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**TESTIMONY BY BOARD PRESIDENT DAVID A. NAIMON ON HOUSE BILL 839
REGARDING COUNTING VOTES IN NONPARTISAN BOARD OF EDUCATION
CONTESTS ON CERTAIN PROVISIONAL BALLOTS
HOUSE WAYS AND MEANS COMMITTEE 2-18-2025**

Chair Atterbeary and Vice Chair Wilkins, for the record, my name is David Naimon, and I'd like to thank you for the opportunity to testify today. I'd also like to thank Del. Kent Roberson of Prince George's County for introducing this important legislation. I'm the President of the Montgomery County Board of Elections and I'm testifying today on behalf of our Board. Our county board supports this legislation and urges a favorable report. In short, this bill would allow all voters who vote the wrong party ballot in a primary election to have their votes count for the nonpartisan Board of Education, which all voters are eligible to vote for in the primary, regardless of whether they're a Democrat, Republican, a member of another political party, or unaffiliated. This bill would support the longstanding Maryland policy of counting the votes of all eligible voters in the races in which they are eligible to vote.

One of the leading reasons that voters receive a provisional ballot in a primary election is because the voter requested a ballot for a party affiliation that differs from the voter's registered party affiliation on our voter registry. In Montgomery County, in the 2022 primary election we had almost 700 provisional ballots for this reason, and in the 2024 primary election we had more than 350. This could happen because the voter mistakenly remembers the voter's party affiliation, the voter mistakenly believes that Maryland has an open primary, or (very infrequently) a mistake was made in recording the voter's chosen party affiliation in the voter registry. Regardless of the reason, in that circumstance, election judges give the voter a provisional ballot and allow the local Board of Elections to decide if the voter was eligible to cast that ballot. Section 8-802(a)(1)(ii) of the Election Law says, "In a primary election to nominate board of education candidates, any registered voter of the county, regardless of party affiliation or lack of party affiliation, is eligible to vote in those contests for nomination." However, section 11-303(d)(2)(i) of the Election Law requires local Boards to reject the provisional ballot if "the local board determines that the individual who cast the provisional ballot is not qualified to vote *that* provisional ballot" (emphasis added). Currently, the local Board has no choice but to reject the *entire* provisional ballot when a voter votes the wrong party ballot, even though the voter was eligible to vote for the Board of Education.

HB 839 would change this to allow the local Board of Elections to accept the provisional ballot "in part" (rather than rejecting it entirely) so the vote in the Board of Education contests -- in which voters of any party affiliation or no party affiliation have the right to participate -- is counted. Under current law, we routinely accept provisional ballots "in part" when voters are eligible to vote in some races but not others (such as if they vote out of precinct in an incorrect congressional or legislative district, but their votes in statewide or countywide races are still counted) and this would be consistent with that policy.

While a few hundred votes in Montgomery County (and presumably a proportional number in other counties) may not sound like a lot, I would remind you that Montgomery County has had multiple races (not for Board of Education) in recent years that were decided by fewer than 100 votes. In addition, the top two finishers in our 2024 primary election for Board of Education At Large were separated by only 300 votes - it didn't result in a recount because both candidates advanced to the general election, but it was an example of how close our elections can be. It's very painful for us whenever we are required to reject a ballot from an otherwise eligible voter, but it's particularly painful to reject the ballot for a nonpartisan race because the voter voted the wrong partisan ballot. This legislation would eliminate that problem, and we urge you to support it.

Thank you for the opportunity to share our views with you today.