743 - Election Service Providers - Contract Clauses and Termination of Contract: Mandates that certain contracts for election service or support include a clause requiring notice of ownership or investment by a foreign national at the time of award or anytime for the duration of the contract. The contract must also contain language for termination of the contract in whole or in part under certain conditions. Requires that within 7 days of contract termination, State Administrator provide notification to appropriate persons including State Board members. Effective 10/1/19.
15. SB950 - Campaign Finance - Termination of Campaign Finance Entities: As amended, following the death of a candidate, authorizes the remaining balance in a campaign finance entity may be paid to a legislative party caucus. Within 1 year after the death of a candidate it mandates the entity pay outstanding obligations, dispose of remaining funds in accordance with any expressed wishes by the candidate, and file a final report. Emergency legislation.
16. SB1004 - Election Calendar and Processes: Alters the election calendar to better accommodate the requirements of the MOVE Act. The 2018 Primary Election demonstrated the need to clarify language and change deadlines regarding the preparation of ballots. The date of an election should be considered the 45th day prior to the actual date of the election. Deadlines for candidates and ballot questions are altered recognizing potential for judicial challenge. Effective 6/1/19.

Ms. Duncan stated that the Departmental bills were HB171, HB172, HB174, HB176, and HB177. Of these, only HB171 did not pass the General Assembly. Ms. Duncan further pointed out that two important non-departmental bills, SB651 and SB1004, have passed the General Assembly. SB651 alters the membership of all local boards from 3 full members and 2 substitute members to 5 full members effective June 1, 2019, except in Montgomery and Prince George's County. SB 1004 alters the election calendar to better accommodate the requirements of the federal Military and Overseas Voter Empowerment (MOVE) Act.

Mr. Hogan asked about the "Gender X Designation" bill (HB421 and SB196- Identical bills but not cross-filed) and how that would affect voter registration. Ms. Wagner stated that this would not affect voter registration as Maryland's Voter Registration Application already has an option for "unspecified" when selecting gender.

8. Security Briefing

Ms. Charlson gave the quarterly security briefing to the Board. She reported that at the April 2018 State Board meeting, the Board was thoroughly briefed on how we protect, monitor, and restore our security systems, and that during subsequent quarterly briefings, the Board has been provided updates. This quarterly briefing is an update since the January 2019 briefing.

Protect- Generally

1. Ongoing Cyber & Information Security Activities- Ms. Charlson reported that SBE continues to perform regular software updates and perform monthly computer assessments on computers accessing State systems.

2. Cybersecurity Training- Ms. Charlson reported that SBE continues to participate in the State Department of Information Technology's online security training program. Using services offered by the State's Department of Information Technology, SBE conducted a weeklong phishing test of over 600 State and local election officials. In this test, 221 of the phishing emails were opened (many of the phishing emails ended up in users' spam folders), 17 users (8%) clicked the link in the phishing email, and of those 17, 8 users completed the "education" component. This test is scheduled for twice a year.
3. Information Sharing- Ms. Charlson reported that SBE continues to receive information from the Multi-State Information Sharing Analysis Center (MS-ISAC) and the Election Infrastructure ISAC.
4. Procurement- Ms. Charlson stated that SBE issued a procurement for an election security team to support our information security efforts. The deadline to submit proposals is April 30th.

Monitor- Generally

Ms. Charlson reported that DHS' weekly cyber hygiene scans of the SBE website continues, while SBE continues to perform various system scans.

Recover- Generally

Ms. Charlson stated that she is in the process of reorganizing and updating SBE's disaster recovery plan. Finally, she reported that DHS has been requested to conduct a cyber table top exercise for SBE staff in the Fall of 2019.

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. *Claudia 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.). 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. Discovery has closed and the plaintiffs' summary judgment motion is due January 25, 2019.
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 grounds 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.
7. *Segal v. Maryland State Board of Elections*, No. 1:18-cv-2731 (U.S. District Court, D. Md.). 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 in its current form, is unconstitutional in at least two ways. First, plaintiffs allege 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. Second, plaintiffs allege that the statutory standard by which Maryland verifies petition signatures is unconstitutionally strict, in that signatures of known Maryland voters may nevertheless be rejected for failure to comply with technical requirements governing the precise information that must be included by the voter when signing. A response to the complaint is due January 24, 2019.

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.

APPROVAL OF REQUESTS FOR WAIVERS OF CAMPAIGN FINANCE LATE FEES

Ms Perkins presented requests from 6 campaign committees to waive late fees incurred by the committees. The committees requesting a waiver of late filing fees are listed below:

1. City Union of Baltimore – Comm. On Political Education PAC
2. Ferrar, Chuck Friends for
3. Grimmel, Jonathan Friends of
4. Hunter, Cordell Friends of
5. McGee, Jim Friends of
6. Mincey Thompson, Rochelle Citizens for

Ms. Perkins noted that one campaign committee was denied a waiver of late fees.

Mr. Cogan made a motion to approve the 30 waiver requests, and Mr. Hogan seconded the motion. The motion passed unanimously.

NEW BUSINESS

At this point in the meeting, Mr. McManus allowed for any guest speakers whose remarks were pertinent to the regulations that were up for a vote for final approval from the Board later in the meeting.

Remarks from Lynn Garland

Ms. Garland, a concerned resident of the State, stated that she is a contributor to an academic paper, *Principals and Best Practices of Post-Election Tabulation Audits*, and advised the

implementation of the paper's best practices. She states that there are inconsistencies between the regulations proposed and the current law. Specifically, in regards to post-election tabulation audits in Maryland, she urged the Board to understand the importance of the original voter-verified paper audits, that precinct-level results must be announced prior selecting any precincts to audit, that those performing the audit must be blind to the expected outcomes, that the sample must be randomly chosen, and that no precinct or ballots must be off limits to the audit. Ms. Garland requested that they carefully read the comments she provided.

In response to a question whether using scannable absentee ballots (as opposed to print-at-home ballots which have to be transcribed during canvassing) would be better, Ms. Garland responded that scannable absentee ballots are not without concerns, but in regards to a tabulation audit, that would be a better option if the scannable ballot was the voter-verified paper ballot.

Mr. McManus thanked Ms. Garland for her concerns. As there were no other speakers present to speak on the proposed final regulations, the meeting moved back to the agenda.

APPROVAL OF REGULATIONS – FINAL APPROVAL: VARIOUS PROVISIONS IN TITLE 8 POST ELECTION VERIFICATION AND AUDITS, TITLE 10 VOTING SYSTEMS, TITLE 12 RECOUNTS, TITLE 16 PROVISIONAL VOTING, AND TITLE 17 EARLY VOTING.

Mr. McManus stated that due to a question from a Board member that is still awaiting a response from the Board counsel, proposed regulations 33.08.05.01 and 33.08.05.08- .10, all regarding the post-election verification and audit, would be tabled until the next Board meeting.

Ms. Charlson reviewed the documents that were included in the board meeting folders, including the memorandum to the members dated April 8, 2019 with a summary of the proposed regulations, the proposed regulations, a chart with a summary of the comments received and recommendation on how to respond to the each comment, and each comment. Ms. Charlson noted that all of the comments received were in response to proposed regulations 33.08.05.01 and 33.08.05.08- .10, which Mr. McManus requested to be tabled until the next meeting.

There were no further questions regarding the remaining proposed regulations. Mr. Cogan made a motion to approve for final approval of proposed changes to 33.10.02 - 03, 33.12.06, 33.16.07.02, 33.17.01.02, and 33.17.05.02, and table 33.08.05.01 and 33.08.05.08- .10. Mr. Funn seconded the motion. The motion passed unanimously.

OLD BUSINESS

Montgomery County Board of Elections: 2018 General Election Instructions to Election Judges Regarding Missing Early Voting Transactions in Electronic Pollbooks

Mr. McManus asked Ms. Charlson to give a brief overview of the issue. Ms. Charlson directed the Board members to two documents in the board meeting folder- first, a memo from Mr. Aumayer to the Board members summarizing the issue, and second, instructions issued by SBE to each local board regarding how to manage the issue. Ms. Charlson stated that, as explained in more detail in Mr. Aumayer's memo, the crux of the issue is that the bulk update from MDVOTERS to the electronic pollbooks containing information from early voting did not include all voters that it should have. Specifically, approximately 7,300 voters who had either registered during early voting and voted in the early voting center **or** requested an absentee ballot did not have their statuses updated via the bulk update. When this issue was discovered, local boards who had not yet started the bulk update were instructed to wait to start the bulk update until the file had been

corrected. For local boards who had already started the bulk update, Ms. Perrone explained that SBE issued instructions for local boards on how to handle the issue on election day. Namely, the instructions were for election judges to check an extra field in the pollbook, and to issue a provisional ballot if the voter turned out to be one of the effected voters. Ms. Perrone stated that she had not heard of any local board who had any issues on election day that had complications or negative experiences when it came to following these instructions or issuing provisional ballots based on the instructions.

Mr. McManus welcomed Margaret Jurgensen, Election Director for the Montgomery County Board of Elections, to explain Montgomery County's response to this issue. Ms. Jurgensen addressed the Board from prepared remarks that were provided in the board meeting folders. In summary, Ms. Jurgensen stated:

- That on Saturday November 3, 2018, the Montgomery County Board of Elections staff determined that they would not be able to start over the bulk update process for the risk was too high of not finishing in time for the pollbooks to be delivered to the polling places.
- That based on the affected voter list provided by SBE, the staff at the Montgomery County Board of Elections determined that the overall risk to the integrity of the election was low. However, due to the large number of election judges (1,700) and pollbooks in use impacted regarding the process change (1,048), that following the instructions provided by SBE would present a real risk of disruption on election day, in the form of long lines due to the extra tasks assigned to judges.
- Ms. Jurgensen stated that, after consultation with the Montgomery County Board of Elections and Counsel to the Board, an alternate procedure for checking in the affected voters was decided upon that would ensure a smooth opening of the polls on election day. The Montgomery County procedure created extra work for staff on the back end, but they felt that not negatively impacting voters wait times and overall experience was more important.

Mr. McManus asked if any lines at any other precincts as a result of SBEs instructions issued or if there were any issues in Montgomery County as a result of their alternate instructions, and Ms. Charlson stated that there were no issues regarding either set of instructions that SBE has been made aware of.

There was further discussion about communication between the local boards and SBE when situations like this arise so close to election day. The Board encouraged all parties involved to communicate better and discouraged anyone or any entity from acting on their own without first consulting with SBE.

Maryland Association of Election Officials' (MAEO) Proposal of Changes to Job Classifications and Salaries

Ms. Charlson explained to the board two documents that were provided in the meeting packet. The first is a table showing which chief elected officials of local jurisdictions had responded to the letter sent to them regarding the proposed changes to job classifications and salaries. As of the meeting, six counties- Cecil, Charles, Dorchester, Harford, and St. Mary's- had approved the changes, and one- Queen Anne's County- had opposed the changes officially. The second item was a letter from the Maryland Rural Counties Coalition (MRCC) stating its opposition to the changes. Of the counties who did not respond independently, MRCC represents 9 local jurisdictions in opposition to the proposed changes.

Ms. Berry and Mr. Garreis of MAEO spoke to the Board as a follow up to their presentation at the March State Board meeting regarding proposed salary increases and changes to job classifications. Ms. Berry reiterated that the local boards need the State Board to be their advocate. She also stated that in the next 10 years local boards will see many experienced employees retire and that the local boards needed to be able to recruit employees who want to stay with local government. Mr. Garreis reiterated that local board pay is not the same compared to other State agencies.

Mr. McManus stated that he spoke to the Chair of the MRCC, Commissioner Jack Wilson from Queen Anne's County, who stated that his members considered the MAEO proposal very carefully, but ultimately they could not support the changes as proposed. The MRCC member counties would like to continue the discussion and would be more amenable to a proposal that is smaller in impact and over a longer number of years.

Mr. McManus then proposed a second letter to be sent out to the local jurisdictions, including those who responded, in order to garner more responses. Mr. Mickley spoke that one concern of waiting for more responses from more rounds of letters is that local jurisdictions are nearing budget deadlines. With this information a response deadline for the second letter was proposed for Friday, May 10. The second letter will be sent to the local jurisdictions this week.

NEW BUSINESS

There was no other new business to discuss.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

There were no campaign contributions reported by any Board members.

SCHEDULE NEXT MEETING

The next meeting is scheduled for May 16, 2019, at 2:00 pm.

ADJOURNMENT

Mr. Cogan made a motion to adjourn the open meeting, and Mr. Hogan seconded the motion. The motion passed unanimously. Mr. McManus adjourned the open meeting at 1:20 pm.

CLOSED MEETING

Mr. McManus 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 staff about pending or potential litigation, and §3-305(b)(10) and (13), which permits closing a meeting to discuss sensitive issues related to ongoing efforts to enhance election security. Meeting in closed session allows the members of the State Board to be briefed on and consult with counsel on potential litigation related to contract management 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. Cogan seconded the motion. The motion passed unanimously.

The motion having passed, the Board met in closed session in accordance with exemptions (b)(7), (8), (10), and (13) of Section 3-305 of the Open Meetings Act to be briefed and consult with counsel on potential litigation related to contract management and receive information about the security of election information system. The closed session began at 3:50 pm. In addition to the board members present when the closed meeting convened, Mr. Trento, Ms. Charlson, and Mr. Aumayr attended the closed meeting.

Ms. Charlson and Mr. Aumayr briefed the members on contract management issues related to several contracts. Ms. Charlson briefed the members on a recent investigation into a violation of the State of Maryland's Information Security Policy. Due to the length of the meeting, updates and changes to how SBE protects, monitors, and restores election critical systems was deferred to the May board meeting. No action was taken.

The closed meeting adjourned at approximately 4:40 pm.