

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

* * * * *

**AFFIDAVIT OF DONNA DUNCAN IN SUPPORT OF MEMORANDUM
REGARDING THE UPCOMING PRIMARY ELECTION**

I, Donna Duncan, am over the age of eighteen years of age, am competent to testify, and have personal knowledge of, or have verified with SBE staff the veracity of, the matters to which I testify below.

1. I am the Assistant Deputy Administrator for Election Policy at the Maryland State Board of Elections (“SBE”). I have worked in this and other capacities at SBE for 45 years. My work currently requires, among other things, overseeing election management, election timeline and calendar development, and the election judge recruitment and training process. I also trained the current ballot developer and assist her in the validation of contests and content. Finally, I support communications processes for stakeholders, and oversee public awareness and voter education campaigns regarding elections and the election process in Maryland.

2. The implementation by local boards of election (“LBEs”) of new congressional, legislative, and councilmanic or commissioner district maps involves

several steps. LBE staff must make manual changes in the State's voter registration database ("MDVOTERS") to assign voters to new districts; determine where precincts are split by any of the new maps and, if necessary, establish new precincts to conform to new district boundaries; and conduct 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.

3. The implementation by LBEs of new congressional, legislative and local districting maps typically takes the LBEs several months to complete. This year's election cycle has proven especially challenging, because unlike in 2012 (the last post-redistricting election) this year's election involves congressional, legislative, and local contests, which requires all of those maps to be implemented before the election takes place. And unlike in 2002 (the last post-redistricting election that involved as many different election contests as are at issue in 2022), the primary was scheduled to take place in June as opposed to September. Redistricting on the timetable presented by this year's election calendar was going to be extremely challenging even in the absence of any legal challenges to the newly passed maps.

4. The reason for the difficulty is that it is only when the new districting maps are implemented that the next steps in preparing for the election can take place. Once LBEs finalize precincts, they must then establish polling places for these precincts. 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. Then, once polling places are determined, LBEs can identify how many election judges will be needed to staff those facilities, can plan for the allocation of voting equipment and other supplies to the different polling places, and can coordinate plans for the delivery of this equipment and supplies with SBE's transportation contractor. While these steps can take place concurrently with the ballot production timeline (described below), unforeseen challenges that delay the resolution of these issues could independently jeopardize the smooth execution of the election.

5. Also, ballot production can only begin once the new districts are implemented in MDVOTERS. After the new districts are implemented in MDVOTERS, 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. Ballot production can then begin. In this election there will be more than 5,000 different ballot styles – one Republican ballot and one Democratic ballot for each of the approximately 1,500 to 2,000 precincts that will be in use, as well as non-partisan ballots for a substantial portion of those precincts. (Not every precinct will have non-partisan contests; in those precincts only the two partisan primary ballots will be necessary.) Also, each ballot style must be created in several different formats: the 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). 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. Once the proofing process is complete as to the paper ballot, SBE can certify the paper ballot and present it for public display, as required by statute. SBE staff and LBEs will continue to complete and proof the accessible and audio ballots following certification. Under normal circumstances, the ballot production process takes approximately three to four weeks total.

6. Once 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. Typically, the process to finalize all ballot material after the ballots are publicly displayed is about eight days. SBE staff then deliver PDFs to the printing contractor and absentee ballot mailing contractor (typically three weeks before the initial mailing), and send ballot style and content data to the web-delivery programmer for testing and finalization of the web-delivery system (typically two weeks before the initial mailing). 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).

7. Under the current election schedule established by the Court, ballots must be sent to overseas and military voters no later than June 4, 2022 under the MOVE Act (45 days before the Court-ordered July 19, 2022 election). Under the production schedules

described above, this would require the paper ballots to be certified by approximately mid-May, 2022. This allows for a sufficient turnaround between delivery of the ballot proof to the absentee ballot mailing contractor and the initial mailing of ballots on June 4, 2022. Ballot certification in mid-May would in turn require the final congressional, legislative and local districting maps to be implemented in MDVOTERS in the latter part of April, 2022, giving approximately 3-4 weeks for the bulk of the ballot production described above to take place before ballots are certified.

8. 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.¹ LBEs have also begun to implement the newly enacted Congressional Districting Plan as well as the various local districting plans that have been promulgated in recent months. Based on this information, we have determined that SBE and the LBEs will be able to 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.

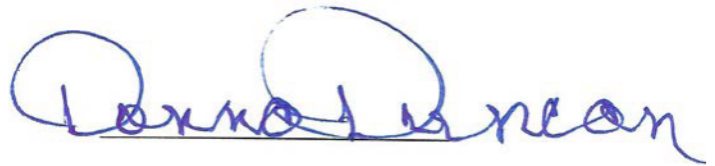
¹ Had the LBEs implemented the Plan in MDVOTERS prior to the resolution of these proceedings, and were this Court to then order the development of a new legislative plan, the LBEs would have had to *reverse* the steps taken to implement the old Plan, and then affirmatively implement the new plan in MDVOTERS, effectively doubling the implementation time for this step.

9. However, 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. This is because, depending on the scope of the changes ordered by the Court to the enacted Plan, some (potentially substantial) portion of the work already done by the LBEs would need to be redone, thereby extending the timeline by which the new legislative plan is likely to be implemented. Also, even before that work needs to be redone, it is not clear to SBE how long it would take for a new plan to be developed. The timeline for the development of a new plan and the additional work needed to be done to implement that new plan (which will depend on the degree to which the new plan differs from the enacted Plan) will obviously impact the identification of an appropriate alternative date for the 2022 Primary Election, but will do so in ways that are difficult to estimate based on current information.

10. 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. The MOVE Act deadline for the mailing of ballots to military and overseas voters in advance of the November 8, 2022 general election is September 24, 2022. Sufficient time will be needed after the primary election for, among other things, the canvassing of ballots and certification of results (and potential recounts that arise), as well as the production and

certification of general election ballots in advance of the MOVE Act deadline according to the timelines described above.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

A handwritten signature in blue ink, appearing to read "Donna Duncan". The signature is written in a cursive style with large, loops for the first and last names.

Donna Duncan