

July 21, 2008

Honorable Robert L. Walker, Chairman
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401

Dear Chairman Walker:

We write on behalf of SAVEourVotes.org, a nonpartisan organization working for secure, accessible, verifiable elections in Maryland.

As you are aware, election officials around the country are preparing for voter turnout for the General Election this November that is expected to be of historic dimension, as increased voter registrations strongly suggest. For the reasons stated below, we ask that you exercise your duty to ensure that the administration of elections is convenient for all voters by directing precinct chief judges to order the use of emergency ballots during the upcoming General Election in November when wait times become excessive. Md. Code Ann., Elec. Law § 1-201 (West 2008). By doing so you will avoid the widespread and well publicized disenfranchisement of voters that occurred in past elections due to wait times of up to three hours.

As a result of unprecedented voter registrations this election cycle, the State Board of Elections (SBE) plans to rent more than 700 additional touch screen voting machines in order to ensure compliance at all precincts with the state's allocation rule, 33.10.01.07, prescribing an allocation formula for machines and privacy booths. Md. Code Regs. 33.10.01.07 (2006) (COMAR). As demonstrated in past elections, however, an adequate number of machines will not prevent long lines, resulting in voter disenfranchisement. "A Day of Waiting and Confusion," *available at*, <http://www.washingtonpost.com/wp-dyn/articles/A19795-2004Nov2.html>.

Current rules limit the use of emergency paper ballots to a court ordered extension of voting hours or other emergency such as a power outage. In June, the SBE was asked by Delegate Sheila Hixson to consider using emergency paper ballots to prevent excessive wait times based on long lines. The state elections administrator, Linda Lamone, responded that using paper ballots "in lieu of leasing additional equipment is problematic." Ms. Lamone erroneously asserted that "paper ballots cannot be deployed at polling places to serve as a second voting system to accommodate lines since that would constitute a second, uncertified voting system" in violation Md. Code Ann., Elec. Law § 9-101 (West 2008). But § 9-101 merely requires the SBE to select, certify and acquire a uniform statewide system for voting. It does not limit the number or type of voting systems to be used and does not prevent the SBE from "selecting, certifying and acquiring" emergency ballots as a voting system. Emergency ballots are an existing component of the current voting system. They were deployed in Baltimore and

Montgomery County during the 2006 Primary Election in response to voting problems and statewide in the 2008 Primary Election because of inclement weather. They are distinct from provisional ballots in that they are cast by fully qualified voters and are accepted or rejected as a class rather than on the basis of individual adjudication.

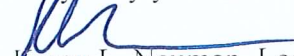
Ms. Lamone further identified “considerable challenges” to utilizing emergency ballots where there are long lines, including: 1) the need to develop guidelines, procedures and training for election judges; 2) technical changes to electronic poll books to differentiate between voter access cards and emergency ballots; 3) voter information; 4) an increased supply of paper ballots; and 5) additional voting booths and ballot bags.

Given the timing of this request -- made well in advance of the election -- there is ample time for the SBE to take the above measures, which fall within the SBE’s duty to manage and supervise elections within the State. Md. Code Ann., Elec. Law § 2-102(a); §2-102(b) (1)-(4) (West 2008). The alternative -- maintaining the status quo -- would be a breach of the SBE’s statutory obligations. It also undermines the intent of the Election Code, which is that the conduct of elections inspire public confidence by ensuring citizen convenience and the fair and equitable treatment of all persons served by the election system. Md. Code. Ann., Elec. Law § 1-201 (West 2008).

Although emergency paper ballots are already supplied to each precinct in the event of a court-ordered extension of voting hours, a court order may not be granted in time to prevent large numbers of people from being disenfranchised by long lines. It is also possible that orders would not be granted uniformly by the County Courts, thereby resulting in disparate treatment among voters.

In light of the foregoing, we believe that the relatively simple request we make here is a reasonably proactive solution that will protect the efficient, equitable administration of elections and avoid the widely publicized debacle of the past.

Very truly yours,



Karen L. Neuman, Legal Director

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Fair Elections Legal Network

cc: Robert Ferraro
Co-Director, SAVEourVotes.org

The Honorable Martin O’Malley
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