

WRITTEN STATEMENT BY JIM SHALLECK AND DAVID NAIMON
Montgomery County Board of Elections
in favor of SB 362 (with amendment)
BEFORE THE SENATE EDUCATION, HEALTH AND ENVIRONMENTAL AFFAIRS COMMITTEE
February, 6, 2020

Senator Pinsky, Senator Kagan and Members of the Committee:

We write to you as the President and the Secretary of the Montgomery County Board of Elections, on behalf of all of our Board colleagues. Our Board members disagree about many subjects, but all of us agree about this legislation.

We support SB 362, Senator Kagan's bill, in concept, with the following amendment:

We recommend that 11-302 (b)(1), Time for opening absentee ballots, be deleted in its entirety and replaced with the following: "A local board may commence the canvass no earlier than 10 a.m. on the Thursday after the election and no later than 10 a.m. on the Friday after the election." According to our Board attorney, section 11-302(b)(1), as currently written, is of no legal effect and is in fact inconsistent with other sections within the Election Law Article. Specifically, while section 11-302(b)(1) currently states that ballots may be opened no earlier than 8 a.m. on the Wednesday after the election, sections 11-101 (C)(1) and (2), Definitions, provide as follows: (C)(1) "Canvass" means the entire process of vote tallying, vote tabulation, and vote verification or audit, culminating in the production and certification of the official election results" and (C)(2) reads as follows: "For absentee ballots, the "canvass" **includes the opening of any envelope accompanying an absentee ballot** and the assembly and review of absentee ballots in preparation for vote tallying" (emphasis added). COMAR 33.11.04.03 A(1) currently provides that the absentee canvass "shall start" at 10 a.m. on the Thursday after the election.

Because 11-101 (C)(2) specifically states that the canvass includes opening envelopes, 11-302(b)(1) has no meaning because the local board cannot open envelopes until the canvass commences. Therefore, we recommend that the current language in 11-302(b)(1) be removed because, when read in context with other statutory sections, it has no meaning. We recommend replacing it with "A local board may commence the canvass no earlier than 10 a.m. after the election and no later than 10 a.m. on the Friday after the election."

This amendment would give local boards the authority to schedule the start of the absentee canvass within a 24-hour period based on local needs, rather than our being required to commence at 10am on the Thursday after the election, as currently required by COMAR 33.11.04.03. By allowing the Board to commence later, this could give more time for the preparatory work required before the canvass, and eliminate the need for the proposed wireless networking of Election Day precincts - only in the six most populous jurisdictions - because of the change in the start time. In addition, this amendment would address an inconsistency in the current language contained in section 11-101(c)(1)(2) and section 11-302(b)(1).

Thank you for your attention to this important issue.