

TESTIMONY BY DAVID NAIMON ON SENATE BILL 115 AT THE HOUSE WAYS AND MEANS COMMITTEE

3-19-2024

My name is David Naimon and I'd like to thank you, Chair Vanessa Atterbeary and Vice Chair Jheanelle Wilkins, for the opportunity to submit written testimony today. As Del. Wilkins knows, I'm the President of the Montgomery County Board of Elections and have served on the Board since 2011, and I'm testifying today behalf of our Board. As you also may recall, our Board had countywide recounts for County Executive in both the 2018 and 2022 Democratic primary elections, as well as a recount in the District 16 House of Delegates race in 2018. We support SB 115 (and HB 371) *as introduced* because we would welcome additional statutory clarification of the recount rules.

The bill codifies some important practices that we followed in our recounts. We looked at all duplicated ballots and the originals on which they were based when we did our recounts. While duplication errors have been extremely rare, it's important in any recount that all duplicated ballots be checked for errors. As you know, ballots are duplicated for a variety of reasons, including the voters' use of web-delivered print-at-home ballots that must be duplicated onto ballot paper or the Board's decision to interpret voter intent when the original ballot is not clear enough to be scanned but the voter's intent is clear to us. As you also may 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). 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 the 2022 Montgomery County Executive primary gained votes in the recount almost exclusively as the result of voter intent decisions by the Board where the scanner would not have recorded a vote.

I'd also like to thank Senator Kagan and the Senate Committee for amending last year's bill (and basing this year's bill as introduced on the amended version of last year's bill) to clarify that local Boards may and must count duplicated ballots after reviewing the voter's original ballot, revisiting any voter intent decisions it made during the original canvass, and, if the Board maintains its original decision, checking to make sure the duplication process correctly reflected those decisions. This strikes me as the best way to conduct the recount.

While our Board supports the legislation as introduced, we oppose the Senate-passed amendment on page 3 lines 12-25. That Senate amendment would create one set of rules of automated recounts and one for manual recounts, but it really should be the same rules for both. The amendment would require a local Board to count *only* the original ballots in a *manual* recount "after review of" the original ballot. There is no language in the Senate-passed amendment for the Board in a manual recount to consider the intent of the voter. By contrast, for an *automated* recount (using scanners), the amendment would require the local Board to examine and compare the original and the duplicate ballot, and, if they differ, then "count the ballot that accurately reflects the voter's intent." If they are the same, the amendment would require that the duplicated ballot be counted.

By having the language considering the voter's intent for the automated recount, but not for the manual recount, the absence of the intent language could be interpreted as *not* allowing the local Board to consider the voter's intent in counting the original ballot in a manual recount. This could require the local Board to treat the original ballot just like the machines would without a Board determination of voter intent, resulting in an overvote even if the voter's intent is clear to us. For example, if a voter fills

in the oval next to my name, then crosses it out and fills in the oval next to your name and draws an arrow to your name saying “this one,” the local Board needs to be allowed to determine that the voter’s intent was to vote for you, not a vote for me or an overvote.

Thank you for the opportunity to submit my testimony to you, and I urge a favorable report on SB 115 or HB 371, as introduced, or alternatively an amendment to remove the Senate-passed amendment from SB 115.