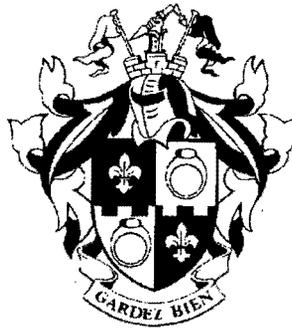


REPORT  
OF THE  
RIGHT TO VOTE  
TASK FORCE



MONTGOMERY COUNTY,  
MARYLAND

June 2014



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

June 4, 2014

Montgomery County Council  
Stella Werner Council Office Building  
100 Maryland Avenue, 6th Floor  
Rockville, Maryland 20850

Dear Councilmembers:

On behalf of the Montgomery County Task Force on Voting Rights, we have the honor of delivering to you the ***Report and Recommendations of the Right to Vote Task Force***.

The Council established the Task Force to:

- Review all local laws and practices that may affect the right to vote;
- Review and recommend changes at the local level to uphold voting rights and increase voter participation;
- Develop plans and take action to promote early voting and same-day registration and make recommendations to the Council on any policies or actions needed to strengthen these efforts;
- Develop plans for a voter registration program designed to register eligible high school students and support voter education programs to increase citizenship knowledge and participation in the democratic process;
- Review Maryland election laws and regulations and recommend legislation that would strengthen the right to vote in Montgomery County, including whether the General Assembly should adopt automatic voter registration, allowing eligible voters to “opt-out” of the voter registration database instead of “opt-in”; and
- Review with the Montgomery County Board of Elections the strengths and weaknesses of our election practices and regulations after the 2014 general election.

To tackle this expansive mandate, the Task Force divided itself into three subcommittees which focused on voter registration, access and ease of casting a ballot, and broader voter rights concerns.

It has been our privilege to serve as chair and vice chair of the Task Force and to work with residents who hold such deep commitment to our democracy and election system. Their expertise and dedication have been evident throughout more than 80 hours of Task Force and subcommittee meetings and more than 1,000 emails exchanged by Task Force members and County staff. It has also been a pleasure to work with Amanda Mihill, Alysoun McLaughlin, and Karen Pecoraro, whose support for the Task Force has been extraordinary.

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The Task Force commends the Council for creating this Task Force and being open to new ideas – big and small – that could make our local, state and federal elections work better and attract even greater participation. The Task Force hopes that our efforts to produce this report will result in subsequent actions by the Council, County staff, and the County Board of Elections to implement many of the recommendations provided herein.

This report contains the 59 recommendations that we endorsed, accompanied by their narrative sections and minority views, if any. Full-version original issue papers containing additional background, extra research, sources, and the recommendations as produced by members of the subcommittees are contained in an appendix. This report does not include two recommendations that the Task Force previously submitted to the Council in a February 2014 letter, although that letter is included in an appendix of this report.

The aggressive schedule in the resolution establishing the Task Force and its broad mandate precluded the Task Force from addressing several unfinished issue papers that had been identified as priorities by some members (and were listed in the interim report to the Council). Late in the deliberations, the Task Force overwhelmingly approved continuing on with these issue papers and voted for their completion, future consideration, and inclusion of eventual recommendations. The Task Force expects to present these issue papers in its final report delivered to the Council in 2015.

We believe that public input on the election process is important, and we therefore request that the Council hold a public hearing and solicit feedback both on this report, the recommendations contained therein, and information on voter experiences during the 2014 Primary Election.

In addition, the Council charged the Task Force, in collaboration with the Board of Elections, with review of the strengths and weaknesses of election practices and regulations as they affect the 2014 General Election and a date to complete this review of February 28, 2015. We do not expect comprehensive reports from the Board of Elections to be available on the General Election until late in the winter. Thus, unless the Council should provide a longer mandate for the Task Force, any review we can provide is likely to be only cursory and anecdotal. Therefore, the Task Force recommends extending the Task Force's term until March 31, 2015.

Finally, the Task Force also urges creating a new task force, or extending the term of the current Task Force, to oversee the implementation of the recommendations in this report and review and comment on any issues that may arise as the State transitions to new voting equipment leading up to the 2016 General Election. The Task Force would also be able to provide additional assistance with implementation of any of the recommendations contained herein that the Council or staff chose to pursue. Two members of the Task Force resigned during the course of our work, one because of work-related scheduling conflicts and the other because of conflict over a set of the recommendations in the report. If the Council extends the term of the Task Force, you might consider seeking replacements to fill these two vacancies.

Again, thank you for your leadership and for giving us and the members of the Task Force this opportunity to serve.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'T. Male', written in a cursive style.

Timothy Male  
Chair

A handwritten signature in black ink, appearing to be 'G. Featheringham', written in a cursive style.

Gary Featheringham  
Chair-Chair

## **DISCLAIMER**

### **Note on Report Preparation and Voting Process**

Task Force members voted individually on proposed recommendations. Inclusion of a recommendation in the final report is not reflective of any one Task Force member's support of it; rather, inclusion of a particular recommendation reflects that a majority of those voting agreed with making that recommendation as worded.

The background and other text accompanying each group of recommendations (issue papers) were prepared by one or more members of the Task Force who voted in the majority on those recommendations. Members voted on the text of individual recommendations but did not vote on the full text of each issue paper. Members in the minority on any given recommendation were given an opportunity to provide a minority view, but may have chosen not to do so. Similar to the majority report, minority views do not necessarily reflect the views of all individuals who did not support a given recommendation.

Additional early drafts of issue papers are available as part of the records associated with the work of this Task Force. These draft papers typically reflect the work of one or two Task Force members of a subcommittee with relatively little subsequent editing or approval by the other members or the full Task Force.

# RIGHT TO VOTE TASK FORCE

## MEMBER LIST

Timothy Male, Chair	Lindsay Eyler Kaplan**
Gary Featheringham, Vice-Chair	Dolly Kildee
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\* Resigned March 2014

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## SUMMARY OF RECOMMENDATIONS

### ***Improvements to Online Voter Registration***

1. The Task Force recommends that Maryland modify the online voter registration system to allow individuals without IDs from the Motor Vehicle Administration to register online by providing a signature through an electronically captured image.  
*10 members supported this recommendation; 1 member did not support this recommendation; 1 member abstained from voting.*
2. The Task Force recommends that Maryland revise the laws regarding its online registration system so that individuals who have neither a driver's license, state ID, nor touchscreen/signature capture technology are sent a postcard to provide a signature to mail back and complete their applications.  
*10 members supported this recommendation; 2 members did not support this recommendation.*
3. If Recommendation #2 is not implemented, the Task Force recommends that Maryland add the capability to accept online registration information from applicants who must then print, sign, and mail their completed applications, so that when the application is eventually mailed in, the information is already in the system waiting to be reviewed. The information could be kept for a set number of days, such as 45 (this is the current practice in Virginia).  
*10 members supported this recommendation; 1 member did not support this recommendation; 1 member abstained from voting.*
4. The Task Force recommends that Maryland integrate the electronic registration system with the MVA and online voter registration system so that information can be electronically and automatically transferred between systems.  
*11 members supported this recommendation; 1 member did not support this recommendation.*

### ***Same Day Voter Registration***

5. The Task Force recommends that the County Council encourage the Maryland General Assembly to pass a state constitutional amendment to establish Election Day registration.  
*9 members supported this recommendation; 1 member did not support this recommendation.*

### ***Automatic Registration Options***

6. The Task Force recommends that the State and/or County Boards of Election enroll all eligible non-registrants as "pending" (just short of registration) in the SBE database. Notification would be sent to those pending registrants (on forms containing the required qualifying information language regarding citizenship and non-felon status), allowing them to opt-in to become registered voters and declare a party affiliation should they choose one. Sources for the list of all eligible non-registrants would include the MVA, State Department of Assessments & Taxation, and public assistance offices. For example, once these data were compared with the existing voter rolls, postcards or forms containing notice that the person has been added as a pending registrant would be sent to the potential voters, and they would simply activate their registration by replying or by appearing at early voting to confirm their information. Potential methods for the government to seek a response from pending registrants might include in person at the Board of Elections, by mail, online, or at the polls.  
*10 members supported this recommendation; 1 member did not support this recommendation.*
7. The Task Force recommends that the State and/or County Boards of Election conduct voter-registration outreach by building a list of all eligible non-registrants, regardless of whether these

citizens are contemporaneously interacting with government. For example, once agency data were compared with the existing voter rolls, postcards or forms containing the required qualifying information language would be sent by the SBE to potential voters, and they would simply register by replying. This would be similar to the Electronic Registration Information Center outreach process, but would incorporate a broader base of data. Sources for all eligible non-registrants would include state-level departments, tax agencies, public assistance offices, U.S. Postal Service address change updates, and schools and colleges. Additional data sources could include county and municipal agencies and departments.

*9 members supported this recommendation; 1 member did not support this recommendation; 1 member abstained from voting.*

8. The Task Force recommends that the Maryland General Assembly and/or the SBE encourage most state, county, and municipal agencies/departments not already subject to National Voter Registration Act requirements to suggest voter registration during each service encounter (face-to-face, websites, or other online portals) with Maryland citizens. Agency personnel could offer paper SBE registration forms during a transaction with a citizen. During an electronic transaction, registration could also be offered; if affirmative, selecting the SBE link would continue the transaction to the online registration website. To the extent practicable, most county, state, or municipal government agency paper forms should contain a checkbox 'footer' inquiring if the citizen wishes to register; if yes, when the agency receives the form back, it would send a registration form back to the citizen. As with MVA, electronic transfer of information would be recommended if available.

*10 members supported this recommendation; 1 member abstained from voting.*

9. The Task Force recommends that all state and county online forms (e.g., tax) should link to the SBE voter registration system, with the capability to receive pre-filed data completed by citizens online. There could be a registration text box at the end of the e-form (pre-signature line) with the requisite check boxes and required qualifying information language, and an activation 'button' that extracts the just-entered data to the SBE system.

*10 members supported this recommendation; 1 member did not support this recommendation.*

### ***Friendlier Ballot Design***

10. The Task Force recommends that the County Council request all agencies involved in ballot design - local and state - to take into consideration the body of research, including the Presidential Commission, that strongly recommends that future ballots follow the suggestions and guidelines as created by the Center for Civic Design and described in detail in their Field Guide: Vol. 1 – “Designing Usable Ballots” (2013), including:

- Use lowercase letters
- Avoid centered case
- Use big enough type
- Pick one sans serif font: Arial, Helvetica, Universe, Verdana
- Support process and navigation
- Use simpler, clear language
- Use accurate instructional illustrations
- Use informational icons (only)
- Use contrast and color to support meaning
- Show what's most important

*10 members supported this recommendation; 1 member abstained from voting.*

### ***Clearer Language for Referendums***

- The Task Force recommends to the General Assembly and County Council that all ballot referendums and ballot questions be stated in plain, clear language, as described by the federal Plain Language legislation.  
*Unanimous among members present.*
- The Task Force recommends that the General Assembly and County Council evaluate best practices of other jurisdictions (local, state, and federal).  
*Unanimous among members present.*
- The Task Force recommends to the General Assembly and County Council that ballot language be reviewed by the Charter Review Commission or other nonpartisan citizen review commission, and/or provide for judicial review of ballot language. This language review should ensure that the ballot language is consistent with the intent of the petitioner.  
*Unanimous among members present.*

### ***Understanding Long Lines***

- The Task Force recommends that the County Council request the County Board of Elections and the State Board of Elections to prepare a Report Card comparing the best practices highlighted in the reports listed below and the current practices followed by BOE.
  - “Voting and the Administration of Elections in Maryland”
  - “The American Voting Experience”
  - “How to Fix Long Lines”*10 members supported this recommendation; 1 member abstained from voting.*

### ***Improving Voter Registration, Ballot Access and Voting for U.S. Military and Overseas Citizens***

15. The Task Force recommends that the State Board of Elections improve its website by providing more information to military and overseas voters through a dedicated Q&A page. In particular, it should describe the active period for voter registrations based on the Federal Post Card Application or other overseas registration options. The page should describe whether registered voters will receive absentee ballots for one election, one election year, or two years.  
*Unanimous among members present.*
16. Since overseas voters are still eligible to vote in local elections, the Task Force recommends that the county also provide overseas voters with information on municipal elections in the county, including the timing of municipal elections and contact information for municipal election staff.  
*Unanimous among members present.*

### ***Supplementing Information in the Sample Ballot***

17. The Task Force recommends that the County Board of Elections develop additional educational/outreach efforts focused on the three ways voters can vote in Montgomery County as stated in the Sample Ballot.  
*Unanimous among members present.*

### ***A Voter Application for Mobile Devices***

18. The Task Force recommends that the Maryland and County Boards of Election provide an app with information regarding poll locations, and other voting information normally found on the BOE website.

*11 members supported this recommendation; 1 member did not support this recommendation.*

19. The Task Force recommends that the Maryland and County BOE provide an app that will allow users to register online through the State online voter registration system and to download a registration form that can be printed, signed and later mailed.

*11 members supported this recommendation; 1 member did not support this recommendation.*

20. The Task Force recommends that the Maryland and County BOE provide an app that allows users to view sample ballots for their jurisdiction.

*11 members supported this recommendation; 1 member did not support this recommendation.*

21. The Task Force recommends that the BOE voting app provide updates on the election.

*11 members supported this recommendation; 1 member did not support this recommendation.*

### ***Get Out the Vote***

22. The Task Force recommends that the County Council direct the County Board of Elections to put together a plan to make the list of early voters and absentee applicants publicly available before Election Day.

*9 members supported this recommendation; 1 member did not support the recommendation.*

23. The Task Force recommends that the County Council direct the County Board of Elections to evaluate the feasibility of providing regular updates on who has voted throughout Election Day.

*9 members supported this recommendation; 1 member did not support the recommendation.*

24. The Task Force recommends that, if feasible, the Board of Elections implement regular updates on who has voted throughout Election Day.

*9 members supported this recommendation; 1 member did not support the recommendation.*

### ***Off-Year Elections***

25. The Task Force recommends that the County Council request the State Board of Elections to conduct a study to review whether municipal voters would be better served by consolidated, even-year elections rather than off-year elections.

*Unanimous among members present.*

26. The Task Force recommends that Montgomery County assist municipalities that would like to consolidate their off-year elections with even-year ones, by supporting requests for assistance with voting equipment, helping facilitate administration of a shift to consolidated elections, and on a pilot basis, providing one-time financial support for the administration of elections for any municipality making such a change.

*Unanimous among members present.*

### ***Special Elections for Legislative and Executive Vacancies***

27. The Task Force recommends that vacancies for U.S. Senators in Maryland, Maryland General Assembly members, and the County Executive should generally be filled by a single special election, not an appointment process.

*12 members supported this recommendation; 1 member did not support this recommendation; 1 member abstained from voting.*

28. The Task Force recommends that the governor for congressional and state-level offices, or the County Council for county-level offices, as the case may be, should have the discretion to conduct special elections entirely by mail ballot.

*Unanimous among members present.*

29. If a vacancy occurs after December 1 of a year before the year when the office is regularly scheduled to be on the general election ballot, the Task Force recommends that the vacancy be filled by an appointment process.

*13 members supported this recommendation; 1 member did not support the recommendation.*

30. Concerning the appointment process proposed in Recommendation 29, the Task Force recommends that:

- the appointee must be from the same political party as the vacating member; and  
*8 members supported this recommendation; 5 members did not support this recommendation; 1 member abstained from voting.*
- the appointing authority does not have to select a replacement from a list submitted by the political party organization of the vacating member.  
*10 members supported this recommendation; 4 members did not support this recommendation.*

### ***Primary Elections***

31. The Task Force recommends that Maryland maintain its system of closed primaries with the opportunity for each party to determine open access to its own primary election, but recommends that the County Council urge the political parties to open their primaries to third parties and unaffiliated voters.

*8 members supported this recommendation; 4 members did not support this recommendation.*

32. The Task Force recommends that, in the event of an uncontested general election, the primary election must be open to all who are entitled to vote in the general election.

*7 members supported this recommendation; 4 members did not support this recommendation; 1 member abstained from voting.*

### ***Ranked Choice Voting/Instant Runoff Voting***

33. The Task Force recommends that the County Council adopt ranked choice voting for county elections. The Council can phase in ranked choice voting, starting with the Council's at-large seats, school board elections, or primary elections.

*11 members supported this recommendation; 1 member did not support this recommendation.*

34. The Task Force recommends that the County Council encourage the Maryland General Assembly to adopt ranked choice voting for state elections.

*11 members supported this recommendation; 1 member did not support this recommendation.*

35. The Task Force recommends that the County Council encourage the state to purchase voting equipment that can tabulate ranked-choice ballots without requiring exports to spreadsheet software.

*11 members supported this recommendation; 1 member did not support this recommendation.*

### ***Fair Redistricting***

#### **State-level Recommendations:**

36. Neutral Redistricting Criteria.

The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish the following neutral redistricting criteria for congressional redistricting and state legislative redistricting:

1. No redistricting plan or district may be drawn with the intent to favor or disfavor a political party or incumbent.
2. Notwithstanding Recommendation #36.1, districts may not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.
3. Congressional districts\* must consist of adjoining territory, be compact in form, and of substantially equal population. Due regard must be given to natural boundaries and the boundaries of political subdivisions.

\*Criteria in #36.3 currently apply to the redistricting of Maryland General Assembly districts under the Maryland Constitution, art. III, sec. 4, but not to the redistricting of congressional districts.

*8 members supported this recommendation; 3 members did not support this recommendation.*

37. Neutral Redistricting Commission.

The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish a neutral state redistricting commission that will determine the boundaries of congressional and Maryland General Assembly districts.

*8 members supported this recommendation; 2 members did not support this recommendation.*

The Task Force further recommends that the state redistricting commission be governed by the following specific principles:

1. Powers and duties: The commission's redistricting plans should be final and binding upon the state, subject only to judicial review for compliance with the neutral redistricting criteria and the obligations placed on the commission.
2. Composition:
  - a. The commission must consist of three members each from every political party recognized in Maryland that has had at least 5,000 registered members over the preceding five years, and three unaffiliated members not registered with any political party.
  - b. No person who holds any elected office is eligible for appointment to the commission.
  - c. No commissioner may hold any elective office in Maryland during the two-year period following their tenure on the commission.

*6 members supported this recommendation; 4 members did not support this recommendation; 1 member abstained from voting.*

3. Member selection: The governor must appoint the commission members. The state central committee, or equivalent body, of each political party that is eligible for representation on the commission must submit to the governor a list of commission candidates from that political party. The governor must appoint three members from each list submitted. The governor must also appoint the three unaffiliated members.
4. Officers: The chair and vice chair of the commission may not both be members of the same political party or both be unaffiliated with any political party.
5. Data restrictions: In establishing districts, the commission may not use any of the following data:
  - a. addresses of incumbents; or
  - b. political affiliations of registered voters.

6. Transparency and public participation: The commission must:
  - a. make all of its meetings, deliberations, and proceedings open to the public, and make all records used in its deliberations and proceedings open to public inspection and copying; and
  - b. accept and consider testimony and proposed redistricting plans from members of the public.
7. Voting: Passage of a redistricting plan requires the support of at least two-thirds of the commission's members.

*6 members supported this recommendation; 5 members did not support this recommendation.*

38. Enforcement.

The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish private right of action for any Maryland resident, municipality, or county to sue the state for declaratory and equitable relief to enforce compliance with the neutral redistricting criteria or the obligations imposed on the state redistricting commission.

*6 members supported this recommendation; 4 members did not support this recommendation; 1 member abstained from voting.*

39. Transparency.

The Task Force recommends that the County Council advocate that any redistricting process adopted by the state provide maximum opportunity for public scrutiny and any include public hearings and a recorded vote by members.

*Unanimous among members present.*

County-level Recommendations:

40. The Task Force recommends that the County Council establish a neutral county redistricting commission to determine the boundaries of County Council districts every 10 years after the decennial census.

*7 members supported this recommendation; 2 members did not support this recommendation; 1 member abstained from voting.*

41. The Task Force further recommends that the county redistricting commission be governed by the following specific principles:

1. The neutral redistricting criteria recommended for congressional and state legislative redistricting should equally apply to redistricting County Council districts.

*7 members supported this recommendation; 4 members did not support this recommendation.*

2. A separate county redistricting commission should be established to redistrict the County Council districts. The commission should be structurally and functionally identical to the state redistricting commission, *except*:

- a. the membership threshold for political parties should be 1,000 registered voters in Montgomery County; and
- b. appointments should be made by the County Executive, with candidate lists submitted by the county central committees, or equivalent bodies, of the political parties represented on the commission.

*7 members supported this recommendation; 3 members did not support this recommendation; 1 member abstained from voting.*

3. The enforcement mechanism and transparency requirements recommended for congressional and state legislative redistricting should equally apply to redistricting of the County Council districts.

### ***Initiative and Referendum***

#### 42. General:

- Enact signature-gathering standards that empower volunteer collection efforts and financial disclosure requirements that identify the sources of funding behind paid signature efforts.  
*9 members supported this recommendation; 4 members did not support this recommendation; 1 member abstained from voting.*
- The state and county should implement measures to require geographic distribution of petition signers.  
*7 members supported this recommendation; 5 members did not support this recommendation; 2 members abstained from voting.*
- For initiative and referendum ballot questions, a process should be established to ensure that ballot questions are written so that they can be understood by the average voter.  
*13 members supported this recommendation; 1 member did not support this recommendation.*

43. Initiative: The Task Force recommends state and county legislation allowing indirect initiatives with a recommended petition signature requirement of 3% of the number of votes cast for governor in the last election. (This is the method currently used for referendum petitions. In 2010, the total number of votes cast for governor was 1,857,880; 3% is 55,736.)  
*(Indirect Initiatives: 10 members supported indirect initiatives; 4 members did not support indirect initiatives.)*  
*(Direct Initiatives: 5 members supported direct initiatives; 8 members did not support direct initiatives; 1 member abstained from voting.)*

44. Referendum: At the state and county levels, the Task Force recommends expanding the current online printout with mail-in to a fully online system with secure, built-in verifications so that signers do not need to mail in a paper copy.  
*13 members supported this recommendation; 1 member abstained from voting.*

### ***“Minor” or “Non-Principal” Party Ballot Access***

45. The Task Force recommends that the County Council request the County Board of Elections to provide information to residents explaining the signature-gathering requirements for non-principal parties and independent candidates.  
*Unanimous among members present.*
46. The Task Force recommends that the County Council request the Maryland General Assembly to support measures granting non-principal parties status if 10,000 registered voters are affiliated with that party, for as long as that level is retained. In the 2014 session, this was SB 1032 (Ferguson).  
*Unanimous among members present.*
47. The Task Force recommends that the County Council request the State Board of Elections to return to “reasonable certainty” ballot access petition signature standards instead of the “strict, to-the-letter” standards in place since March 2009. (Local election boards have long requested more lenient standards.)

*Unanimous among members present.*

48. The Task Force recommends that the County Council request that the Maryland General Assembly to support measures reducing ballot access petitions for independent candidates from 1% of the number of registered voters to 10,000 registered voters.

*Unanimous among members present.*

#### ***Candidate Debate Access***

49. County: The Task Force recommends that the county provide free and equal radio and television time, by elected position, for all general election eligible candidates and parties on Montgomery County local access media and other county-controlled media.

*9 members supported this recommendation; 1 member did not support this recommendation; 2 members abstained from voting.*

50. State: The Task Force recommends that the County Council encourage the State to adopt free and equal debate and media access programs, by elected position, at the state level.

*8 members supported this recommendation; 1 member did not support this recommendation; 3 members abstained from voting.*

51. National: The Task Force recommends that the County Council write to federal legislators to encourage equal debate and media access. Possible examples that the Council may engage with others on include returning control over national debates to the League of Women Voters or creating a new publicly funded Citizen's Commission on Presidential Debates.

*7 members supported this recommendation; 5 members did not support this recommendation.*

#### ***Voting Access for Noncitizens With a Permanent Resident Visa***

52. The Task Force recommends that Montgomery County request the State of Maryland to allow each county to determine its own public policy with respect to the voting rights of noncitizens with permanent resident visas in county elections.

*7 members supported this recommendation; 4 members did not support this recommendation; 1 member abstained from voting.*

53. The Task Force recommends that Montgomery County allow noncitizens with permanent resident visas to vote in county elections if state law is changed to allow noncitizens to vote.

*7 members supported this recommendation; 4 members did not support this recommendation; 1 member abstained from voting.*

#### ***Voting Rights for Residents With Felony Convictions***

54. The Task Force recommends that Montgomery County develop and administer an active voter registration and civic education program as part of re-entry services provided in prison for people being released from the Montgomery County Correctional Facility. The County should create opportunities for voter registration for all prisoners awaiting trial for felony or misdemeanor charges or serving time for misdemeanor offenses.

*10 members supported this recommendation; 2 members did not support this recommendation; 1 member abstained from voting.*

55. The Task Force recommends that the County Council encourage the Maryland General Assembly to change state law to allow incarcerated felons who are Maryland residents the option to register to vote during the pre-release phase before any parole and probation. That 'pending' registration should become active automatically on the date the person becomes eligible.

*10 members supported this recommendation; 3 members did not support this recommendation.*

56. The Task Force recommends that the county encourage the Maryland General Assembly to change state law to restore voting rights to residents with felony convictions who have served their time in prison and pre-release programs but who are still serving a term of probation or parole.

*10 members supported this recommendation; 3 members did not support this recommendation.*

57. The Task Force recommends that the County not support the full restoration of voting rights to all felons, including those still incarcerated or under house arrest or home-based detention (i.e. pre-release programs).

*10 members supported this recommendation; 3 members did not support this recommendation.*

#### ***Voting Rights for Residents Who Are 16 and 17 Years of Age***

58. The Task Force recommends that the County Council and Executive propose to the Maryland General Assembly reducing the voting age from 18 to 16 years old for county elections.

*8 members supported this recommendation; 4 members did not support this recommendation.*

#### ***Financial Support of the Board of Elections to Uphold Voting Rights and Increase Voter Participation***

59. The Task Force would like to remind the County Council that increased financial resources may be needed by the Board of Elections to meet the Council's goal of maximizing voter participation in the election process.

*7 members supported this recommendation; 4 members did not support this recommendation.*

### **Issues Requiring No Further Action**

#### ***Election Day Holiday***

The Task Force considered but did not support a recommendation that the county create an Election Day holiday. (The State of Maryland already grants Election Day holiday status for the general elections for State employees.)

*7 members supported this recommendation; 3 members did not support this recommendation; 1 member abstained*

#### ***Online Voting***

In view of the technical issues and concerns associated with online voting, the Task Force recommends that the county not promote online voting at this time.

*Unanimous among members present.*

#### ***Voter Photo Identification***

Since all of the credible evidence indicates that requiring photo IDs would decrease rather than increase voter turnout, the Task Force recommends that the issue of requiring photo IDs to vote get no further consideration from the County Council.

*11 members supported this recommendation; 1 member did not support this recommendation.*

# IMPROVEMENTS TO ONLINE VOTER REGISTRATION

## Background

Online registration has been a popular bipartisan reform gaining momentum nationwide. The bipartisan Presidential Commission on Election Administration, unanimously and with the support of both 2012 major presidential party candidates' attorneys, strongly recommended the expansion of online voter registration in its January 2014 report. Indeed, Maryland adopted online voter registration effective in 2012. Several improvements, however, could be made to fully realize the benefits of the move to online registration.

Currently, in Maryland, a person must have a driver's license or State ID card issued by the Motor Vehicle Administration (MVA) to register to vote online so that the signature from these databases can be used for voter registration. Although the State is required to ask for the driver's license or State ID number, that number is not required to register to vote by other means, including by mail or at government agencies. However, applicants without these forms of ID do need to provide the last four digits of their Social Security number, or confirm that the applicant does not have any of these three items of identification.

One limitation of the current requirements is that a "digital divide" can occur if only people with drivers' licenses and State IDs can register online. Not all eligible citizens have these IDs. But all potential voters should reap the benefits of accurate data entry and checks on completeness that an online site can provide, not just individuals with those IDs.

The Task Force has made several recommendations that address this access issue. One method to broaden access is to accept electronic signatures that applicants make on a touch screen, consistent with technology now used in many businesses. This technology has become widespread with the use of smartphones. Citizens could therefore use their mobile phones or tablets to register to vote, providing a signature much the way they do by mail and for business contexts, such as credit card transactions and signing for deliveries. This change would also be consistent with the Maryland Electronic Transactions Act, which states that if a law requires a signature, an electronic signature satisfies the law. Such changes are also consistent with public expectations, especially of young people, that all activities can be done online. Several other states have this capability, including Delaware and Missouri. Finally, this change would be consistent with the way mail applications work, just applied in a different medium.

However, not all citizens may have the technology necessary to use touch screens. Therefore, the Task Force has recommended another improvement: allowing applicants to use the online system to submit their information online, even if they do not have a driver's license, state ID, or access to touch screen/signature capture technology.<sup>1</sup> Under the Task Force's recommendation, these applicants would be sent a postcard to provide a signature by mail to complete their applications. Even though staff time would be required to match up the records, this procedure would ultimately save election officials time and money by having data entered by the registration applicants themselves that would otherwise be entered manually by election workers.

Regarding security, although some may argue that having a driver's license or state ID is more secure, election officials would still conduct the same verification procedures conducted for mail applications.

First-time applicants who do not provide a verifiable driver's license, state ID, or last four digits of their Social Security number could have the same requirements applied to them as to mail applicants who do not provide this information. Importantly, the key feature of these recommendations is to "translate" methods already used with mail and paper to a modern medium.

Finally, the Task Force made a recommendation for further modernizing the system so that Maryland can realize the cost-savings benefits of other states that have integrated the electronic registration system with their motor vehicle and online voter registration systems.

### **Recommendations**

1. The Task Force recommends that Maryland modify the online voter registration system to allow individuals without IDs from the Motor Vehicle Administration to register online by providing a signature through an electronically captured image.
2. The Task Force recommends that Maryland revise its laws regarding its online registration system so that individuals who have neither a driver's license, state ID, nor touchscreen/signature capture technology are sent a postcard to provide a signature to mail back and complete their applications.
3. If Recommendation #2 is not implemented, the Task Force recommends that Maryland add the capability to accept online registration information from applicants who must then print, sign, and mail their completed applications, so that when the application is eventually mailed in, the information is already in the system waiting to be reviewed. The information could be kept for a set number of days, such as 45 (this is the current practice in Virginia).
4. The Task Force recommends that Maryland integrate the electronic registration system with the MVA and online voter registration system so that information can be electronically and automatically transferred between systems.

### **Minority View**

The most significant problem with these recommendations is the vulnerability to FRAUD. The Task Force has elected not to recommend consideration of an online voting system, mostly due to security issues. So why place the registration system in a similar position? Most importantly, the MVA is open to providing driver's licenses to illegal immigrants, and the potential for illegals to be able to register to vote is significantly high. All four of the recommendations, and especially Recommendation #4, are made without consideration for the cost and effort involved. To develop an integration registration system with MVA would be quite expensive to implement and most likely require taxes to again be raised to pay for it. Also, the Maryland track record and cost overruns on an integrated data system could be exemplified by recent attempts and associated failures.

## **SAME DAY VOTER REGISTRATION**

### **Background**

Same Day Registration (SDR) is a reform that has gained ground in the United States recently. In 2013, Maryland passed SDR for the early voting period only (and not on Election Day itself) as HB 224, which becomes effective in 2016. However, the Task Force's understanding is that to offer voter registration on Election Day, Maryland must amend its constitution, because provisions in the constitution assume that registration will be closed for a period of time before Election Day.<sup>2</sup>

SDR States are consistently among the highest in turnout. A 2006 report by the Maryland Attorney General and State Administrator of Elections found that EDR (Election Day Registration) would likely increase turnout between 1 and 3 percent, and a study in 2000 found that EDR was particularly effective in boosting the turnout of young voters and those who have recently moved.<sup>3</sup> SDR also offers a last-minute alternative for voters who want to participate, but either did not plan on doing so ahead of time, or simply did not register in time. Finally, SDR provides a fail-safe option for voters who had problems registering (e.g., at the Motor Vehicle Administration) or who forgot to mail in an application they may have filled out, failed to respond to a notice of incomplete application, or may have been removed incorrectly.

Concerns that are sometimes raised with respect to SDR can be addressed. One oft-cited concern is fraud; however, states that have SDR have not experienced fraud problems attributable to it. For example, in New Hampshire, an EDR State, the Attorney General reported after making a "major effort" to investigate voter fraud in the 2004 general election that "there are very few instances of wrongful voting" there.<sup>4</sup> At least one Task Force member conducted research indicating that there was no apparent increased incidence of fraud when comparing SDR with other types of registration. States with SDR generally require some type of proof of residency and identity, though specific state requirements may vary.

Opponents also may be concerned regarding the attendant cost; however, states such as Iowa have implemented SDR registration without significant additional expense. In addition, any associated costs of SDR implementation would be mitigated by the reduced need for provisional ballots.

Current jurisdictions with SDR on Election Day include: Colorado, Connecticut, the District of Columbia, Idaho, Iowa, Maine (in town offices and city halls), Minnesota, Montana (in official county election offices), New Hampshire, Wisconsin, and Wyoming. In addition, California's SDR law has passed but is not yet effective, and Hawaii's measure has passed the legislature and is expected to be signed.<sup>5</sup>

The Task Force overwhelmingly rejected an amendment to this recommendation to require proof of citizenship, residency, and age for SDR. Such requirements would make it more difficult for eligible voters to register.

## **Recommendation**

5. The Task Force recommends that the County Council encourage the Maryland General Assembly to pass a state constitutional amendment to establish Election Day registration.

## **Minority View**

The large potential for FRAUD is the most significant reason why SDR should not be considered. SDR does not provide time for the BOE to validate the registration. One cannot expect a poll worker to be a handwriting expert and be able to validate signatures. The potential for FRAUD rises with Maryland illegals having a valid driver's license. Maryland early voting centers are the solution to the perceived need for SDR. The Task Force is chartered to improve the voting process and reduce long lines and wait times. Imagine the confusion and problems associated in separating voters from those with the need for registration and previously registered voters. Complicate this with additional lines for SDR and different types of validation and identifications. So, SDR will "increase" turnout, an objective of the Task Force, by increasing wait times and operational costs, which is not the objective of the Task Force. Also, the Task Force is against voter ID, but the BOE will need different processing for SDR because of ID requirements. It is stated within this document that there is little fraud with SDR, but that is because of the requirement for proof of ID with SDR. It clearly follows that some type of voter ID is needed for SDR, although, according to the Task Force, voter ID is disingenuous towards minorities, elderly, African Americans, and the poor. From this, then, it follows that SDR is disingenuous towards minorities, elderly, African Americans, and the poor as well; thus producing the second SDR conundrum.

## AUTOMATIC REGISTRATION OPTIONS — OPT-IN ENHANCEMENTS

### Background

Maryland's voter registration system is "opt-in," meaning that voters must take action in order to be added to the voter registration rolls. The National Voter Registration Act (NVRA) mandated that registration be offered by departments of motor vehicles and all public-assistance agencies during their interactions with the public, which facilitates the process. With automatic registration, citizens are notified of their eligibility to vote; with an opt-in system, they can confirm their desire to register. Automatic "opt-out" means that a prospective voter is offered the opportunity *not* to be registered, instead of the opportunity *to* register; applicants would be added automatically to the rolls if deemed eligible until they indicated they wanted to opt-out.

At its outset, the primary sources for the State Board of Elections' (SBE) voter registration database were the county rolls and Motor Vehicle Administration (MVA) registrations; now, Maryland also participates in the Electronic Registration Information Center (ERIC). The Task Force already recommended that voter registrations be automatically transmitted to the SBE via hyperlinks accessed from various County websites. Using the ERIC approach, the SBE itself could compile data amassed by the MVA, tax departments, Social Security death records, and U.S. Postal Service address changes. Other opt-in approaches could pre-populate the SBE registration database with would-be voters, collected from either most State databases, or State, County, and municipal information contributed by multiple agencies and departments.

The opt-out approach, while being the most comprehensive and expedient way to maximize voter registration, (1) does not provide for citizen consent prior to being registered (raising concerns with free choice in the first instance rather than after the fact), and (2) might force the inclusion of reluctant Marylanders in the publicly available registration list due to legal transparency provisions (which raises potential privacy/security concerns). The Registration Subcommittee discussed using all available state records to automatically register all eligible citizens of Maryland, while providing the ability to opt-out after the fact. Alternative opt-in recommendations would achieve most of the same goals, but with the ability to minimize the concerns raised by opt-out. Therefore, the subcommittee did not recommend the opt-out option.

### Recommendations

The recommendations seek to modernize voter-initiated registration, streamline the process, and leverage already-existing government-citizen interactions and data to increase participation. The suggested systems could be set up to use electronic transfer of information, eliminating costly errors and data entry problems. They would reduce paperwork and labor-intensive hours before elections and during voter registration drives, spread resources throughout the cycle instead of concentrating them around election deadlines, and allow a focus on "off the grid" non-registered citizens. The recommendations urge a more automatic opt-in voter registration system: #6 is more State-level-records driven (resulting in the 'pending' status, and yielding fewer multiple name versions of the same potential voter than #7); #7 is a broader net of databases and is more outreach-driven, utilizing far more sources to compile a list for mail-out purposes (but not culminating in a 'pending' addition to the SBE rolls); #8 encourages most state and county departments to 'recruit' registrants during encounters (in-person or

online); and #9 links online 'e-forms' to the SBE registration website. Recommendations #6 (closest to opt-out) and #9 could align alone; however, the Task Force approved all four so that the County Council has the maximum amount of options to consider recommending to the General Assembly.

6. The Task Force recommends that the State and/or County Boards of Election enroll all eligible non-registrants as "pending" (just short of registration) in the SBE database. Notification would be sent to those pending registrants (on forms containing the required qualifying information language regarding citizenship and non-felon status), allowing them to opt-in to become registered voters and declare a party affiliation should they choose one. Sources for the list of all eligible non-registrants would include the MVA, State Department of Assessments & Taxation, and public assistance offices. For example, once these data were compared with the existing voter rolls, postcards or forms containing notice that the person has been added as a pending registrant would be sent to the potential voters, and they would simply activate their registration by replying or by appearing at early voting to confirm their information. Potential methods for the government to seek a response from pending registrants might include in person at the Board of Elections, by mail, online, or at the polls.
7. The Task Force recommends that the State and/or County Boards of Election conduct voter-registration outreach by building a list of all eligible non-registrants, regardless of whether these citizens are contemporaneously interacting with government. For example, once agency data were compared with existing voter rolls, postcards or forms containing the required qualifying information language would be sent by the SBE to potential voters, and they would simply register by replying. This would be similar to the ERIC outreach process but would incorporate a broader base of data. Sources for all eligible non-registrants would include state-level departments, tax agencies, public assistance offices, U.S. Postal Service address change updates, and schools and colleges. Additional data sources could include county and municipal agencies and departments.
8. The Task Force recommends that the Maryland General Assembly and/or the State Board of Elections encourage most state, county, and municipal agencies/departments not already subject to NVRA requirements to suggest voter registration during each service encounter (face-to-face, websites, or other online portals) with Maryland citizens. Agency personnel could offer paper SBE registration forms during a transaction with a citizen. During an electronic transaction, registration could also be offered; if affirmative, selecting the SBE link would continue the transaction to the online registration website. To the extent practicable, most county, state, or municipal government agency paper forms should contain a checkbox 'footer' inquiring if the citizen wishes to register; if yes, when the agency receives the form back, it would send a registration form back to the citizen. As with MVA, electronic transfer of information would be recommended if available.
9. The Task Force recommends that all state and county online forms (e.g., tax) should link to the SBE voter registration system, with the capability to receive pre-filed data completed by citizens online. There could be a registration text box at the end of the e-form (pre-signature line) with the requisite check boxes and required qualifying information language, and an activation 'button' that extracts the just-entered data to the SBE system.

## **Minority Views**

### ***Minority view #1***

It is clearly stated in this document that the Task Force does not recommend the opt-out registration option and substantiates that position within this document. But, it quickly supports four

recommendations that push the current opt-in regulation even closer towards becoming an “opt-out” regulation. Registration, like voting, is an American right. Currently, a citizen can choose to register or vote and it is the choice and freedom of the citizen to do so. It is not mandatory that one votes in the USA and it should not be mandatory that one is forced to register. These four recommendations clearly are an expansion of “Big Government”, trying to take away the freedom of choice of the individual. None of these recommendations should be supported by freedom-loving Americans!

***Minority view #2***

While a subcommittee of the Task Force discussed the advantages and disadvantages of an “opt-out” voter registration system, the full Task Force itself chose not to vote on whether the county or state should adopt an “opt-out” system of voter registration, and it had little discussion of the subject. The County Council should not interpret these recommendations, which suggest making opt-in registration easier, as either an endorsement or a condemnation of opt-out voter registration.

## FRIENDLIER BALLOT DESIGN

### Background

Since the 2000 presidential election dozens of articles have been written to address issues that created confusion during that election and the changes that ensued after implementation of the Help America Vote Act of 2000 (HAVA).

In 2008 the Brennan Center for Justice published “Better Ballots,”<sup>6</sup> which presented analyses of 13 cases where the number of residual votes was larger than the margin of victory. According to the article, “... in all of these cases, the likely culprit of lost votes was ballot design.” Residual votes is a term coined by the CalTech-MIT Voting Technology Project. The Center for Civic Design (2014) reported that “Residual votes are overvotes or undervotes. Overvoting happens when a voter marks too many choices in a contest...Undervoting can be intentional or unintentional on the part of the voter.”

“Report of Findings: Use of Language in Ballot Instructions”<sup>7</sup> was published in 2009 by the National Institute of Standards and Technology, is the result of a two-year study looking at ballot instructions across the country. The study established best practices for the use of plain language in ballots.

The Center for Civic Design published in 2012 and 2013 a series of Field Guides, including: Designing Usable Ballots; Writing Instructions Voters Understand; Testing Ballots for Usability; Effective Poll Worker Materials; Choosing How to Communicate with Voters; Designing Voter Education Booklets and Flyers; Designing Election Department Websites; and Guiding Voters Through the Polling Place.<sup>8</sup> All reflect the opinion among election experts that confusion, delays, and long lines are related to ballots that are poorly designed and that the language used is not clear.

In January 2014, “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration”<sup>9</sup> was published. This is an evidence- and research-based best practices report regarding four areas in need of reform to improve election administration and the voting experience:

- Modernize voter registration;
- Expand early voting and improve management of polling place resources;
- Improve the simplicity and usability of ballots and voting machines, and publishing data on machine; and
- Improve performance.

The report’s Appendix K recommends the following reports:

#### U.S. Election Assistance Commission (EAC):

- “Effective Election Design for Federal Elections Administration” (2007)

#### The Brennan Center for Justice

- “Better Ballots” by Lawrence Norden, David Kimball, Whitney Quesenbery, and Margaret Chen (2008)

#### Center for Civic Design:

- “Field Guides To Ensuring Voter Intent”:
  - Vol 1. - Designing Usable Ballots

- Vol 2. - Writing Instructions Voters Understand
- Vol 3. – Testing Ballots for Usability

National Institute of Standards and Technology (NIST)

- “Report of Findings: Use of Language in Ballot Instructions”, Janice (Ginny) Redish, Ph.D. Redish & Associates (NISTIR 7556, 2009)

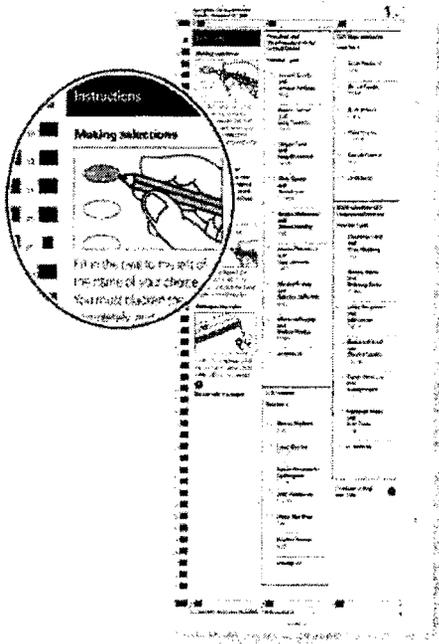
Soon after the release of the Presidential Commission Report, the Center for Civic Design published “Ballot Simplicity, Constraints, and Design Literacy,” which stated:

There’s actually nothing simple about voting in the United States - especially interacting with ballots. We have the most complex ballots in the world. We ask much of voters. So when voters encounter poor ballot design, they make mistakes. Regardless of age, education, or voting system used, we lose votes because of ballot design and instructions.

Many of the factors that prevent ballots from being simple, usable, and accessible are embedded in legislation. But not all of the legislation that affects ballot design is directly related to type, layout, and instructions. Procurement rules and processes, design literacy and skills also play a role.

**Recommendation**

10. The Task Force recommends that the County Council request all agencies involved in ballot design – local and State – to take into consideration the body of research, including the Presidential Commission, that strongly recommends that future ballots follow the suggestions and guidelines as created by the Center for Civic Design and described in detail in their Field Guide, Vol. 1 – “Designing Usable Ballots” (2013), including:
  - Use lowercase letters
  - Avoid centered case
  - Use big enough type
  - Pick one sans serif font: Arial, Helvetica, Univers, Verdana
  - Support process and navigation [picture]
  - Use simpler, clear language
  - Use accurate instructional illustrations [picture]
  - Use informational icons (only)
  - Use contrast and color to support meaning
  - Show what’s most important



**Illustrations at the beginning of the ballot demonstrate how to use the ballot.**



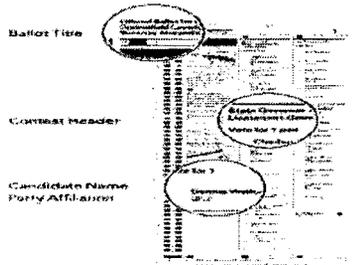
No. 07

## Use accurate instructional illustrations.

Visual instructions help low-literacy and all voters.

Illustrations must be accurate in their details, highlighting the most important instructions.

Do not use photographs.



No. 10

## Show what's most important.

Use layout and text size to help voters know what to pay attention to.

The ballot title should be the most prominent.

A contest header should be more prominent than the candidates' names.

A candidate's name should be bolder than his/her party affiliation. Candidates' names and options should be presented with equal importance.

## CLEARER LANGUAGE FOR REFERENDUMS

### Background

Voters are often confused or uncertain of the implications and meanings of referendums placed on ballots. The effects bargaining referendum presented to County voters in the 2012 general election is a good example of unclear language. Many voters were uncertain of the meaning and implications of this referendum, which required rereading even by those who understood the issues.

#### **QUESTION B**

##### **Referendum on Law Enacted by County Council Effects Bargaining for Police Employees**

“Shall the Act to modify the scope of collective bargaining with police employees to permit the exercise of certain management rights without first bargaining the effects of those rights on police employees become law?”

Though there were many efforts to convince voters of either a “yes” or “no” vote, the background information and the basic understanding of this referendum was lost in the jockeying for votes. A *Washington Post* article published before the election demonstrated how the opposing parties to this referendum posed positions that seemed to state their own facts, not just their own opinions.<sup>10</sup>

The Federal Government Plain Writing Act of 2010 addresses the need for documents and communication to be clear and concise. The Act states, “The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting **clear Government communication that the public can understand and use.**”<sup>11</sup>

In addition, follow-up Executive Orders address specific areas where plain language should be used. Executive Orders 12866 and 12988 address clarity in regulations. Executive Order 13563, Improving Regulation and Regulatory Review, states that “[our regulatory system] must ensure that regulations are accessible, consistent, written in plain language, and easy to understand.”

To facilitate the transition to clear and plain language, the government has set up a Plain Language website that establishes guidelines, examples, and tips and tools on plain language in communications.<sup>12</sup>

The Center for Plain Language published an article indicating that 60 percent of North Carolina voters did not understand Amendment One, which was part of the May 2012 election to change the State’s constitution.<sup>13</sup> According to the Chair of the Center, she is surprised that even 40 percent might have understood the ballot referendum.

The Center is also promoting HR 1557 and S 807, the Plain Regulations Act of 2013. At this time, HR 1557 has been referred to Committee.<sup>14</sup> The Senate bill has also been referred to Committee. Other laws address the need and desire for plain writing in government documentation.<sup>15</sup>

## **Recommendations**

11. The Task Force unanimously recommends to the General Assembly and County Council that all ballot referendums and ballot questions be stated in plain, clear language, as described by the federal Plain Language legislation.
12. The Task Force unanimously recommends that the General Assembly and County Council evaluate best practices of other jurisdictions (local, state, and federal).
13. The Task Force unanimously recommends to the General Assembly and County Council that ballot language be reviewed by the Charter Review Commission or other nonpartisan citizen review commission, and/or provide for judicial review of ballot language. This language review should ensure that the ballot language is consistent with the intent of the petitioner.

## UNDERSTANDING LONG LINES

### Background

Past elections, particularly presidential elections, in Montgomery County have been notorious for the long lines voters have had to endure before voting. This has been widely discussed, and many recommendations have been made to remedy this issue.

The problem in Montgomery County is not unique. The issue of long lines at polling places has been a problem nationwide since the 2008 presidential election. Numerous studies, research papers, study commissions, and white papers have been written analyzing the problem and making recommendations for improvement. This proposal is to request a report from the County Board of Elections on the recommendations and best practices described in the following 3 reports:

1. “Voting and the Administration of Elections in Maryland,” a report by Schaefer Center for Public Administration, University of Baltimore, January 2014

The 2013 legislative session of the Maryland General Assembly asked the Maryland State Board of Elections to: “Review the maximum waiting lines for Maryland voters in the 2010 and 2012 elections and identify the cases for wait times of more than 30 minutes and propose target maximum wait times for voters at early voting centers and polling places.”

**Analysis:** Many voters waited more than an hour to vote in the 2012 presidential election, both during early voting and on Election Day. Disruption of early voting by tropical storm Sandy, and unusually long ballots due to statewide ballot questions were contributing factors to the wait times. Some national surveys have reported that Maryland has fared poorly in “longest wait times” compared with other States over the past several election cycles.

**Recommended Solution:** Well-informed voters can help reduce wait times. An uninformed voter who sees the ballot for the first time in a polling booth will take longer to vote than one who comes prepared to vote. The sample ballot should be available to all voters no later than the beginning of in-person early voting or three weeks prior to Election Day.

2. “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration,” a report of the Presidential Commission on Election Administration, January 2014

**Problem:** The image of voters waiting for many hours to vote on Election Day 2012, as in the two previous presidential contests, spurred the call for reform. Research indicates that there is no single cause for long lines, and there is no single solution. But the problem is solvable.

**Analysis:** The causes of long lines are not uniform across jurisdictions. One line may be the result of a poorly laid out polling place. Down the street, the line may be due to equipment malfunction. Across town, a strong personality conflict amongst poll workers or disagreement on process can create a bottleneck.

Although isolated incidents can cause long wait times, systemic problems also contribute to long lines. Lengthy ballot propositions can clog the polling centers. Poor methodology in resource allocation or turnout forecasting can lead to shortages of staff and machines. Inadequate facilities or insufficiently trained poll workers can increase the “transaction time” for each voter, and an inaccurate voter list will cause more voters to cast provisional ballots.

**Recommended Solution:** The Commission concluded that no voter should have to wait more than half an hour to vote and recommended that long lines could be eased by:

- better polling place location and better signage;
- better management of the flow of voters; and
- greater poll worker recruitment and better poll worker training.

3. “How to Fix Long Lines,” Lawrence Norden, Brennan Center for Justice, February 2013

The Brennan Center concludes that the biggest obstacle facing the electoral system - and a central cause of long lines on Election Day - is the country’s outdated voter registration system that causes confusion and delays on Election Day.

**Problem:** Calling the U.S. voter registration system significantly outdated and rife with errors, the report recommends modernizing voter registration through technological upgrades funded by the Federal government.

**Analysis:** Error-ridden voter rolls contribute to the congestion and lines. A voter whose information is missing or is incorrectly entered requires the time and attention of officials to correct the error. Studies have shown that chronic long lines can lead to the loss of tens of thousands of votes.

**Recommended Solution:** Three reforms would reduce the lines and would create a more efficient and secure electoral system:

- modernizing voter registration;
- providing early voting during a fixed national time period; and
- setting minimum standards for voters to access the polling places.

### **Recommendation**

14. The Task Force recommends that the County Council request the County Board of Elections and the State Board of Elections prepare a Report Card comparing the best practices highlighted in the three reports listed below and the current practices followed by BOE.
- “Voting and the Administration of Elections in Maryland”
  - “The American Voting Experience”
  - “How To Fix Long Lines”

## IMPROVING VOTER REGISTRATION, BALLOT ACCESS AND VOTING FOR U.S. MILITARY AND OVERSEAS CITIZENS

### Background

In the past, overseas and military voters experienced significant problems with receiving ballots on time and having their votes counted. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 and Military and Overseas Voters Empowerment Act (MOVE) of 2009 sought to maintain and strengthen the voting rights and opportunities of voters overseas. In particular, these laws encourage improvements in remote electronic voting systems and set standards on absentee ballots and ballot management designed to improve voting and eliminate notarization requirements for voter registration. The development of the Federal Post Card Application to register as a voter and its use as an absentee ballot request is one example of the innovations spurred under these laws. If an absentee ballot is not received by the overseas voter in time, they may use a Federal Write-in Absentee Ballot<sup>16</sup> which is available online. Overseas voters who maintain a County residence remain eligible to vote in county and municipal elections.

In data released in a Pew Charitable Trusts report on April 8, 2014, Maryland ranked 42nd in the nation in having more than 11 percent of all military and overseas ballots rejected, and almost 26 percent of requested overseas ballots were unreturned by Maryland voters<sup>17</sup>. Other studies have found average or below average satisfaction of overseas voters with Maryland voter registration, absentee ballot requests and voting.<sup>18</sup>

Groups like the Overseas Vote Foundation work with states and the federal government to provide up-to-date information on election dates, absentee voter registration and ballot request requirements.<sup>19</sup> Six states and two counties use the foundation's services to provide online, interactive overseas and military voter registration services.

In 2013, the Presidential Commission on Election Administration reported on a number of key findings relating to overseas and military voting.<sup>20</sup> In particular, the report called the Internet the "election lifeline for many military and overseas voters" because the Military Postal Service or foreign mail carriers are often unreliable and slow. Maryland and Montgomery County already follow the highest priority recommendations made by the Commission:

- provide ballots and registration materials to overseas voters through websites.
- accept federal write-in absentee ballots and federal postcard applications; and
- allow overseas voters to print a ballot with a barcode that can be read by election administrators.

***State Board of Elections:*** Maryland is one of 19 States that have no option on their website for overseas and military voters to get extra assistance such as a dedicated email address, FAQ statement or interactive help desk. The State Board of Elections website provides information for overseas voters but states, "complete and submit a new Federal Post Card Application whenever you move or each election year", which may confuse voters. In 2013, the state took over the management of all ballot requests from overseas voters and now requires the counties to forward ballot requests to them. It remains unclear whether the state can provide as timely and effective response as the county could provide.

**Montgomery County:** At the request of the Task Force, the county has a visible link available on the Board of Elections website homepage for military and overseas voters, and we appreciate the staff's work to add this connection. The link brings visitors to the correct state website for overseas registration and voting information. No other information is available on the Board of Elections website.

It is not clear whether overseas voters using the federal postcard application or federal write-in absentee ballot receive county absentee ballots for all elections for one federal election cycle, or for one election year or two years. It is also not clear whether the state or county pass along that information for municipal elections and whether municipalities are encouraged to send absentee ballots to overseas voters during the same period. Finally, there is little guidance available on criteria for eligibility for overseas voters who retain a residence in Montgomery County but are stationed overseas. For example, are they eligible to vote in county and municipal elections and what criteria are used that might affect their status on voter rolls? These issues could be easily resolved.

### **Recommendations**

We believe that Americans should be able to register to vote and have their vote counted, regardless of where they live in the world. We also believe the state should seek ways to improve its 42<sup>nd</sup> place ranking associated with the rejection of more than 11 percent of overseas ballots. At the county level, simple steps would improve the information provided to overseas voters and make a significant difference in the county's ability to reach and serve them.

15. The Task Force unanimously recommends that the State Board of Elections improve its website by providing more information to military and overseas voters through a dedicated Q&A page. In particular, it should describe the active period for voter registrations based on the Federal Post Card Application or other overseas registration options. The page should describe whether registered voters will receive absentee ballots for one election, one election year, or two years.
16. Since overseas voters are still eligible to vote in local elections, the Task Force unanimously recommends that the county provide overseas voters with information on municipal elections in the county, including the timing of municipal elections and contact information for municipal election staff.

## SUPPLEMENTING INFORMATION IN THE SAMPLE BALLOT

### Background

Changes to electoral processes take place almost every election that are intended to make access to voting easier and to increase voter participation.

This recommendation is an integral part of the suggestion to make changes to the Sample Ballot that better highlight changes in voting processes for the elections in 2014. The County Board of Elections has incorporated several recommendations of Task Force members in an overhaul of its Sample Ballot, including a “one vote, three choices” language based on a proposal of Task Force members.

The need to educate voters is widely supported by dozens of articles written to improve elections in the United States. Recent election changes nationwide as well as national discussions about voting rights and changes in election processes are confusing to the voters.<sup>21</sup> Steps are being taken to remedy the confusion. For example, in North Carolina, as part of an education and outreach effort, New Hanover launched a campaign through its public affairs department to make voters aware of the recent changes in election processes and other changes through billboards, advertisements, and information posted on the Board of Elections’ website.<sup>22</sup>

The importance of communicating with, and educating, voters was highlighted in the report issued in January 2014 by the Presidential Commission on Election Administration, created in 2013 by President Obama through Executive Order 13639.<sup>23</sup> The report describes practical as well as evidence- and research-based best practices regarding four areas in need of reform — each of which will improve election administration and the voting experience. This comprehensive analysis dedicates Appendix T to Voter Education, which highlights:

- choosing how to Communicate with Voters;
- designing Voter Education Booklets and Flyers; and
- designing Election Department Websites.

Also, in January 2014 the Maryland State Board of Elections released “Voting and the Administration of Elections in Maryland,” a report prepared by the Schaefer Center for Public Policy,<sup>24</sup> which states that part of the problem with the long lines is the fact that the voter is not prepared for the election. The report recommends that “public outreach be carried out to registered voters about any changes in the election processes.”

The County Board of Elections primarily conducts outreach through its Sample Ballot mailed to all registered voters, through free appearances on English and Spanish-speaking TV and radio, and using volunteer outreach coordinated through its Future Vote student program. The Board advertises on Comcast, in *The Gazette* and *El Tiempo Latino* newspapers, on Radio America, Ride-On bus signs, and circulates fliers advertising early voting.

## **Recommendations**

17. We believe that the information in the 2014 Sample Ballot needs to be widely advertised to reach not only registered voters but also future voters. Therefore, the Task Force unanimously recommends that the County Board of Elections develop additional educational/outreach efforts focused on the three ways voters can vote in Montgomery County as stated in the Sample Ballot. Outreach venues include placing additional signs in Ride On buses, radio and television PSAs or related efforts, participation in radio and local television programs, and outreach to local non-profit NGOs, churches, and other local organizations.

These additional outreach efforts will reach the riders on the 340 Ride On buses, cable subscribers, County Cable Montgomery viewers, radio stations listeners (including CBS Radio El Zol and Radio America), readers of *The Gazette* and users of other media outlets. The County Board of Elections has an approved budget for advertising, and some of these funds could be used for the recommended outreach/education efforts.

The Task Force strongly believes that this effort is one of many steps to promote higher voter participation.

## A VOTER APPLICATION FOR MOBILE DEVICES

### Background

A voting app could be the most readily acceptable communication tool for young adults to become informed and engaged in the voting process from the very beginning. The concept of combining voting information and apps is not new. In various local jurisdictions around the country, voting apps are beginning to show up. The voting apps currently available are for the most part, informational. They provide information regarding dates and deadlines, polling, candidates, and sample ballots. Some apps also provide election results.

A voting app prepared by the New York City Campaign Finance Board was made available in the 2013 New York City elections.<sup>25</sup> The NYC app allows residents to begin the voter registration process by filling out a registration form, though it must be signed and submitted by mail. This app allows users to make campaign contributions similar to payments made through Amazon.com. It features a countdown to registration deadlines, a location-based look-up for candidates and the ability to check voter registration status. The app allows the user to find their poll site, vote absentee, review dates and deadlines, and view election results.<sup>26</sup>

The New York City Board of Elections (BOE) also issued an election app, located at [nyc.pollsitelocator.com](http://nyc.pollsitelocator.com). The NYC BOE issued this app to facilitate finding poll sites and other information from the BOE.

The State of Louisiana initiated a voting app that includes voter registration information, district information, and information about upcoming elections such as voting dates and times, voting locations, and sample ballots (see <http://voterportal.sos.la.gov/MobileLanding.aspx>). The Louisiana app provides information that is already available at the state website. The full website contains additional information that was not yet available for mobile devices during the previous election. This website provides information about elected officials and a full election calendar, as well as links to other secretary of state pages for managing absentee ballots or changing registration information. However, the website indicates that the app is expected to contain the same information as the website in the future.

In El Paso, Texas, the BOE issued a voting app that follows the Elections Department news “so you can be updated with up to the minute news releases and election results.”<sup>27</sup>

In Mecklenburg County, North Carolina, the BOE issued an app called MeckVotes that is intended to provide voters with early voting and Election Day voting locations, maps, and driving directions.<sup>28</sup>

The State of Washington has issued an app that provides up-to-date election results for Washington State and county elections.

The Florida League of Women Voters is promoting the mobile app [www.bereadytovote.MOBI](http://www.bereadytovote.MOBI), which has the same information as the desktop version. The voting app puts any voter, anywhere in the state, in touch with their BOE, and allows voters to check their current voter status.

In 2012, *Computerworld*, a publication dedicated to researching new technology, reviewed and tested six voting apps<sup>29</sup>. Four of these - CNN Mobile, ElectionCaster, NYTimes Election 2012 and USA Election 2012 - offer election-related news and information, either from a single publication or from a variety of sources. The other two offer insights on what the politicians are saying (PolitiFact Mobile) or let you have your say (VoterMap). These apps were informational only, and not officially sponsored by the BOE.

All the apps reviewed by *Computerworld* demonstrated excellent results. Only USA Election 2012 proved to be insufficient in the amount of information provided, but otherwise was rated excellent. While these mobile apps were only informational, they serve to show that users find them to be an excellent way to keep up with election-related topics.

### **Recommendations\***

18. The Task Force recommends that the Maryland and County Boards of Election provide an app with information regarding poll locations, and other voting information normally found on the BOE website.
19. The Task Force recommends that the Maryland and County BOE provide an app that will allow users to register online through the state online voter registration system and to download a registration form that can be printed, signed and later mailed.
20. The Task Force recommends that the Maryland and County BOE provide an app that allows users to view sample ballots for their jurisdiction.
21. The Task Force recommends that the BOE voting app provide updates on the election.

\* Just before this report was published, but after the the Task Force voted to support this recommendation, the County Board of Elections launched a mobile web application that will be used for the primary election. It can be reached by visiting the Board of Elections website at [www.777vote.org](http://www.777vote.org) using a smartphone.

## **GET OUT THE VOTE**

### **Background**

Personal contact is one of the most effective ways to mobilize voters. Voter mobilization is primarily the result of volunteers working for candidates, political parties, or on issues. Making this process easier should increase turnout. An added result would be fewer Get out the Vote (GOTV) calls to voters. While all registered voters are initially interested in GOTV drives, the focus shifts on Election Day to those voters who did not vote absentee, early vote, nor make it to the polls early in the day. To know who voted, Maryland law allows campaigns to assign volunteer poll watchers, who must be scheduled throughout the day in the polling place. They take the names of the voters, pass them on to the campaign, and those names are removed from the contact list. This requires more volunteers than most campaigns can recruit. For Montgomery County, the six volunteers needed for each of the 257 precincts (two volunteers for three 4-hour shifts, from 7:00 am until 6:00pm) = 1,542 volunteers.

California's election procedures allow a more efficient use of volunteer time. Under California Election Code Section 14202, before opening the polls on Election Day, the precinct board posts in separate, convenient places at or near the polling place, and within easy access to the voters, two copies of the registered voters for that precinct. This list notes all voters who have requested an absentee ballot. California Election Code Section 14294 requires that a member of the precinct board go out each hour on Election Day and draw a line through the name of each person who has voted, from 10:00 am until 6:00 pm.

If the State of Maryland adopted the California method, the names of the early voters would also be noted on the list. Early voting ends at 8:00 p.m. on the Thursday before the Tuesday election. After the early voting books are brought up to date for the individual precincts, the printed list would show all who had voted or had applied for an absentee ballot. This would allow campaigns to identify registered voters who voted at each polling place throughout Election Day in a more accurate and efficient manner, as compared to the current practice of using poll observers, when available, to report that information. This should, in turn, make Maryland's GOTV drives more focused and effective, and increase the total vote accordingly.

The issue of privacy was considered, but a person's voting record is public information. This effort would make the information available in a more timely manner.

### **Recommendations**

In order to increase voter turnout, we believe the Board of Elections should make key information on who has voted available during Election Day at each precinct. As discussed above, this key information consists of those who voted during early voting, those who requested absentee ballots, and those who voted earlier on Election Day. Making this information available in a more timely manner should make GOTV drives more effective because the many hours volunteers now spend collecting voter information at the precincts could be spent on more productive activities, such as reminding supporters who have not voted to do so, driving voters to the polls when needed, and babysitting while the voter votes. All of these "old school" campaign methods have been used effectively to increase voter turnout in the past;

shifting volunteers from poll watching to such direct GOTV activities should make them even more productive.

22. The Task Force recommends that the County Council direct the County Board of Elections to put together a plan to make the list of early voters and absentee applicants publicly available before Election Day.
23. The Task Force recommends that the County Council direct the County Board of Elections to evaluate the feasibility of providing regular updates on who has voted throughout Election Day.
24. The Task Force recommends that, if feasible, the Board of Elections implement regular updates on who has voted throughout Election Day.

### **Minority View**

As reported by the Maryland BOE, the 2012 general presidential election had a turnout rate of 74 percent. That very impressive rate means that about three out of four registered voters participated in the election. The three proposals from the Task Force recommends that the BOE spend money, time, and effort before and during the critical Election Day to provide regular updates as to who has voted and potentially who is remaining to vote. The Task Force does not suggest that the BOE reduce some of its current resources to pay for this activity, so it is safe to assume more tax dollars should be allocated to the BOE to accomplish these tasks. Some if not all of the information requested in Recommendation #22 is already being provided. All three of the recommendations are discriminatory to all parties except to the Democratic Party and lesser extent the Republican Party. The other parties would generally not have enough resources to take advantage of this information on a real time basis and it would generally be of no significant use to them. The third largest and most rapidly growing group of Maryland voters are the unaffiliated. Because the unaffiliated, by definition, are not organized, they could not take advantage of this proposed information. Bottom line, the Task Force wants the Maryland taxpayers to subsidize the majority party to help and make it easier for that party to get out their voters. Early voting by mail and various centers provide easy access to voters not being able to participate on Election Day. The right to vote is sacred to Americans, but so is the right not to vote. Having one's name posted and distributed throughout the County as not voting could easily be considered an invasion of privacy by many.

## OFF-YEAR ELECTIONS

### Background

Off-year elections in Montgomery County are for the most part, municipal elections. Maryland's 156 municipalities operate by the authority granted them in Article XI-E of the Maryland Constitution, ratified by the voters of the state in November 1954. The General Assembly has been restricted since that time to passing general laws relating to all municipalities or to all municipalities of a single class.<sup>30</sup> Over a dozen jurisdictions in Maryland hold off-year municipal elections. Articles 23A and Article 23B of the Maryland Code state that the conduct of municipal elections are to be structured within the municipal charter adopted by the town's citizens.<sup>31</sup>

Montgomery County does not have legislation that prohibits or encourages off-year elections. These elections are authorized by the local jurisdictions where they are held.

In jurisdictions where off-year elections are held, the most frequent arguments made to justify off-year elections are that they:

- allow election administrators to test new procedures before a larger, more complex even-year election;
- allow staff to be trained and in practice for the next even-year election; and
- direct voters to focus on the local candidates and thereby be unfettered by the distractions of county, state and federal elections.

In jurisdictions where off-year elections are held, the overwhelming evidence is that they generate a greater cost than if those elections were consolidated with the even-year elections.<sup>32</sup> In Maryland, the cost incurred by the state for the off-year 2011 Baltimore City elections was approximately \$265,000.<sup>33</sup> In jurisdictions where off-year elections are consolidated with the even-year elections, the cost per voter decreases considerably. In a study published by the Greenlining Institute, the cost comparisons of several elections in California showed that even-year consolidated elections "cost considerably less per voter than off-year elections."<sup>34</sup> The California study showed how dramatic these cost differences can be. The cost per voter in an even-year consolidated primary in San Diego was \$4.05. By comparison, the cost per voter in the off-year primary in Los Angeles was \$39.35. Similar differences were observed in the general election where the amounts per voter were \$1.67 and \$52.61, respectively.

Some have argued that voters in off-year elections are better able to focus on local issues without the distractions involved in county-wide or state-wide contests. A study on democracy by the Brookings Institute challenges this view. This study says, "We cannot say definitively whether those citizens who turn out to vote in concurrent national and local elections are less attentive to or knowledgeable about local issues than the smaller numbers who vote in off-year local elections."<sup>35</sup>

On average, low turnout is most pronounced in off-year elections as well as primary elections and local elections. According to FairVote, the typical off-year election turnout is from 5 percent to 10 percent.<sup>36</sup> A study of 340 mayoral elections in 144 U.S. cities from 1996-2012 found that voter turnout averaged 25.8 percent.<sup>37</sup> In the 1999 mayoral election in Dallas, the turnout was only 5 percent.<sup>38</sup>

Contrary to the presumption that voters will better focus on the local elections during off-years, the California study showed that voter turnout did not improve during off-year elections. The percentage of registered voters who cast ballots in San Diego during consolidated even-year elections were between 36.6 and 39.3 percent. By contrast, the percentage of registered voters who cast ballots in off-year local elections in Los Angeles showed a turnout of between 16.8 and 23.1 percent.<sup>39</sup> Similar turnout differences were noted when comparing San Jose's even-year consolidated elections and San Francisco's off-year elections. In Wicomico County, Maryland, the County Executive noted that the presidential even-year election had about an 80 percent turnout while the off-year election had a 55 percent turnout.<sup>40</sup>

Virginia and New Jersey are the only states that have off-year gubernatorial elections. Despite the national significance of these gubernatorial elections in 2013, the turnout in both elections was much lower than the consolidated election turnout rates, and the general election turnout rates for these same jurisdictions. The turnout for the 2013 gubernatorial race in New Jersey was slightly less than 38 percent. The previous record low turnout for this race in New Jersey was 47 percent, set in 1999.<sup>41</sup> The 2013 Virginia gubernatorial election turnout was 37 percent, a significant drop from the 1989 gubernatorial race that had a 67 percent turnout.<sup>42</sup> These rates seem to indicate that despite the significance and national focus on off-year elections, the turnouts are significantly lower than those of the general elections and of the comparable consolidated elections evaluated in the California study.

The Access Subcommittee evaluated the argument that off-year elections unfairly limit voter participation of minorities. The Subcommittee did not in this research find that this was the most compelling argument for recommending local elections be consolidated with general elections. Instead, the research showed that the much greater additional cost and the lower rate of voter turnout of all groups demonstrated the strongest arguments for consolidated general elections.

### **Recommendations**

25. The Task Force recommends that the County Council request the State Board of Elections to conduct a study to review whether municipal voters would be better served by consolidated, even-year elections rather than off-year elections.
26. The Task Force recommends that Montgomery County assist municipalities that would like to consolidate their off-year elections with even-year ones, by supporting requests for assistance with voting equipment, helping facilitate administration of a shift to consolidated elections, and on a pilot basis, providing one-time financial support for the administration of elections for any municipality making such a change.

### **Minority View**

Counties and municipalities already suffer from a top-down governmental structure. Consolidation is sometimes central to functionality, but that is not the case with municipal elections. Municipalities have the option to schedule their elections in even years, and the fact that they uniformly decide not to speaks volumes: for whatever reasons, they have decided that off-year cycles work best for them. They should not be forced to sacrifice what works for them for "convenience" or "efficiency" to the state, and democracy is worth the expense. Maryland should continue to allow municipalities to decide what is best for them and also not punish them by removing funding.

## SPECIAL ELECTIONS FOR LEGISLATIVE AND EXECUTIVE VACANCIES

### Background

A quintessential principle of governance in the United States is that the people elect their political leaders. However, this principle is not always respected in the process of filling political offices that become vacant midterm. Filling legislative and executive vacancies through political appointments made by other elected leaders does not allow voters to be represented by leaders of their own choosing. Worse, when non-elected political party organizations choose the replacement candidates for the vacancy, voters have even less connection to the position. Appointments also unfairly confer the benefits of incumbency on candidates who were never elected. In contrast, special elections respect the right of voters in our democracy to choose their own representatives.

In Maryland, legislative and executive vacancies currently are filled by different means depending on the type of office. Some vacancies are filled by special election, and others are filled by appointment. Voters currently have the strongest role in filling vacancies for the following offices:

- **U.S. House of Representatives.** The U.S. Constitution requires that vacant U.S. House of Representatives seats be filled by a regular or special election. The Maryland Code permits the Governor to require that a special election be conducted entirely by mail ballot.<sup>43</sup>
- **Montgomery County Council.** According to the County Charter and County Code, a vacancy is filled by special election, unless the vacancy occurs after December 1 of the year before a quadrennial state election, in which event the County Council must appoint a replacement from the same political party as the Councilmember whose seat is to be filled. A special election combines the primary and general elections into a single election. The Maryland Code allows counties to require a special election be conducted entirely by mail.<sup>44</sup>

Unfortunately, a number of other major elected offices are filled by an appointment process:

- **U.S. Senate.** The U.S. Constitution permits each state to determine whether to fill a vacant U.S. Senate seat by either an election or a gubernatorial appointment. The Maryland Code dictates that vacant U.S. Senate seats are filled by gubernatorial appointment until an election is held at the next regular statewide election.<sup>45</sup>
- **Maryland General Assembly.** According to the Maryland Constitution, when a vacancy occurs in either chamber, the Governor appoints a replacement from a list of names submitted by the State Central Committee of the same political party as the legislator whose seat is to be filled. According to the National Conference of State Legislatures, 25 states fill state legislative vacancies by special election, and 25 states fill state legislative vacancies by appointment.<sup>46</sup>
- **Montgomery County Executive.** According to the County Charter, a vacancy is filled by an appointment made by the County Council. The replacement must be a member of the same political party as the former County Executive.<sup>47</sup>

For these offices, changing from an appointment process to a special election would take, respectively, a change in state law, the Maryland Constitution, and the County Charter. Fortunately, the Montgomery County legislative delegation already recognizes the need to improve how County Executive vacancies are filled; the delegation introduced a bill in the 2014 legislative session to change the Maryland Constitution to allow county executive vacancies to be filled by special elections.<sup>48</sup> This bill was enacted

by the Maryland General Assembly and signed into law by the governor, but is subject to a constitutional referendum.

Although political appointments are expedient, the cost of conducting a special election can be significantly reduced by conducting the election entirely by mail ballot and by combining the primary and general elections into a single special election. Using mail ballots is an especially effective method to conduct special elections; as noted above, Maryland already allows for mail-only special elections to fill vacancies in the U.S. House of Representatives and for county councils, and Oregon, Washington, and Colorado have successfully conducted their elections entirely by mail for years. To further save costs, in the event that a vacancy occurs close in time to a scheduled regular election, a limited appointment process should be used to fill the vacancy. Any monetary costs that do arise from conducting special elections are outweighed by the costs to voters' choices and democracy from filling vacancies through political appointments.

### **Recommendations**

27. The Task Force recommends that vacancies for U.S. Senators in Maryland, Maryland General Assembly members, and the County Executive should generally be filled by a single special election, not an appointment process.
28. The Task Force unanimously recommends that the Governor for congressional and state-level offices, or the County Council for county-level offices, as the case may be, should have the discretion to conduct special elections entirely by mail ballot.
29. If a vacancy occurs after December 1 of a year before the year when the office is regularly scheduled to be on the general election ballot, the Task Force recommends that the vacancy be filled by an appointment process.
30. Concerning the appointment process proposed in Recommendation 29, the Task Force recommends that:
  - the appointee must be from the same political party as the vacating member; and
  - the appointing authority does not have to select a replacement from a list submitted by the political party organization of the vacating member.

## PRIMARY ELECTIONS

### Background

Primary elections (primaries) determine which candidates will appear on the general election ballot in November. Primaries are different from state to state and in some states Democrats and Republicans may have different rules for their primaries. The result is generally the same, however, as people choose the candidates who best represent them and, in most cases, their party's interests. Primaries are characterized generally as closed, semi-closed, open or top-two. Most states operate a closed or semi-closed regime although a significant number of states operate open primaries. A few states conduct a top-two primary system. There are internal variations as well, as in some states one party may operate under the open primary regime while the other party conducts a closed or semi-closed primary. There is no constitutional right to a selection of candidates through a primary system.

**Closed Primary:** A voter may only vote for the party in which they are affiliated before the primary date, *i.e.*, a Republican can only vote in the Republican primary, a Democrat only in the Democratic primary; a party may or may not invite unaffiliated voters to participate but usually at the price of giving up their independent status, typically having to register with the party on election day.

**Semi-closed (Hybrid):** Falls somewhere between open and closed primaries; procedures vary from state to state as does the treatment of independent or unaffiliated voters, but often allows unaffiliated/independent voters to choose in which party primary to vote.

**Open Primary:** Permits any registered voter to cast a vote in a primary, regardless of his or her political affiliation, *i.e.*, a Republican could be a "crossover" and cast a vote in the Democratic primary, or *vice versa*, and an unaffiliated voter could choose either major party's primary. Voters cannot vote in more than one party's primary. As in a closed primary, the highest voted candidate in each party proceeds to the general election. Depending on the statutory framework within which it exists, an open primary may face constitutional challenges. For example, the U.S. Court of Appeals for the Fourth Circuit ruled that the Virginia mandatory open primary statute was unconstitutional as applied to the Republican district at issue because it imposed a burden on that party's freedom to associate. *Miller v. Brown*, 503 F.3d 360 (4<sup>th</sup> Cir. 2007).

**Top-Two Primary (aka nonpartisan blanket primary):** All candidates regardless of party affiliation are listed on the single primary ballot. The top two vote-getters, regardless of party affiliation, appear on the general election ballot (of limited appeal and used only in four states in different variations; not used for presidential primaries in any state) – in effect, an elimination of the strict party primary. (Declared constitutional in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008)). The partisan blanket primary, which provides all who are entitled to vote (party and unaffiliated) the right to vote for any candidate in any primary, with the candidate chosen in each party primary advancing to the general election as that party's representative, was declared unconstitutional in *California Democratic Party v. Jones*, 530 U.S. 567 (2000), primarily due to the burden this system placed on the parties in selecting their standard bearers. The California partisan blanket primary was an attempt to replace party "hard-liners" with "moderate problem solvers."

Maryland operates under a closed primary system, but a party may choose to open its primary for a particular election. In Maryland, a primary is defined as an officially supervised party nominating procedure created by the General Assembly specifically to allow members of a party to select their candidates. The requirement for a primary in order to nominate candidates for public office extends

only to the principal political parties as determined by the statement of registration issued by the State Board of Elections. Neither the Maryland Constitution nor Maryland statute provides a right for any voter to participate in the primaries of parties other than the one to which the voter belongs. Maryland's election law allows a party to choose to hold a primary that permits voters not affiliated with the party to vote in the party's primary election, provided the chairman of the party's state central committee notifies the State Board six months prior to the primary.

The Task Force considered the benefits of the open primary, which include the flexibility and independent decision-making for voters, accommodation of unaffiliated voters, the possibility of greater participation in the candidate selection process by all voters and the potential to moderate party politics. In the end, a majority of the Task Force preferred to rely on the existing party system and the association right of political parties and their right to choose their own standard bearers. Furthermore, the Task Force was concerned by the constitutional deficiencies of a strict open primary system. However, the Task Force did support requiring open primaries in races where the general election is uncontested. In these races, the primary election is in effect the only election, and all voters should have the opportunity to participate in deciding who will represent them in government.<sup>49</sup>

### **Recommendations**

31. The Task Force recommends that Maryland maintain its system of closed primaries with the opportunity for each party to determine open access to its own primary election, but recommends that the County Council urge the political parties to open their primaries to third parties and unaffiliated voters.
32. The Task Force recommends that, in the event of an uncontested general election, the primary election must be open to all who are entitled to vote in the general election.

### **Minority Report**

The report first recommends:

“that Maryland maintain its system of closed primaries with the opportunity for each party to determine open access to its own primary election, but recommends that the County Council urge the political parties to open their primaries to third parties and unaffiliated voters.”

This double-speak (it both recommends retaining the current system of closed primaries and urges open primaries) has no apparent connection with the County Council's charges to the Task Force. Rather, it seems to be an attempt to weaken or eliminate any perceived advantages the major political parties may now enjoy.

So, the question is whether Maryland should change its voting process in order to rein in or limit these perceived advantages. Judging by the many areas where Maryland excels when compared to other states, it is my belief that the strong party system has served the state well. And since closed primaries are an integral part of that system, there is no good reason to weaken or destroy them.

The report also recommends that:

“...in the event of an uncontested election, the primary election must be open to all who are entitled to vote in the general election.”

Nothing in the body of the report explains what this means. It may mean that if only one (or more) of party X's candidates in a primary election is/are unopposed in the ensuing general election, then all voters may cast votes for every position in party X's primary. Or, it may mean that for each of party X's candidates in a primary election who is unopposed in the ensuing general election, all voters may cast votes for that particular position in party X's primary.

Whatever this recommendation means, there is no good reason why the happenstance that a party's primary candidate will be unopposed in the ensuing general election should create an exception to the first part of the first recommendation and open what would otherwise be a closed primary to other voters.

## RANKED CHOICE VOTING / INSTANT RUNOFF VOTING

### Background

Maryland and Montgomery County currently use two electoral systems. Both of these systems allow candidates to win by receiving a plurality, not a majority, of votes:

- **first-past-the-post voting** for single-winner elections, including County Council District seats and the Maryland Senate; and
- **plurality-at-large voting** for multi-winner elections, including County Council At-Large seats and the Maryland House of Delegates.

Many jurisdictions outside of Maryland use different systems, such as the traditional runoff system. Under this system, if no candidate in a single-winner election receives a majority (50% + 1) of votes, then a second election is held between the two candidates who received the most votes. Similar principles may apply in multi-winner elections.

Another system used across the country is **ranked choice voting** (RCV), also called “instant runoff voting” (IRV). It allows a voter to rank candidates in the order that the voter prefers the candidates to win. It operates like a traditional runoff but does not require the expense of a second election.

### Sample RCV Ballot

Rank any number of options in your order of preference.

- Joe Smith
- 1 John Citizen
- 3 Jane Doe
- Fred Rubble
- 2 Mary Hill

RCV does not affect races where only two candidates run, but in elections with three or more candidates, it ensures the election of winners who are supported by a majority of voters and increases opportunities for political minorities. RCV also allows voters to more accurately and fully express their preferences.

### ***Single-Winner Elections***

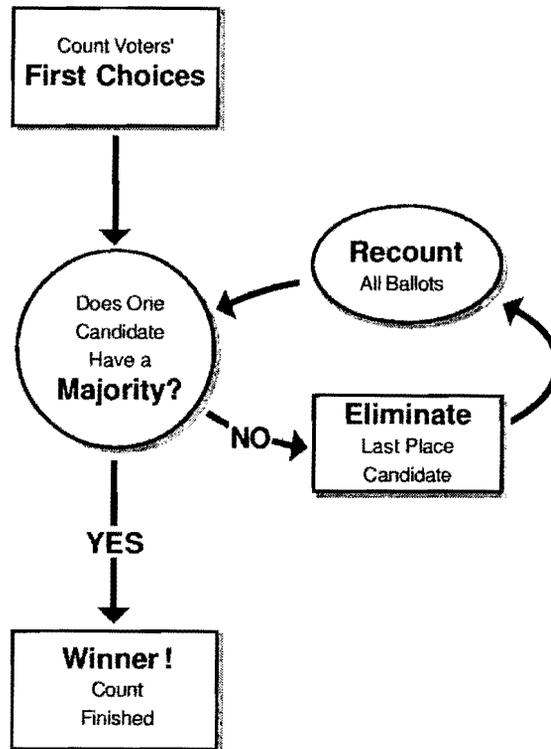
**First-Past-the-Post Voting:** Each voter casts one vote. The candidate who receives the most votes wins; a majority of votes is *not* required. This system allows for a *spoiler effect*: candidates of similar ideologies may split the vote and allow a dissimilar candidate to be elected, even if the majority opposes that candidate. Examples: Clinton/Bush/Perot (1992) and Al Gore/Ralph Nader (2000).

**Ranked Choice Voting:** The first-place rankings of each voter are counted. If a candidate receives a majority (50% + 1) of first-place rankings, that candidate wins. If no candidate receives a majority, then the candidate who received the fewest votes loses, and a recount occurs that includes the second-place

rankings of voters who preferred the losing candidate. This process continues until a candidate receives a majority of votes.<sup>50</sup>

# Instant Runoff Voting

## Ballot Count Flow Chart



In each round, your ballot counts for your favorite candidate who is still in the race.

### ***Multi-Winner Elections***

#### Plurality-at-Large Voting:

All candidates run against each other, and multiple candidates win. Voters may cast as many votes as there are seats. The winners are whichever candidates receive the most votes.

This system is “plurality-takes-all” (winner-takes-all); a single plurality group can elect its preferred candidates to every seat. Thus, it both disrespects majority rule and deprives many constituencies of the ability to elect even one of their preferred candidates. For this latter reason, courts have struck down plurality-at-large systems across the country for violating the rights of racial minorities.<sup>51</sup>

The system also encourages voters to sacrifice some of their votes. *Bullet voting (undervoting)* occurs when a voter casts fewer votes than she is entitled to cast to avoid hurting her most preferred candidate. Relatedly, plurality-at-large voting allows for *wasted votes*. After a candidate receives enough votes to

win, additional votes that candidate receives do not help the candidate; they only take votes away from voters' other choices.

### Ranked Choice Voting:

RCV operates in a multi-winner election almost identically to how it operates in a single-winner election. The first-place rankings of each voter are counted. If a candidate receives a winning number of first-place rankings, that candidate wins. If no candidate receives a winning number, then the candidate who received the fewest votes loses, and a recount occurs that includes the second-place rankings of voters who preferred the losing candidate. Unlike single-winner elections, the election does not stop after one candidate wins; instead, the second-choice rankings of the voters who supported a winning candidate are then counted for the remaining candidates at an equally reduced value. This process continues until all seats are filled.

Because multiple candidates win, individual winning candidates do not receive a majority of votes. Rather, the winning number of votes depends on the number of seats:

- 1-winner district: 50% + 1 (single-winner elections)
- 3-winner district: 25% + 1 (Maryland House of Delegates districts)
- 4-winner district: 20% + 1 (County Council at-large seats)

These winning numbers mean a majority of voters elect a majority of candidates, and underrepresented groups of voters are more likely to elect a candidate of their choice. Unlike the current “plurality-takes-all” system, RCV is “majority takes a majority, minority takes a minority.”

Because voters rank candidates, *bullet voting* is unnecessary; RCV allows voters to express preferences without hurting their most-preferred candidates and without sacrificing any of their votes. Additionally, because of the recounting process that occurs after a candidate wins, *wasted votes* do not occur.<sup>52</sup>

### ***Where Ranked Choice Voting is Used***

Memphis, TN; Seattle, WA; Minneapolis, MN; St. Paul, MN; Telluride, CO; Takoma Park, MD; Hendersonville, NC; Portland, ME; Santa Fe, NM; Springfield, IL for overseas voters; Berkeley, CA; Oakland, CA; San Francisco, CA; San Leandro, CA; in statewide elections in South Carolina, Louisiana, Alabama, and Arkansas for military and overseas voters; in statewide judicial elections in North Carolina in 2010; Cambridge, MA; local boards in Minneapolis, MN; Australia, Pakistan, Malta, Ireland, India, and several other countries; and Oscar nominations.

### ***Voter Opinion***

Voters in RCV elections have expressed overwhelming support for RCV in exit surveys. In exit surveys conducted for the 2012 Takoma Park special election, 78% supported RCV and 23% were indifferent. Additionally, 90% said the concept of ranking was very easy (79%) or easy (11%), 9% were neutral, and 1% said it was difficult. Exit surveys showed similar results in Cary, MN; San Francisco, CA; Burlington, VT; and previous Takoma Park elections.<sup>53</sup>

### ***Voting Equipment***

Some voting machines can internally tabulate ranked-choice ballots. Maryland does not presently have such voting machines, but the state is currently in the process of replacing its voting equipment. While using these voting machines is preferable, it is not required to conduct elections using RCV. North

Carolina, which uses voting equipment similar to Maryland's, counted thousands of ranked-choice ballots in 2010 by exporting ballot data to Excel for tabulation.<sup>54</sup>

### **Recommendations**

33. The Task Force recommends that the County Council adopt ranked choice voting for county elections. The Council can phase in ranked choice voting starting with the Council's at-large seats, school board elections, or primary elections.
34. The Task Force recommends that County Council encourage the Maryland General Assembly to adopt ranked choice voting for state elections.
35. The Task Force recommends that the County Council encourage the state to purchase voting equipment that can tabulate ranked-choice ballots without requiring exports to spreadsheet software.

# FAIR REDISTRICTING

## Background

Every 10 years following the decennial census, Maryland and Montgomery County are required to redraw the boundaries of federal, state, and local legislative districts. At the state level, redistricting of congressional and state legislative districts is left in the hands of partisan elected officials who have interests in drawing districts that increase their own odds of winning reelection and in enhancing the power of their political party at the expense of voter choice. This allows for Maryland congressional and state legislative districts to be gerrymandered into strange, unintuitive shapes and sizes that benefit incumbents and political parties at the expense of the voters living in those districts. Too often, communities and voting blocs in Maryland are irrationally “cracked” and “packed” to prevent them from achieving fair representation in elected bodies. To respect the rights of all voters, the redistricting process must be reformed. Elected officials should *not* choose their voters; voters should choose their elected officials.

At the state level, the mechanics of the redistricting process differs depending on the type of districts being redrawn, but self-interested politicians draw all districts:

- **Congressional districts:** The Maryland General Assembly must pass a bill to redistrict Maryland’s 8 congressional districts. Congressional redistricting legislation is treated as a regular bill by the General Assembly; it must be passed by both the Maryland Senate and the Maryland House of Delegates, and the Governor has veto power.
- **Maryland General Assembly districts:** The Maryland Constitution requires the Governor to prepare and present a redistricting plan to the Maryland General Assembly. The President of the Senate and the Speaker of the House must ensure that the Governor’s plan is introduced as a joint resolution for consideration. If the General Assembly refuses to enact a different redistricting plan within 45 days, the Governor's plan becomes law.<sup>55</sup>

Montgomery County has a fairer system of redistricting the County Council districts, although further improvements can be made:

- **Montgomery County Council Districts:** Article I, Section 104 of the Montgomery County Charter establishes a redistricting commission that is responsible for redistricting the County Council districts. The commission consists of four members from each political party that polled at least 15 percent of the vote casts for all candidates for the Council in the preceding regular election. Each member is chosen from a list of eight individuals submitted by the central committee of each eligible political party. Each list includes at least one individual who resides in each Council district. The Council appoints one additional member. The commission, at its first meeting, selects one of its members to serve as its chair. No person who holds an elected office is eligible for commission membership.<sup>56</sup>

To minimize gerrymandering, several other states have adopted neutral redistricting methods. One method is to create neutral redistricting criteria that prohibit line-drawers from redistricting to achieve partisan ends. Redistricting plans are then subject to judicial review to ensure that the neutral redistricting criteria has been satisfied.

Another method used in other states to minimize gerrymandering is to remove redistricting from the control of politicians completely. In these states, a neutral redistricting commission typically draws the redistricting plans. A commission is used to redistrict in Montgomery County, but its membership is not equally split among the county's political parties, and thus it is not entirely neutral. To protect the rights of underrepresented political minorities, a redistricting commission should be comprised of an equal number of members from all sizable and durable political parties, including more than just the Republican and Democratic parties. To avoid concerns of gaming the commission, political parties that are new and small should be excluded. Additionally, the redistricting commission should have to pass a redistricting plan through a supermajority vote. Furthermore, the data that the redistricting commission relies on in drawing lines should not include political information, such as the addresses of incumbents and the political affiliations of registered voters.

An additional way to minimize gerrymandering is for the redistricting process to be conducted in a transparent manner and to allow for broad public participation, such as allowing the public to submit testimony and propose redistricting plans. Maryland currently allows the public to submit comments to the Governor's redistricting advisory committee, and these principles should equally apply to redistricting carried out by a neutral redistricting commission.

Although adopting fair redistricting in Maryland may present concerns that the Democratic Party is "unilaterally disarming" while other states continue to be gerrymandered to favor the Republican Party, Maryland can minimize these concerns by exploring the possibility of entering into an interstate agreement with a state that has a similarly sized Congressional delegation but has been gerrymandered to favor Republicans, such as Wisconsin. Regardless, these concerns are substantially outweighed by the fundamental unfairness of Maryland's current redistricting process, which sacrifices representation for underrepresented voters and completely disrespects the rights of our state's voters to choose their own elected representatives.

## **Recommendations**

### ***State-level Recommendations:***

#### **36. Neutral Redistricting Criteria:**

The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish the following neutral redistricting criteria for congressional redistricting and state legislative redistricting:

1. No redistricting plan or district may be drawn with the intent to favor or disfavor a political party or incumbent.
2. Notwithstanding recommendation #36.1, districts may not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.
3. Congressional districts\* must consist of adjoining territory, be compact in form, and of substantially equal population. Due regard must be given to natural boundaries and the boundaries of political subdivisions.

\*Criteria in #36.3 currently apply to the redistricting of Maryland General Assembly districts under the Maryland Constitution, art. III, sec. 4, but not to the redistricting of congressional districts.

**37. Neutral Redistricting Commission:**

The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish a neutral state redistricting commission that will determine the boundaries of congressional and Maryland General Assembly districts.

The Task Force further recommends that the state redistricting commission be governed by the following specific principles:

1. *Powers and duties:* The commission's redistricting plans should be final and binding upon the state, subject only to judicial review for compliance with the neutral redistricting criteria and the obligations placed on the commission.
  2. *Composition:*
    - a. The commission must consist of three members each from every political party recognized in Maryland that has had at least 5,000 registered members over the preceding five years, and three unaffiliated members not registered with any political party.
    - b. No person who holds any elected office is eligible for appointment to the commission.
    - c. No commissioner may hold any elective office in Maryland during the two-year period following their tenure on the Commission.
  3. *Member selection:* The governor must appoint the commission members. The state central committee, or equivalent body, of each political party that is eligible for representation on the commission must submit to the governor a list of commission candidates from that political party. The governor must appoint three members from each list submitted. The governor must also appoint three unaffiliated members.
  4. *Officers:* The chair and vice chair of the commission may not both be members of the same political party or both be unaffiliated with any political party.
  5. *Data restrictions:* In establishing districts, the commission may not use any of the following data:
    - a. addresses of incumbents; or
    - b. political affiliations of registered voters.
  6. *Transparency and public participation:* The commission must:
    - a. make all of its meetings, deliberations, and proceedings open to the public, and make all records used in its deliberations and proceedings open to public inspection and copying; and
    - b. accept and consider testimony and proposed redistricting plans from members of the public.
  7. *Voting:* Passage of a redistricting plan requires the support of at least two-thirds of the commission's members.
- 38. Enforcement:** The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish private right of action for any Maryland resident, municipality, or county to sue the state for declaratory and equitable relief to enforce compliance with the neutral redistricting criteria or the obligations imposed on the state redistricting commission.
- 39. Transparency:** The Task Force unanimously recommends that the County Council advocate that any redistricting process adopted by the state provide maximum opportunity for public scrutiny and include public hearings and a recorded vote by members.

***County-level Recommendations:***

40. The Task Force recommends that the County Council establish a neutral County Redistricting Commission to determine the boundaries of County Council districts every 10 years after the decennial census.
41. The Task Force further recommends that the county redistricting commission be governed by the following specific principles:
  1. The neutral redistricting criteria recommended for congressional and state legislative redistricting should equally apply to redistricting County Council districts.
  2. A separate county redistricting commission should be established to redistrict the County Council districts. The commission should be structurally and functionally identical to the state redistricting commission, *except*:
    - a. the membership threshold for political parties should be 1,000 registered voters in Montgomery County; and
    - b. appointments should be made by the County Executive, with candidate lists submitted by the county central committees, or equivalent bodies, of the political parties represented on the commission.
  3. The enforcement mechanism and transparency requirements recommended for congressional and state legislative redistricting should equally apply to redistricting of the County Council districts.

**Minority Views**

***Minority view #1***

We fully agree with the suggestions and recommendation provided with this document. Just recently, Maryland's current districting, especially the 3rd and 6th Districts, have been the basis for the distinct honor and title by the *Washington Post* that puts Maryland as the 2nd worst gerrymandered state in the nation. It is the firm belief of the minority position that this topic of gerrymandering will not be seriously considered by the Montgomery County Council, as long as the current political structure is in place. To stop the process that keeps the liberals, themselves, in power will not be considered by its members and the perpetuation of gerrymandering will continue as long as the democrats are in the position of power in Maryland. A lot of Maryland's ultra liberal position is largely due to its gerrymandering. Maryland should not justify its pathetic position as the second worst gerrymandered state in the Nation by pointing to another state, like Texas. Most of the Task Force members stress how they think Maryland is leader in political "progressive" thinking. Perhaps it is time for Maryland to lead by reducing its gerrymandering. Voters should chose their representative but representative should not be able to choose their voters.

***Minority view #2***

This study would reduce gerrymandering by requiring more compact legislative districts and establishing fixed criteria for drawing boundaries when redistricting. It also reduces the ability of the major political parties to influence the redistricting process. These redistricting recommendations apply to national, state, and county elections.

National Elections: given the nature of the current Congress, Maryland should not give up its ability to elect Members of Congress who reflect the views of the great majority of the voters in this state. Limiting Maryland's ability to counter the disproportionate number of representatives elected to Congress by states such as Texas is ill-advised. Consider how the Texas legislature re-redistricted after

the 2000 census, the second time when conservatives gained control of the legislature. Consider also the odd shapes of Texas legislative districts and what they accomplish. Maryland should not disarm unilaterally.

Accordingly, Maryland should delay the application of uniform redistricting measures until a sufficient number of other states adopt similar redistricting constraints. Maryland did this when it joined the National Popular Vote Interstate Compact on the apportionment of presidential electors, which does not take effect until such time as the signatory states have an absolute majority in the electoral college.

Also, there are those who complain that a major party “hegemony” controls both Maryland and the County. To combat this perceived evil, they seek to reduce or eliminate whatever advantages these broadly based, inclusive parties may enjoy under the current political system. Here, they would give 5,000-member parties the same number of seats on redistricting committees as 1,000,000-member parties.

Those who seek these changes may not appreciate the fact that others could use them to foster the agenda of less progressive interest groups. We know that there are a fair number of people who strongly support the elimination of all gun regulations; who want to close all abortion clinics; and who focus entirely on cutting taxes, without regard to maintaining services or social justice. To avoid increasing the potential power of such narrow special interest groups, Maryland should maintain the current balance between the major and minor parties.

## INITIATIVES AND REFERENDUMS

### Background

Initiatives and referendums are the tools of direct democracy.

### *Definitions*

- **Initiatives** are a proposed new law or constitutional amendment that is placed on the ballot by petition. They may be direct or indirect (the latter are voted on by legislators first).<sup>57</sup>
- **Referendums**
  - a) Popular referendums are proposals to repeal a law that was previously enacted by the legislature. They are placed on the ballot by citizen petition. Referendums are fairly rare, especially compared to initiatives.
  - b) Legislative referendums are proposals placed on the ballot by the legislature. Legislative measures are much more common than initiatives and popular referendums, and are about twice as likely to be approved. They may also be advisory only.

The Task Force recommends indirect initiatives but not direct initiatives. The process is not sufficiently deliberative and too susceptible to sound-bite sloganeering to become law without input from the legislature. Initiatives have few checks and balances in contrast to normal legislation, which requires support from the County Council and County Executive or, in Annapolis, from two legislative chambers and the governor. Direct initiatives become law after action by voters and have a long history of unintended consequences. When many ballot measures occur, printing costs rise, some voters will feel overwhelmed by too many ballot questions, and long ballot question issues could create long lines that would discourage voting.

**Other States:** Twenty-four states have the initiative process. Most of those with initiatives require petition signatures of 3 to 10 percent of the number of votes cast for governor in the last election. Twenty-three states permit referendums; most of these also permit initiatives. All states permit legislative referendums, and all states except for Delaware require constitutional amendments to be approved by the voters. Twenty-three states permit neither initiatives nor referendums.

**Maryland:**<sup>58</sup> A “referendum-only” law, passed by the Maryland legislature in 1915, allows voters to bring referendums but not initiatives. In 1916, advocates cited the failure to include initiatives as due to “Committee chairmen, a very active lobby against the initiative amendment, and rural legislators' fear of the Baltimore masses.”<sup>59</sup> Between 1915 and 2013, Marylanders have used the referendum process 17 times to force a statewide popular vote on laws passed by the legislature.

**Counties, Nationwide:** The initiative and referendum are available in thousands of counties and municipalities and are used far more frequently than statewide measures.

### Recommendations

#### 42. *General:*

- Enact signature-gathering standards that empower volunteer collection efforts and financial disclosure requirements that identify the sources of funding behind paid signature efforts.

- The state and county should implement measures to require geographic distribution of petition signers.
  - For initiative and referendum ballot questions, a process should be established to ensure that ballot questions are written so that they can be understood by the average voter.
43. *Initiative:* The Task Force recommends state and county legislation allowing indirect initiatives with a recommended petition signature requirement of 3% of the number of votes cast for governor in the last election. (This is the method currently used for referendum petitions. In 2010, the total number of votes cast for governor was 1,857,880; 3% is 55,736.)
44. *Referendum:* At the state and county levels, the Task Force recommends expanding the current online printout with mail-in to a fully online system with secure, built-in verifications so that signers do not need to mail in a paper copy.

### **Minority Views**

#### ***Minority view #1***

Several Task Force members, including some who have lived in states with direct initiatives, recommend that option for Maryland voters. Direct initiatives are the norm in Western Europe but oddly controversial in the United States. Direct democracy is important, and voters need a way to participate on issues that do not get signed into law. Some voters will feel engaged by the ability to get a measure on the ballot; having the opportunity to vote on an issue may encourage voter turnout. Direct initiatives could show support for more progressive issues that often die in Annapolis committees. Further, geographic distribution requirements should not be required; GDR can place undue burdens on signature gathering in rural areas.

#### ***Minority view #2***

Direct initiatives are very important because it is the only way citizens can bring an issue to the populace without the control of the party in power. With a very liberal state government in Maryland, a conservative view or concept has a very small chance of being considered by the people if the indirect initiative is in place as a liberal sieve preventing the consideration of important issues that do not meet the liberal ideals of the current administration.

#### ***Minority view #3***

In the case of a referendum at the state and county level, the Task Force recommends:

“...expanding current online printout with mail-in to a fully online system with secure, built-in verifications so that signers do not need to mail in a paper copy.”

This recommendation runs counter to the position the Task Force took on the online voter study, adopted unanimously, which recommended that the County not promote online voting. As explained more fully in that study, using the Internet to cast votes (for referendums in this case) presents a host of verification, vote secrecy, potential for hacking, and other technical problems that need to be resolved before the Internet can be viewed as a secure means for casting votes.

## “MINOR” OR “NON-PRINCIPAL” PARTY BALLOT ACCESS

### Background

Ballot access laws determine which parties can exist and which candidates can appear on the ballot. Article I of the United States Constitution grants individual states the authority to determine the time, manner, and place of their elections. The 1880s reform movement transferred ballot control from individuals and parties to state governments, allowing legislatures controlled by established political parties to influence elections by enacting restrictive ballot access laws. Discriminatory ballot access rules can affect the civil rights of candidates, political parties, and voters.

Maryland law separates political parties into two categories: principal and non-principal parties. The Democratic Party is considered the “principal majority” party. The Republican Party is considered the “principal minority” party. The Green, Libertarian, and any other parties are deemed “non-principal” parties.

**Non-Principal Parties:** The lowest signature requirements for ballot access appear to be 706 (Hawaii); the highest, nearly 150,000 (Minnesota). Thirty-three out of 50 states require 10,000 or fewer signatures.<sup>60</sup> Maryland requires that minor parties have 1 percent of registered voters (about 40,000) affiliate with it or submit a petition of 10,000 valid signatures of registered voters. Maryland extends ballot status by two years when that minor party’s gubernatorial candidate wins at least 1 percent of the vote. If a minor party does not run a gubernatorial candidate or that candidate receives less than 1 percent of the vote, the party must submit another petition of 10,000 valid signatures every four years or lose ballot status. These requirements present a formidable barrier to fair participation: the 1 percent registration test has never been met by any third party. Should parties with at least 10,000 affiliated voters have to fulfill this requirement? Maryland’s Libertarian Party has 13,549 registered voters; the Green Party stands at 8,442. Constant petitioning is wasteful not only for the parties but also for election officials who must check signatures. Further, plaintiffs in Maryland ballot access lawsuits have cited the Copenhagen Document, an international treaty signed by the United States in 1990; signatories pledge not to discriminate against any political parties.

**Independent Candidates:** Non-principal parties securing 10,000 signatures can nominate by convention for as many partisan offices as they wish. Independent (unaffiliated) candidates must obtain far more than 10,000 signatures: they need 1 percent of registered voters (about 40,000). Courts in other states have ruled that states cannot treat independent candidates differently than political parties, so current law leaves Maryland open to another lawsuit.<sup>61</sup>

**“Strict” v. “Reasonable Certainty” Signature Standards in Maryland:** The Maryland Court of Appeals ruled in December 2008 in the case *Jane Doe v. Montgomery County Board of Elections* that Maryland law requires signatures on a referendum petition to exactly match the printed name on the same page and also match the voter’s exact name on voting rolls, or be a voter’s full name, including middle initials, and the signature must be legible.<sup>62</sup> Accordingly, on March 26, 2009, Maryland’s Board of Elections voted unanimously to impose stricter standards for referendum petition drives.

Democracy is about providing choice; more choices may increase voter registration and turnout. Independent voters are growing nationwide and represent the #2 “party” in Montgomery County,

surpassing registered Republicans. Sixty percent of voters polled believe that America needs a third party, and 53 percent think neither principal party represents the American people.<sup>63</sup> Ballot access restrictions unjustly restrict voters' choices and disadvantage non-principal party candidates.

### **Recommendations**

45. The Task Force recommends that the County Council request that the County State Board of Elections provide information to residents explaining the signature-gathering requirements for non-principal parties and independent candidates.
46. The Task Force recommends that the County Council request that the Maryland General Assembly to support measures granting non-principal parties status if 10,000 registered voters are affiliated with that party, for as long as that level is retained. In the 2014 session, this was SB 1032 (Ferguson).
47. The Task Force recommends that the County Council request the State Board of Elections to return to "reasonable certainty" ballot access petition signature standards instead of the "strict, to-the-letter" standards in place since March 2009. (Local election boards have long requested more lenient standards.<sup>64</sup>)
48. The Task Force recommends that the Council Council request that the Maryland General Assembly support measures reducing ballot access petitions for independent candidates from 1 percent of the number of registered voters to 10,000 registered voters.

### **Minority Views**

#### ***Minority view #1***

National uniform ballot access laws are needed across all 50 states, using a model that is not discriminatory toward minor parties and independent candidates. State rules are often hostile to third parties and vary widely, making them even more difficult to overcome.<sup>65</sup> The lack of uniformity can create chaos in a presidential year. In many cases, the rules are imposed by state party bosses who are less interested in democracy than in rigging the system to benefit their favored candidates. Uniformity is especially timely, given the ever-increasing voter interest in third parties and independent candidates.<sup>66</sup> The United States is the only nation in the world, except Switzerland, that does not have uniform federal ballot access laws. Congress should establish a National Elections Commission with the mandate to establish minimum national election standards and uniformity, partner with state and local election officials to ensure pre-election and post-election accountability for their election plans, require n election boards, and depoliticize and professionalize election administration across the United States.

#### ***Minority view #2***

Voting rules and access laws are states' rights and not a federal responsibility. It is well beyond the Task Force to make congressional recommendations to consolidate states' rights in favor of bigger federal government.

## CANDIDATE DEBATE ACCESS

### Background

The right to debate one's opponent(s) is fundamental to democracy and a prerequisite for informed voters. More than half of voters consistently poll as desiring a "third" party.<sup>67</sup> Debates that include third-party candidates often result in post-debate double-digit support and greatly increased voter support on election day.<sup>68</sup> Voters not represented by the principal parties can feel that their candidates and views are locked out; more candidates may encourage voter turnout. Opening to third parties would provide a fuller spectrum of views, comparable to that of other democratic nations.

Most candidate debates at all levels of government do not invite minor party candidates. Third-party candidates have been barred from debates even when polls showed they had more public support than some other candidates who were granted debate access.<sup>69</sup> Non-profits that host debates are already forbidden by law from showing favoritism, but private groups are free to invite or disinvite any candidates and to develop their own standards. Standards can be – and have been – developed and applied to candidates who seek public funding, including mandatory debates sponsored by non-partisan hosts. The City of New York devised such a program in 1996.<sup>70</sup>

***Maryland Debates:*** Although excluded from most debates, some non-principal party candidates have been allowed to participate in a few debates with principal party candidates: Linda Schade (Green Party, District 20 House of Delegates, 2002);<sup>71</sup> Kevin Zeese (Green Party, U.S. Senate, 2006); Ed Boyd (Green Party, Governor, 2006); and Chris Driscoll (Populist Party, Governor, 2006). 2014 Montgomery County Council candidate Tim Willard (Green Party) has thus far been invited to six forums, all sponsored by 501(c)3 or local organizations. The Democratic Party organizes its own debates, limited to Democrats for the primary, but debates generally are not held after the primary.

***National Debates:*** From 1976-1984, the non-partisan League of Women Voters ran national presidential debates, setting the standards and rules of debate. In the wake of disputes over rules and format issues with the League, the Republican and Democratic parties in 1987 created the Commission on Presidential Debates (CPD), a private corporation. The League's inclusion of alternative party candidate John Anderson in 1980 was not the only issue, but it was reportedly a major source of irritation to the two ruling parties. The CPD "placed so many rules and restrictions on the possible format of the debate that the League was finally unable to agree to participate."<sup>72</sup> Upon refusing to sign on to the ruling parties' "charade," the League stated "we have no intention of becoming an accessory to the hoodwinking of the American public."<sup>73</sup>

Since 1988, the CPD has run the debates. CPD is principally financed by Anheuser-Busch and major corporations that have regulatory interests before Congress. Every four years, the Republican and Democratic campaigns meet behind closed doors to hash out a memorandum of understanding that dictates the terms of the debates. All aspects are vetted by the candidates, including the moderator and format. Third party candidates are excluded, regardless of the level of public support.<sup>74</sup> They have been barred from sitting in the audience, even with a legitimate entrance ticket, and have been arrested for refusing to leave the area.

## **Recommendations**

49. County: The Task Force recommends that the county provide free and equal radio and television time, by elected position, for all general election eligible candidates and parties on Montgomery County local access media and other county-controlled media.
50. State: The Task Force recommends that the County Council encourage the State to adopt free and equal debate and media access programs, by elected position, at the state level.
51. National: The Task Force recommends that the County Council write to federal legislators to encourage equal debate and media access. Possible examples that the Council may engage with others on include returning control over national debates to the League of Women Voters or creating a new publicly funded Citizen's Commission on Presidential Debates.

## **Minority Views**

### ***Minority view #1***

The first two recommendations are reasonable and supportable. The third recommendation for National consideration is beyond the scope of the Task Force. This introduces the "Big Government" concept of rules and has potential impact on the states' election process and the commercial media. National debates have a large impact on the commercial media. The cost associated with the media and its participation is a business decision and not per se a national consideration. Candidates and political parties should decide how, when, and why their candidate participates and not the federal government.

The concept described in the paragraph below of setting up a Campaign Finance Program is also beyond the scope of the Task Force and is another example of "Big Government" dictating how a candidate or campaign is run and forcing participation in debates that might not be in the best interest of the candidate or within the budget of the candidate to participate. It is almost comical that the following points it finger at media conglomeration while it is a prove fact that at 90 percent of the news organizations and TV media is very liberal in its perspective. We fully agree that journalists do not pursue certain stories but not because it would be unpopular with the advertiser, but rather with the left wing proponents within the media. The best example of this closed eye perspective is the issue of Benghazi and how the left wing media does not even cover the critical issues of national interest. To look at New York City as a guiding light in public financing is, in itself, rather peculiar. Taking a step more to the left and follow NYC is almost impossible for a state like Maryland, that sees little competition on the left except Vermont and California.

### ***Minority view #2***

The Task Force should recommend stronger action. Freedom of the press was guaranteed in the Constitution because democracy requires a diverse and lively exchange of ideas and an unfettered debate so that citizens can make responsible informed choices as voters and carry out other citizenship duties. Current media laws and rules encourage media conglomeration while discouraging competing voices. We must also guard against official censorship. In our society, large corporations are a more common source of censorship than governments. Media outlets kill stories because they undermine corporate interests, advertisers use their financial clout to squelch negative reports, and powerful businesses threaten expensive lawsuits to discourage legitimate investigations. The biggest censorship is self-censorship: journalists often do not pursue certain stories that will be unpopular with advertisers.

The New York City Council's December 1996 public financing program could be a small, local first step. Details and favorable legal reviews are in the Task Force's draft report. Grander proposals include greater public ownership of the airways, tough media anti-trust laws that carve up conglomerates, reinstating and strengthening the Fairness Doctrine, and more. Twenty specific Green Party reforms are available online in the Green Party's *Platform* section I:C, on "Democracy: Free Speech and Media Reform" at <http://gp.org/index.php/platform-democracy>.

## VOTING ACCESS FOR NONCITIZENS WITH A PERMANENT RESIDENT VISA

### Background

From 1776 to 1926, when the last remaining permissive state enacted restrictions, 22 states allowed noncitizen voting at various times and in varying degrees in federal, state, and local elections. Today, not one state allows noncitizen voting in federal and state elections and most have constitutional or statutory prohibitions. Maryland ended noncitizen voting rights in federal and state elections in 1851, and Article I, Section 1 of the Maryland Constitution sets out U.S. citizenship and Maryland residency as prerequisites for voting eligibility. Although Maryland municipalities are autonomous with respect to setting their own voting eligibility, Montgomery County is bound by state constitutional and statutory strictures in this area.

Most Americans believe that citizenship is a federal constitutional requirement for the privilege of voting. This is not the case. The U.S. Constitution does address rights of citizens to vote and allows states to impose citizenship as a voting qualification, but does not specifically prohibit noncitizens from voting. As stated above, there is precedent through our early history for noncitizen suffrage. In fact, neither the Supreme Court nor any lower federal court has ever found noncitizen voting unconstitutional. Federal law enacted in 1996 makes it a crime for a noncitizen to vote in federal elections.

Political analysts have identified a myriad of reasons for the decline of noncitizen suffrage in this country from anti-immigrant and racist attitudes of the American public occurring primarily post-Civil War/Thirteenth Amendment, and during the harshly xenophobic period following World War I, to changed circumstances that accompany a growing and industrializing society. Although the reasons for the granting and denial of noncitizen voting rights may vary, the fact remains that noncitizen suffrage is not historically novel. The question regarding political enfranchisement in Montgomery County is whether to embrace all, some, or none of our resident noncitizens (maintaining the *status quo*). Put simply, the question before us is who should be included in “we the people” as applied to Montgomery County residents. The majority of Task Force members favor including noncitizen permanent residents.

The concept of noncitizen suffrage is flourishing in political discussions and legislative proposals. Currently, approximately 20 countries, mostly in the European Union, allow noncitizen voting in varying levels and degrees. Over the past 15 years, a number of states and cities have considered proposals allowing some level of noncitizen voting. To date, these have been unsuccessful but debate continues. There are only a few examples to observe noncitizen voting in practice, and these are limited in geography and scope of jurisdiction. These are Barnesville, Chevy Chase Sections 3 & 5, Martin’s Additions, Somerset, and Takoma Park (all in Maryland) and Chicago, Illinois (school board elections only). New York City previously allowed immigrant voting in school board elections until 2002 when the then-mayor took control of the school system. In 2013, a super majority of the New York City Council voted in support of a sweeping proposal for noncitizen voting eligibility. Unfortunately, despite noncitizen suffrage that spans decades or more in some of these jurisdictions, there are no empirical data on the impacts of such voting in these communities.

In making its recommendation for noncitizen voting in County elections, the Task Force relied on many of the arguments put forth by proponents nationwide of noncitizen suffrage, including:

- expands democracy to be more inclusive and provides more members of the local community a stake in the decision-making that affects the community, the essence of democracy;
- non-citizen residents work, pay taxes, contribute to and are a part of civic and community activities, and are subject to U.S. military draft; and
- enhances civic responsibility and promotes greater civic participation among non-citizen residents who already assume other responsibilities of local citizenship, are governed as full members of the local community, and identify with local, community issues over non-citizen issues.

### **Recommendations**

52. The Task Force recommends that Montgomery County request the State of Maryland to allow each county to determine its own public policy with respect to the voting rights of noncitizens with permanent resident visas in county elections.
53. The Task Force recommends that Montgomery County allow noncitizens with permanent resident visas to vote in county elections if state law is changed to allow noncitizens to vote.

### **Minority View**

The State should maintain consistency in federal, state, and local (county) voter laws and require citizenship as a qualification to vote.

- There exists a well-defined Naturalization process by which aliens can obtain the right to vote (if they so wish), have a voice in the government, and provide civic responsibility. There is no need to circumvent this established Nationalization process. The ONLY validity for alien suffrage from our perspective is for the perceived potential political advantage of obtaining bloc voters. The XIV Amendment of the Constitution already provides a legitimate channel of expression for any legal persons in American for life, liberty, and equal protection of the law, but does not provide the right to vote to noncitizens. Naturalization permits a person with the right to be called an American, to vote in American elections, and to hold most public offices; among other benefits. Lawful permanent residents over the age of 18 can apply for citizenship. Being able to pass a basic English language and civics tests are part of the Naturalization process. Without the naturalization process, immigrants will not have to demonstrate a knowledge and understanding of the fundamentals, principles and form of American government – lack of adequate preparation for the electoral process and “attachment” to America.
- Giving immigrants the right to vote would be disingenuous to all of the millions of immigrants who elected and worked hard to become citizens, swore allegiance to America, and are proud to be Americans.
- Administrative and practical issues in identifying legal status of immigrant voters along with federal statute prohibit noncitizens from voting in federal elections. Most Americans believe that citizenship is an important prerequisite to voting, and the Maryland Constitution requires it.
- Immigrants may lack sufficient familiarity with and knowledge of American political institutions and processes to make informed voting decisions.

- The justification for noncitizens to vote because it is “not prohibited by the Constitution” is a weak argument. The Constitution addresses the right of citizens to vote in Amendments XV, XIX, XXIV, and XXVI. If you permit noncitizen the right to vote because it is not specifically excluded, then using the same argument, immigrants could be excluded from voting by age, race, sex, and color, because noncitizens are not specifically mentioned in those Amendments. Constitutional amendments will have to be made to at least Amendments XIV, XV, XIX, XXIV and XXVI to accommodate noncitizens suffrage.
- Increase potential for voter fraud.
- Only one of 19 municipalities in Montgomery County sees the need for including immigrants in voting, and this is restricted to municipality issues. If this voting issue is important, then there would be more municipalities pushing for this action. It is documented that very few immigrants in Takoma Park exercise their “right to vote”.<sup>75</sup>

# VOTING RIGHTS FOR RESIDENTS WITH FELONY CONVICTIONS

## Background

Before 1974, Marylanders with a felony conviction faced a lifetime ban on voting, but those restrictions were eased in 2002. In 2007, Maryland expanded voting rights for residents with felony convictions who have served their time in prison and completed parole and probation. Approximately 120,000 Marylanders had lost their voting rights because of felony convictions before state law was changed in 2007. Since then, the estimated number of residents unable to vote because of a felony conviction has dropped to approximately 60,000.

Nineteen states restore voting rights more quickly than Maryland<sup>76</sup>. Among them, two states allow prisoners to continue voting while incarcerated, 13 states (and the District of Columbia) restore voting rights upon release from prison, and four states restore voting rights after parole but before probation is completed. In contrast, 11 states have lifetime bans on voting associated with some felony offenses, have a waiting period for the restoration of voting rights beyond the term of parole and probation and may require a resident to petition the governor or a board for the restoration of their voting rights.

A person convicted in a court of law of a felony crime is known as a felon. The felony versus misdemeanor distinction is still widely applied and the federal government defines a felony as a crime punishable by imprisonment in excess of one year. Under Maryland law, some crimes are defined as misdemeanors (e.g. human trafficking) but may carry terms of imprisonment greater than one year.

A report from the Sentencing Project found that in the 2010 elections almost six million Americans were disenfranchised nationwide because of felony convictions, including one out of every 13 voting-age African Americans.<sup>77</sup> More than 7 percent of the voting-age population was disenfranchised in six states. The punishment of loss of voting rights likely does little to deter future felony crimes and denies the right of residents in a democracy to be represented by elected officials of their choosing. Allowing paroled felons to vote is a small step in reintegrating them back into both the rights and responsibilities of residents living freely in our society.

Opponents of restoring more voting rights to people with felony convictions argue that it is appropriate for society to conclude that felons have not fully paid their debt to society until they have completed their prison sentence, probation and parole period. In addition, giving the right to vote to a felon while incarcerated will place a cost on taxpayers and prison facilities in terms of safety of election administration in a prison and provision of information about elections and access to candidate information.

Beyond questions of voting rights, other opportunities exist to expand participation in elections by people moving through our criminal justice system. The County's Department of Correction and Rehabilitation administers the Montgomery County Correctional Facility, which houses up to 1,000 prisoners who serve sentences of up to 18 months. People with felony convictions are significantly less likely to have registered to vote prior to conviction and once released from prison remain less likely to register or vote.<sup>78</sup> However, studies have shown that registration procedures have an impact on subsequent turnout by ex-felons, in particular, making it easy to register during the time they are transitioning back into society. These same patterns likely exist for misdemeanor offenders who make

up the majority of the population of the County Correctional Facility, and there is an opportunity for the County to register more of these residents during their misdemeanor or trial-related incarceration. States like Ohio<sup>79</sup> and California<sup>80</sup> provide registration information and voter guides to prisoners.

### **Recommendations**

54. The Task Force recommends that Montgomery County develop and administer an active voter registration and civic education program as part of re-entry services provided in prison for people being released from the Montgomery County Correctional Facility. The County should create opportunities for voter registration for all prisoners awaiting trial for felony or misdemeanor charges or serving time for misdemeanor offenses.
55. The Task Force recommends that the County Council encourage the Maryland General Assembly to change state law to allow incarcerated felons who are Maryland residents the option to register to vote during the pre-release phase before parole and probation. That 'pending' registration should become active automatically on the date the person becomes eligible.
56. The Task Force recommends that the county encourage the Maryland General Assembly to change state law to restore voting rights to residents with felony convictions who have served their time in prison and pre-release programs but who are still serving a term of probation or parole.
57. The Task Force recommends that the County not support the full restoration of voting rights to all felons, including those still incarcerated or under house arrest or home-based detention (i.e. pre-release programs).

### **Minority Views**

#### ***Minority view #1***

None of the four recommendations should be supported. Only after a felon has served their incarceration, including probation and parole, can they register and vote. Felony includes rape, murder, arson, terrorism, pornography, child molestation and other violent crimes as well as voting fraud.

Prisoners remain human beings but the right to vote is not fundamental, for it is not granted to all; only trusted members of society are granted the right to vote. Prisoners are deemed irresponsible and therefore stripped of their rights. As the U.S. Supreme Court ordered in 2000, the law 'does not protect the right of all citizens to vote, but rather the right of all qualified citizens to vote'. Prisoners disqualify themselves through their actions; If the courts deem a prisoner unfit for society, how can it be sensible to give them a say in how that society is run or vote on the lawmakers?

Giving the right to vote or register to an incarcerated felon will place an undue hardship on the correction facility (and possibly Board Of Elections) in terms of safety, security, costs, and discipline. Operation and control of a prison is part of the Department of Corrections. A felony is not a misdemeanor.

Federal and state laws govern the establishment and administration of prisons as well as the rights of the inmates. Although prisoners do not have full Constitutional rights, they are protected by the Constitution's prohibition of cruel and unusual punishment. This protection requires that prisoners be afforded a minimum standard of living. Prisoners retain some other Constitutional rights, including due process in their right to administrative appeals and a right of access to the parole process. The Equal

Protection Clause of the 14th Amendment has been held to apply to prisoners. Prisoners are therefore protected against unequal treatment on the basis of race, religion, sex, and creed. Prisoners also have limited rights to speech and religion. In the United States, loss of rights due to felony conviction includes disenfranchisement, exclusion from jury duty, and inability to possess firearms. Shall we provide felons with a firearm along with voting rights?

***Minority view #2***

Two factors favoring extending voting to those currently incarcerated are that U.S. laws, especially drug laws, result in (1) the U.S. embarrassingly having the world's highest incarceration rate; and (2) the enforcement of these laws being so racially applied that they are effectively a new "Jim Crow" - a targeted disenfranchisement of people of color and the poor.<sup>81</sup>

## VOTING RIGHTS FOR RESIDENTS WHO ARE 16 AND 17 YEARS OF AGE

### Background

Age restrictions on voting have changed over time in America and around the world. Before the Second World War, most countries had a voting age of 21 years. By 1943, a majority of those polled by Gallup favored lowering the U.S. voting age to 18, and the state of Georgia adopted that change the same year. In 1953, a proposed constitutional amendment lowering the voting age had majority but not two-thirds majority support in the U.S. Senate, and in 1955, Kentucky changed its voting age to 18.<sup>82</sup> In 1971, Congress passed and the states ratified the 26th amendment to the U.S. Constitution. That Amendment provides that the rights of U.S. citizens 18 years of age or older shall not be denied or abridged by the Federal government or any State government on account of age. Many states, including Maryland in 2010, allow 17-year-olds to vote in state primaries if they will be 18 years old by the time of the General election.

The Maryland Constitution and the Maryland Voter Eligibility Qualifications statute set out the following requirements for voting in federal and state elections: (1) citizenship of the United States; (2) residency of the State of Maryland as of the time for the closing of registration next preceding the election; (3) registration pursuant to the Maryland voter eligibility statute; and (4) at least 18 years of age at the time of the general or special election (16 years of age for registration purposes). The U.S. Constitution does not specifically prohibit allowing residents younger than 18 the right to vote.

A number of countries, *e.g.*, Austria, Argentina, Brazil, Denmark Germany, Ireland, Israel, Norway, United Kingdom, have extended voting rights to people at 16 or 17 for national, regional or local elections or are considering doing so. Their experiences suggest that extending voting rights to people who are 16 and 17 promotes higher voter turnout for first-time voters and stronger voting habits of those same voters over time.<sup>83</sup> There is no significant experience of under-18 voting in the United States.

Although nearly half the states allow 17-year-olds to vote in primaries if they will be 18 at the time of the corresponding general election, only one jurisdiction in the United States, Takoma Park, Maryland, allows residents 16 and 17 years old to vote in the general municipal election (as of May 2013). In February 2014, College Park lowered the age of eligibility for the office of Mayor or City Council so that 17-year-olds can run for office if they will be 18 at the time of the election.

Proponents of lowering the voting age to 16 point out that turning 16 triggers certain benefits and responsibilities. Maryland residents can drive, pay taxes, assume student loans without the signature of a parent or guardian, and for the first time work without restrictions on their hours. The majority of the Task Force members agreed that these benefits and responsibilities are relevant to the question of whether 16- and 17-year-olds could be granted the right to vote.

The majority also supported the argument that 16- and 17-year-olds are not too young to comprehend politics and local issues. Montgomery County high school civics classes teach the fundamentals of federal, state and local government in sophomore year (15 and 16-year-olds). There is no greater reason to apply an issues test to 16- and 17-year-olds than to older age groups; 16- and 17-year-olds have the capacity to make informed and intelligent decisions. In fact, The Voting Rights Act of 1965 sets out a 6th grade education as adequate for voting eligibility. The majority of the Task Force favored extending suffrage to- 16 and 17-year-olds to all County elections – primary, special and general.

### **Recommendation**

58. The Task Force recommends that the County Council and Executive propose to the Maryland General Assembly reducing the voting age from 18 to 16 years old for county elections.

### **Minority Views**

#### ***Minority view #1***

Maryland should let current law stand and keep voting age at 18 for the following reasons:

- US Constitution, Maryland Constitution, and Registration requirements would have to be amended for youth vote outside of municipalities.
- The 26th Amendment already reduced voting age from 21 to 18.
- Legally - one is a minor until 18 and not considered an adult. Minors are not mature and able to make mature decisions. At 18 one can join the military; sign a contract; purchase stock, tobacco, ammunition; and can vote, but one must be 21 to purchase alcohol or guns and 25 to rent a car.
- Minors are quite susceptible to influences (impressionistic) in their decision-making process (i.e., getting news from late night comedy TV shows or Facebook). Youth are guided by teachers, peers, and parents in forming opinions, oftentimes without giving any real or meaningful thought to the political issues at hand and the ramifications of their vote. This ineffective process often concludes in a student registering with one political party, while completely supporting views of another, without understanding it.<sup>84</sup>
- Takoma Park has elected to permit youths of 16 years and older to vote in municipal elections. There are 19 municipalities in Montgomery County; why haven't the other 18 municipalities opened voting to youths as well or is this just not the will of the people or a priority of youth?
- What makes a 16-year-old more mature and able to understand the vast implications of their vote over a 13-year-old? Why put any restrictions on voting? Using the Voting Rights Act of 1965, it states that a sixth-grade education is deemed adequate knowledge to vote. Let us set the voting age to sixth grade and 13 within the school year. Surely, 13-year-olds can reproduce the rhetoric taught them as well as a 16-year-old.

#### ***Minority view #2***

The suggestion that the County Council and Executive should ask the General Assembly to reduce the voting age to 16 would have made sense in the latter part of the 19th century, when 16-year old children worked under harsh conditions on the farm and in factories, mills and mines. They fought in combat

during the civil war and on the frontier after that. Most Americans completed school by eighth grade, well before they were 16. Society did not coddle children; rather, they were treated as adults and had to fend for themselves at an early age. It could be reasonably argued that such self-sufficient youth had enough worldly experience to vote intelligently at age 16 (but could not until they were 21).

Over the intervening years, American society took numerous steps to protect young people from the harsh realities of adult life. Child labor laws enacted in the early 1900s prohibit employing 16 year old children in dangerous jobs in mines and mills. Such work as they do now requires work paper approvals with limited hours. When they offend society, they are generally treated under the country's juvenile justice systems, rather than as adult criminals, where they would be exposed to hardened criminals. When their parents abuse them or fail to support them properly, those parents are subject to the requirements of the child protective services laws. When their parents separate, they are entitled to child support payments. They can escape the consequences of the contracts they sign because they are under 18. Cumulatively, these changes mean that many of today's 16-year olds are raised in a protected environment, able to enjoy and benefit from their high school experiences, free from the need to earn a living and other adult concerns.

No one explains how youth raised in an environment designed to shelter them from the problems of the adult world can be expected to have the same mature outlook as those who are independent, self-sufficient members of society.

## **FINANCIAL SUPPORT OF THE BOARD OF ELECTIONS TO UPHOLD VOTING RIGHTS AND INCREASE VOTER PARTICIPATION**

### **Background**

The Task Force commends the County Council for its efforts to increase participation in and access to the democratic process. The Council has articulated support of additional early voting centers authorized by the General Assembly, including the optional ninth one that required County approval and funding.

The Task Force has had the benefit of both presentations and individual consultations with our Board of Elections liaison, Alysoun McLaughlin, as well as other members of the staff and the Board. A few of the members regularly attend the monthly Board meetings. These members know from these interactions that both the appointed Board members and the staff are working through many issues to make the 2014 election cycle as easy and accessible as possible for Montgomery County voters.

Some of the tasks and ideas being carried out by the Board of Elections and staff are complementary to Task Force suggestions, especially concerning outreach. However, other recommendations of the Task Force are independent from staff and Board activities or are themselves independent of our recommendations. We know each change in practice requires a good deal of thought and preparation by the staff to make it to fruition, and many require sufficient funds to support changes, such as graphic design and software design. During this and subsequent budget seasons, we suggest that the County Council anticipate the increased financial resources that may be needed by the Board of Elections to meet the Council's goals, articulated in the tasks presented to the Task Force.

### **Recommendation**

59. The Task Force would like to remind the County Council that increased financial resources may be needed by the Board of Elections to meet the Council's goal of maximizing voter participation in the election process.

## ISSUES REQUIRING NO FURTHER ACTION

### ELECTION DAY HOLIDAY

#### **Background**

In Maryland, state employee holidays already include each statewide general election day, and current law also mandates that any employee can have two hours off for voting as long as they have a signed form from the Board of Elections. It is not necessary to spend the entire day voting. Polls are open before and after work and during lunch hours. If the polling place is too far from the office or if Election Day is inconvenient, early voting opportunities and “no excuse” absentee mail-in ballots make an easy and fast solution.

#### **Recommendation**

The Task Force considered, but did not support, a recommendation that the county create an Election Day holiday. (The State of Maryland already grants Election Day holiday status for the general election for state employees.)

#### **Minority View**

A holiday is still needed despite early voting. Voting rights experts are ambivalent on the effectiveness of early voting, which reportedly has little impact on turnout. Further, because influential information could surface in the last few weeks of the race, early voters might be less informed. A holiday would increase voter turnout. Puerto Rico makes Election Day a holiday, and its residents regularly vote at rates far higher than most states.<sup>85</sup> Most Western democracies either mark the holiday or allow voting on weekends. A holiday would increase the pool of potential poll workers and shorten lines for voters, because of a more even distribution of participants throughout the day. Many local jurisdictions already have difficulty finding qualified poll workers to staff current polling hours.<sup>86</sup> It would also allow people to volunteer to drive seniors and others to the polls. Finally, a holiday would increase awareness of the election and show how valued elections are.

## ONLINE VOTING

### Background

Should voters receive and cast their ballots directly via the Internet? This question is the subject of continuing debate; does current Internet technology permit secure voting that is proof against technical attacks, or hacking? The technical problems associated with sending ballots out to voters appear manageable; ballots are sent to U.S. voters routinely in accordance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) for local, state and federal elections. However, the more difficult technical problems when casting a vote online – such as authentication, avoiding fraudulent votes, and the need for secret ballots – have not been resolved.

As discussed in the studies that follow, the major technical concerns include the following.

First, remote electronic absentee voting from personally owned devices face a variety of potential attacks on voters and voters' personal computers. Since the voter's personal computer is outside the control of election officials, it is extremely difficult to protect against software attacks that could violate ballot secrecy or integrity or steal a voter's authentication credentials. These are serious threats that are already commonplace on the Internet today.

Second, remote electronic voter authentication is a difficult problem. Current technology does offer solutions for highly secure voter authentication methods, but these may be difficult or expensive to deploy. Personally owned computers may not be able to interface with these methods, such as having the necessary smart card readers for cryptographic authentication using Common Access Cards or Personal Identity Verification cards.

Third, it is not clear that remote electronic absentee voting systems can offer a comparable level of auditability to polling place systems. Because of the difficulty of validating and verifying software on remote electronic voting system servers and personal computers, ensuring remote electronic voting systems are auditable largely remains a challenging problem, with no current or proposed technologies offering a viable solution.<sup>87</sup>

When the District of Columbia Board of Elections opened a new Internet-based voting system in 2010 for a weeklong test period, they invited computer experts to try and hack it. Hackers did just that. A University of Michigan computer class exploited a number of vulnerabilities in the online voting system that D.C. officials failed to notice for two days, despite the fact that the Michigan students added a new feature, the playing of the University of Michigan fight song when voters cast their ballots. When the hackers revealed what they had done, D.C. officials suspended the trial. Some, including True the Vote and teapartycommunity.com blog see this test of D.C.'s proposed Internet voting system as good reason to avoid Internet voting now and in the future. Others, such as the University of Michigan's report on its testing of the D.C. system, also see substantial technical problems with Internet voting. Michigan's report urges voting proponents "...to reconsider deployment until and unless major breakthroughs are achieved."<sup>88</sup>

Despite the technical challenge of protecting the integrity of Internet voting, a number of U.S. municipalities and states, as well as their Canadian, Indian, Norwegian and other counterparts, have

conducted elections using Internet voting, either routinely or experimentally. One country, Estonia, uses Internet voting routinely for all municipal, national and European elections. Some groups see other good reasons for using Internet voting, such as increasing voter turnout and lowering cost.<sup>89</sup> These groups believe the technical problems associated with Internet voting are well worth the effort to resolve. Further, they question whether the technical problems with Internet voting have been overstated, in view of the many times Internet voting has been used successfully.

A study by the National Institute of Standards and Technology (NIST) scopes out the issues, looks at the potential benefits, and treats the major threats associated with Internet voting, such as confidentiality (secret ballot), integrity of the vote, availability of the computer systems, and identification and authentication of the voter. While NIST expresses its conclusions in low-key bureaucratic language, the most encouraging thing they have to say about the state of the art was that “Pilot projects should be encouraged...” (see Endnote 97).

Another group with good technical credentials, the Association for Computing Machinery (ACM) published the article “*Internet Voting in the U.S.*” in its monthly magazine, Communications of the ACM, October 2012. (The ACM is a 100,000 member scientific computing society comprised of educators, researchers and professionals who work in that field.) The ACM article starts with the question “If I can bank online, why can’t I vote online?”

This article discusses the relevant background issues, ranging from the District of Columbia’s online voting trial problem, to the successful elections conducted here in the United States and elsewhere online, including the U.S. military experience. In the latter case, ballots are sent out online, but returned via the U.S. mail. The authors outline a number of problems with Internet voting, including: insider attacks, malware on the voter’s personal computer, impersonating the election server, denial-of-service attacks, and loss of secret ballot.

Finally, how does one choose between those analysts who support online voting because it has been used both experimentally and routinely with apparent success, and the authoritative technical studies recommending against online voting? One consideration is the continuing reports of hackers gaining access to credit card data, Social Security numbers and other critical information stored on computer systems maintained by major commercial entities and federal agencies that have the resources and staff needed to combat hacking, but fail to do so. Further, we found that the technical considerations outlined in the “Conclusion”<sup>90</sup> and “Compared”<sup>91</sup> portions of the ACM article offered compelling arguments supporting its views and we invite the reader’s attention to those relatively brief summaries.

### **Recommendation**

In view of the technical issues and concerns associated with online voting, the Task Force unanimously recommends that the county not promote online voting at this time.

## VOTER PHOTO IDENTIFICATION

### Background

Twelve states currently require a photo ID when voting. Many are concerned that requiring photo IDs will suppress the vote of minorities, the poor and seniors.

Supporters of voter photo ID point out that some states that have implemented this requirement have shown an increase in turnout of these groups. However, in October 2012, the *Wall Street Journal* reported that studies of the impact of voter ID laws on turnout have had inconclusive results, particularly since most of the laws were introduced prior to the 2008 presidential election, which had high levels of voter turnout. Additionally, studies may be influenced by other factors that impact individuals' likelihood of voting.

Advocates for photo ID laws also argue that the U.S. Supreme Court's divided opinion upholding Indiana's photo ID law in *Crawford v. Marion County Election Board* rendered all state photo ID laws immune to constitutional challenge. In *Crawford*, the Court upheld Indiana's photo ID law against a broad "facial" attack to its constitutionality. In doing so, the Court made clear that the photo ID law remained subject to challenge as a matter of law by particular groups or individuals who were unconstitutionally burdened by the law. The Court expressly singled out groups that might potentially bring a successful challenge as "elderly persons born out of state," "persons who because of economic or other personal limitations may find it difficult to secure a copy of their birth certificate" or other documents needed for photo ID, homeless people, and people with a religious objection to being photographed. In addition to leaving the door open to challenges by affected voters, the Court also left the door open to challenges to other photo ID laws that burden voters more than Indiana's law.

In any event, according to the Brennan Center for Justice, the lawsuits challenging photo ID laws have been mixed; the case law to date has established several basic principles that must be satisfied under the Constitution:

Whether or not a person can afford the cost, photo IDs required for voting must be available free of charge for all those who do not have them. States may not require an oath of indigency. In addition, some courts may require states to ensure that all the documents required in order to obtain photo IDs are free and easily available to prospective voters.

Photo IDs must be readily accessible to all voters, without undue burden. At a minimum, most states will likely have to expand the number of ID-issuing offices and extend their operating hours to meet this requirement.

States must undertake substantial voter outreach and public education efforts to ensure that voters are apprised of the law's requirements and the procedures for obtaining the IDs they will need to vote.

Further, new ID requirements would have almost no effect on voter fraud because in-person impersonation of voters is almost nonexistent. In this regard, *Slate* magazine reported that during the George W. Bush administration, "The [Department of Justice] devoted unprecedented resources to

ferreting out polling-place fraud over five years and appears to have found not a single prosecutable case across the country.” In the News 21 Carnegie-Knight investigative report of August 12, 2012, the 12-year study of 2,068 alleged voting fraud cases found only ten cases of alleged in-person voter fraud nationwide. Given the hundreds of millions of votes that were cast in this country during the 12-year time span of the study, and the fact that only 10 cases of alleged in-person fraud were found, there is no reason to impose stricter ID requirements on voters in Maryland or elsewhere.

Moreover, photo ID will disenfranchise vastly more people than the number of people who commit in-person fraud, especially in underprivileged populations:<sup>92</sup>

<b>Population Segment (Voting Age Citizens)</b>	<b>Percent / Number Without a Photo ID</b>
African Americans	25% / 5.5 million
Hispanics	16%
Elderly, ages 65+	18% / 6 million
Youth, ages 18-24	18% / 4.5 million
Income less than \$35,000/year	15%
All Americans	11% / 21 million

Obtaining a photo ID remains costly even if the state offers the ID card itself for free. To apply for a Maryland driver’s license, a person must already have and present many other documents (like a birth certificate) proving identity, age, and residence, and obtaining those other documents themselves may be costly. For example, birth certificates in Maryland cost \$24.00 to obtain. Additionally, people must have transportation and the free time to obtain the photo ID and any underlying documents. This disproportionately impacts underprivileged populations, who are less likely to have the underlying documents and the ability to get them or the photo ID. Further, mobile populations, including youth and the poor, are less likely to have a photo ID that accurately reflects their domicile for voting.

Given the data showing that mandating photo IDs will, in all likelihood, disenfranchise millions of voters and the studies showing that there have been almost no cases of in-person voter fraud, it is clear that this proposal would significantly interfere with the rights of large groups of voters in order to solve what is essentially a nonexistent problem.

**Recommendation**

Since all of the credible evidence indicates that requiring photo IDs would decrease rather than increase voter turnout, the Task Force recommends that the issue of requiring photo IDs to vote get no further consideration from the County Council.

**Minority View**

Twenty-seven states require or request some form of identification from voters at the polls on Election Day. This is based on the findings of research by the Center for Democracy and Election Management American University, Washington, D.C., January 9, 2008; Since the 2000 election, one of the most contentious issues has been voter identification requirements. Opposition to voter IDs has come largely from those who fear that this requirement will disenfranchise voters who do not have IDs or would find it difficult to acquire them. The survey was of registered voters in three states—Indiana, Maryland, and

Mississippi. The survey found only about one percent of registered voters in all three states lack a photo ID. More than two-thirds of respondents believe the U.S. electoral system would be trusted more if voters were required to show a photo ID. This is significant because the perception of fraud among the voters is high and the confidence in the electoral system is low.

**Conclusions:**

- The issue of showing a photo ID as a requirement of voting does not appear to be a serious problem. Almost all registered voters have an acceptable form of photo ID (e.g., driver's license, passport, military ID). About 1.2 percent of registered voters do not have a photo ID, but half of those have documents proving citizenship, and most of the states have provisional or absentee ballots or other exceptions that could permit people to vote without IDs.
- More than 97 percent of all registered voters in the three states surveyed could produce proof of citizenship documentation.
- Nearly a quarter of all respondents lack confidence that their votes will be counted accurately.
- Nearly one-fifth of registered voters saw or heard of fraud at their own polling place.
- More than two-thirds of respondents believe the U.S. electoral system would be more trusted if voters were required to show a photo ID.
- Nearly all (98 percent) of voters said showing a photo ID would not make them less likely to vote.
- Approximately 80 percent of voters would support a national photo ID if provided free by the government.
- While the number of registered voters without valid photo IDs is quite small, and therefore not statistically significant, those numbers suggest a disproportionate effect on women, Democrats, and African-Americans.

- <sup>1</sup> Virginia’s system allows such data entry and keeps the information for 45 days, pending the applicant’s submission of the paper form.
- <sup>2</sup> Department of Legislative Services, Office of Policy Analysis, *Election Day Registration*, at 4 (Dec. 12, 2008), available at [http://dls.state.md.us/data/polanasubare/polanasubare\\_intmatnpubadm/Election-Day-Registration.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_intmatnpubadm/Election-Day-Registration.pdf). The relevant provision of the Maryland Constitution states that “The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of Election of the right of every person, thus registered, to vote at any election thereafter held in this State ...” Md. Const. Art. I § 2.
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