

My name is David Naimon and I'd like to thank you, Chair Brian Feldman and Vice Chair Cheryl Kagan, for the opportunity to testify today. As you know, I'm the Secretary (and Democratic Leader) of the Montgomery County Board of Elections but I'm testifying today only on my own behalf as an individual. As you also know, our Board had countywide recounts in both the 2018 and 2022 Democratic primary elections, and I would welcome any additional clarification of the recount rules. I'm testifying today to point out a few considerations that I hope you will keep in mind as you consider this legislation.

1. While I don't know if this is the author's intent, the bill's language could be interpreted to question the Canvassers' duplication process and/or the Board's prerogative to rule on voter intent questions for referred ballots. If the Board rules on a voter intent question, it frequently requires a duplication. Any requirement that the Board only count original ballots just reproduces the issues that led to the duplication. We already look at all duplicated ballots and the originals on which they were based when we do a recount, so if you're simply asking us to do that, I think a clarification would be necessary. This is an important question in practical terms, and it's the major factor that changes votes from an original count to a recount. For example, the trailing candidate in last year's Montgomery County Executive primary gained votes in the recount almost exclusively as the result of voter intent decisions by the Board.

2. If a regular ballot (as opposed to a web-delivered ballot) was duplicated due to the Board's decision to interpret voter intent, then those original regular ballots (rather than the duplicate ballots) could be scanned for the purpose of a recount, but you would essentially be overruling the Board's decision on intent, in favor of more overvotes and/or undervotes. As you know, we often find clear (and sometimes less clear) intent expressed by the voter that the scanner would merely record as an overvote (such as when a voter crosses out one choice and circles another).

3. Is the use of the word "facsimile" on page 2, line 8, in A (2) (I) using the common meaning of an *exact* copy? If so, it could limit the Board's prerogative to determine voter intent even when it's very clear. Again, if we're required to duplicate the content of the original ballot "as is," the tabulation could result in counting overvotes or undervotes, even in a case of a clear voter intent. I think having the Board determine voter intent is more appropriate.

4. I have a similar issue on page 3, line 6 with the requirement that we "count only the voter-verifiable paper record, not the duplicate ballot, in a manual recount under this subtitle." It appears to require the Board to count the original ballots as they are, without allowing the Board to use its judgment in the case of an overvote or undervote. If that's the case, then the tabulated results would have more overvotes and undervotes. I can understand if the desire is for Board to revisit any voter intent decisions it made during the original canvass and to check the duplication process correctly reflected those decisions, both of which we already do but is time-consuming, but a prohibition on counting duplicated ballots could be interpreted to undo those voter intent decisions rather than to consider them again.

Thank you for the opportunity to present these concerns to you, and I'd be happy to respond to any questions you may have.