

IN THE MATTER OF 2022
LEGISLATIVE DISTRICTING OF
THE STATE OF MARYLAND

* IN THE
* COURT OF APPEALS
* OF MARYLAND
* September Term, 2021
* Misc. No. 25, 26, & 27

* * * * *

**MEMORANDUM FROM THE STATE REGARDING THE UPCOMING
PRIMARY ELECTION**

In its Order dated April 4, 2022 (the “4/4/22 Order”), this Court directed the State to “include in its exceptions, or by separate memorandum, any recommendations from the Maryland State Board of Elections (“SBE”) regarding the capability of SBE and local boards of election staff to complete any potential reassignment of voters to appropriate legislative districts in a timely fashion for a July 19, 2022 primary election.” 4/4/22 Order at 1. This Court also ordered the State to “advise, if necessary, of any potential alternative election calendar dates that provide election officials with sufficient time for the orderly and efficient administration of the 2022 primary election.” *Id.* at 2. The State respectfully submits this memorandum providing the information requested by the Court.

The implementation by local boards of election (“LBEs”) of new congressional, legislative, and councilmanic or commissioner district maps is a time-consuming process. *See generally* Aff. of Donna Duncan in Support of Mem. from the State Regarding the

Upcoming Primary Election (“Duncan Aff.”). This process involves, among other things, making manual changes in the State’s voter registration database (“MDVOTERS”) to assign voters to new districts; determining where precincts are split by any of the new maps and, if necessary, establishing new precincts to conform to new district boundaries; and conducting physical inspections of the new district and precinct boundaries to ensure that there are no inconsistencies between the enacted maps and the actual, physical layouts of the districts. *Id.* ¶ 2. Following the enactment of new maps, start-to-finish, this process has in the past taken LBEs several months to complete. *Id.* ¶ 3. But unlike in years past, this election cycle presented LBEs with the challenge of completing the process immediately in advance of an election involving congressional, legislative, and local elections,¹ which was scheduled to take place in June as opposed to September.² *Id.* Thus, even in the absence of any legal challenges, implementing the newly passed congressional or legislative maps in advance of the 2022 primary election was going to be extremely challenging. *Id.*

It is only when the maps are implemented that the next steps in preparing for the election can take place. *Id.* ¶ 4. Once LBEs finalize precincts, polling places must be

¹ In 2012, only the congressional map and certain local maps needed to be implemented in advance of the election, since that election did not involve State legislative contests.

² In 2002, the last time that new congressional, legislative and local maps needed to be implemented in advance of the next election, the primary took place on September 10, 2002.

established. *Id.* This involves ascertaining whether suitable public facilities are available in each precinct, and, where that is not the case, negotiating with the owners of private facilities to make their facilities available for this purpose. *Id.* Once polling places are determined, LBEs can identify how many election judges needed to staff those polling places will be required, can plan for the allocation of voting equipment and other supplies among those different polling places, and can coordinate plans for the delivery of this equipment and supplies with SBE’s transportation contractor. *Id.* These steps can take place concurrently with the ballot production timeline (described below), but unforeseen challenges that delay the resolution of these issues could independently jeopardize the smooth execution of the election. *Id.*

Separately, ballot production can only begin once the new districts are implemented in MDVOTERS. *Id.* ¶ 5. First, SBE staff imports the new districts into its Agency Election Management System software (“AEMS”), and LBEs are given the opportunity to review the candidate listings and districts in AEMS to check for errors. *Id.* Ballot production can then begin. *Id.* SBE staff will need to create over 5,000 different ballot styles for this election,³ and must prepare different formats for each ballot style to account for the

³ Pending emergency legislation, if enacted, would require SBE to report precinct-level results for election-day, absentee, and early voting. *See* S.B. 163, 2022 Sess. (amending Elec. Law § 11-402(c)(1)(i)). Thus, SBE staff must create two precinct-specific ballots—one Republican, and one Democratic—for each of the 1,500 to 2,000 precincts that will be in use in this primary election, and non-partisan primary ballots for a substantial portion of these precincts. Duncan Aff. ¶ 5.

standard paper ballot, the accessible Ballot Marking Device ballot, the web-delivered ballot, and the audio ballot (in both Spanish and English in Montgomery County and Prince George's County). *Id.* Each of these ballots, in each of the different formats, must then be proofed by the LBEs so that any errors can be caught and corrected. *Id.* SBE can then certify the ballots and present them for public display. *See* Md. Code Ann., Elec. Law § 9-207(c). Under normal circumstances, the ballot production process takes approximately three to four weeks. *Duncan Aff.* ¶ 5.

After the ballots are certified and posted for public display, SBE staff, with the assistance of the LBEs, continue the ballot production process by completing and proofing the accessible ballots and the audio ballots. *Id.* ¶ 6. Typically, the process to finalize all ballot material after the ballots are publicly displayed is about eight days. *Id.* SBE staff then deliver PDFs to the printing contractor and absentee ballot mailing contractor, and send ballot style and content data to the web-delivery programmer for testing and finalization of the web-delivery system. *Id.* These deliveries generally take place three weeks and two weeks, respectively, before the initial mailing of absentee ballots. *Id.* SBE must complete all of these steps in time for ballots to be printed and mailed (or delivered over the Internet) to overseas and military voters who have requested absentee ballots no later than 45 days before the election, as required by the federal MOVE Act. *See* 52 U.S.C. § 20302(a)(8)(A).

The current schedule, as ordered by the Court, sets the primary election for July 19, 2022. *See* Order of Mar. 15, 2022. This election date would require ballots to be sent to overseas and military voters no later than June 4, 2022 under the MOVE Act. Under the production schedules described above, this would require ballots to be certified by approximately mid-May, 2022, which in turn would require the final congressional, legislative and local maps to be implemented in MDVOTERS by the latter part of April, 2022. *Duncan Aff.* ¶ 7.

In anticipation of the short time period between the resolution of the various challenges to the current State Legislative Districting Plan (the “Plan”) and the impending MOVE Act deadline, LBEs have taken steps to implement the Plan without finalizing any of the information in MDVOTERS.⁴ *Id.* ¶ 8. LBEs have also begun to implement the newly enacted Congressional Districting Plan, which was signed into law by Governor Hogan just last week, as well as the various councilmanic or commissioner districting plans that have been promulgated in recent months. *Id.* Based on this and other information provided by the LBEs, SBE staff have determined that SBE and the LBEs will be able to

⁴ This caution was necessary because full implementation of the Plan in MDVOTERS would have required—if the plan were held unconstitutional—each of those implementation steps to be individually reversed before a new plan were able to be implemented. *See Duncan Aff.* ¶ 8 n.1. This would have effectively doubled the time required for implementation in MDVOTERS of any plan developed in response to an order by this Court that the original Plan was unconstitutional. *Id.*

administer the 2022 Primary Election on July 19, 2022 in the event that this Court follows the recommendation of Special Magistrate Judge Wilner and upholds the Plan. *Id.*

Should this Court depart from the Special Magistrate's recommendations and hold the Plan to be unconstitutional, it is unlikely that SBE and the LBEs would be able to administer the election on July 19, 2022. *Id.* ¶ 9. Depending on the scope of the changes ordered by the Court, at least some portion of the work already done by the LBEs would need to be redone, thereby extending the timeline by which the Plan would likely be implemented. *Id.* Moreover, an order finding the Plan to be unconstitutional would require the creation of a new legislative map. *Id.* The timeline for the development of a new plan and the additional work needed to be done to implement that new plan will impact the identification of an appropriate alternative date for the 2022 Primary Election. *Id.* At this time, SBE staff estimates that the latest possible date for the primary election to take place, before the election begins to encroach on the calendar for the 2022 General Election on November 8, 2022, would be Tuesday, August 16, 2022. *Id.* ¶ 10.

Dated: April 11, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this 11th day of April, 2022, the foregoing was filed and served electronically by the MDEC system on all persons entitled to service:

/s/ Steven M. Sullivan

Steven M. Sullivan