

Maryland Election Track Condition Report For 2018 – Activist & Public Version

By AUDIT-USA, Mimi Kennedy, John Roberts Brakey and Tim White

Revised Feb 27, 2018 JB

Executive Summary

Our goal is simple. We want elections that are **transparent, trackable and publicly verified NOW!** This can be done with current equipment and without passing any new laws.

Maryland votes entirely by paper ballot. In every jurisdiction, sole vendor Election Systems and Software (ES&S) scans a picture of each ballot (both sides) into a digital Ballot Image. Once scanned, the paper ballot is secured away and never brought out again except for a mandated or court-ordered test, audit or recount. ES&S software “captures” the votes off the image, not off the paper.

The high-resolution images protect voters' votes. The paper ballots protect the images. Inserted software or programming can change the correct count in known ways (such as Fraction Magic, which allots different weight to different votes). inserted into. But no way has been found, as of February 2017, to shop Ballot Images on the fly to match a fraudulent tally.

The Ballot Images constitute essential links in the chain of custody of documentary evidence from ballot to certified winner. Indispensable to reconstruction of the election tally for audit and verification, Federal and State election laws require they be retained along with all election materials. Yet in Ohio, Arizona, Alabama, Florida, Virginia and many other states—perhaps Maryland—election officials are criminally destroying the Ballot Images, blocking their intended use for checking the count.

In support of free and fair elections, AUDIT-USA seeks to protect, request, obtain and publicly post all Ballot Images so that anybody can compare official counts to their own. “Free” because the images are anonymous and untraceable by law. Vulnerable voters can vote their conscience free from coercion and vote-buyers. “Fair” because the official returns are subject to verification by crowd-count. And there’s no security concern because tampering the images is pointless because the secure paper ballots are the definitive record.

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**With Digital Scan Voting Systems,
There Are Two Official Versions of Each Ballot**

The one the voter filled out ... and the one the machine counted.

Why is that important?

- * Chain-of-Custody cannot be broken
- * Federal Law 22 months States vary
- * Voted version is hard to get – catch 22 problem
- * The Digital copy is a public record that must be preserved just like other election materials such as Envelopes with signatures

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1. Road Map of Maryland



2. Map of MD Counties by Type of Ballot Used



3. Voting Equipment Type & Vendor

Maryland's 3,900,090 Electors vote from 2032 precincts in Baltimore City and 23 counties, ranging from 12,948 voters to 656,674 in Montgomery County.

All jurisdictions are equipped by a single vendor, Election Systems and Software (ES&S) <https://www.essvote.com/products/13/digital-scan-tabulators/>

Hand-Marked Paper Ballots voted in person at precinct poll sites are counted on the ES&S DS200 Digital Image Scanner.

Hand-Marked Paper Ballots voted by mail are centrally counted by counties on the ES&S DS850 Digital Image Highspeed Scanner (no-fault absentee voting on demand).

Machine-Marked Paper Ballots, voted by disabled electors on the ES&S ExpressVote Ballot Marking Device, the accessible voting unit required in every polling place by the federal Help America Vote Act, are fed into the ES&S DS200 Digital Image Scanner, same as abled voters' Hand-Marked Paper Ballots.

Jurisdiction	Type	Precincts	Total Registration	Make	Model	Equipment Type
Allegany	County	37	43,051	Election Systems & Software	DS200	Digital Scan
Anne Arundel	County	195	377,502	Election Systems & Software	DS200	Digital Scan
Anne Arundel	County			Election Systems & Software	DS850	Digital Scan
Baltimore City	City	299	390,616	Election Systems & Software	DS200	Digital Scan
Baltimore City	City			Election Systems & Software	DS850	Digital Scan
Baltimore County	County	236	546,886	Election Systems & Software	DS200	Digital Scan
Baltimore County	County			Election Systems & Software	DS850	Digital Scan
Calvert	County	23	62,700	Election Systems & Software	DS200	Digital Scan
Caroline	County	8	19,498	Election Systems & Software	DS200	Digital Scan
Carroll	County	35	119,143	Election Systems & Software	DS200	Digital Scan
Cecil	County	28	64,896	Election Systems & Software	DS200	Digital Scan
Charles	County	43	108,334	Election Systems & Software	DS200	Digital Scan
Dorchester	County	40	21,223	Election Systems & Software	DS200	Digital Scan
Frederick	County	84	164,464	Election Systems & Software	DS200	Digital Scan
Frederick	County			Election Systems & Software	DS850	Digital Scan
Garrett	County	19	19,544	Election Systems & Software	DS200	Digital Scan
Garrett	County			Election Systems & Software	DS850	Digital Scan
Harford	County	89	174,334	Election Systems & Software	DS200	Digital Scan
Harford	County			Election Systems & Software	DS850	Digital Scan
Howard	County	118	207,245	Election Systems & Software	DS200	Digital Scan
Howard	County			Election Systems & Software	DS850	Digital Scan
Kent	County	10	12,952	Election Systems & Software	DS200	Digital Scan
Montgomery	County	257	656,674	Election Systems & Software	DS200	Digital Scan
Montgomery	County			Election Systems & Software	DS850	Digital Scan
Prince George's	County	302	575,809	Election Systems & Software	DS200	Digital Scan

Prince George's	County			Election Systems & Software	DS850	Digital Scan
Queen Anne's	County	12	34,795	Election Systems & Software	DS200	Digital Scan
Somerset	County	23	12,948	Election Systems & Software	DS200	Digital Scan
St. Mary's	County	36	69,372	Election Systems & Software	DS200	Digital Scan
Talbot	County	12	26,747	Election Systems & Software	DS200	Digital Scan
Washington	County	52	93,666	Election Systems & Software	DS200	Digital Scan
Wicomico	County	54	59,712	Election Systems & Software	DS200	Digital Scan
Worcester	County	20	37,979	Election Systems & Software	DS200	Digital Scan
Totals		2,032	3,900,090			

Excel spreadsheet available by request from John Brakey at JohnB@AUDITelectionsUSA.org

source data: **Verified Voting**, Oct 2016 <https://www.verifiedvoting.org/verifier/#year/2016/state/24>

Code of Maryland Regulations, Election Title 33.10.01.03 **System Specifications — In General.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.10.01.03.htm>

A. Privacy.

(1) The tabulators shall store digital ballots images randomly to preserve the secrecy of the digital ballot images.

(2) Each ballot marking device shall include a voting booth.

B. Auditability. The tabulators shall provide a vote cast record of all ballots cast and audit log of alerts provided to voters and tabulator events and errors.

C. Memory Device.

(1) Each precinct tabulator and high-speed tabulator shall have a memory device that stores ballot images and reads selections marked or printed on a ballot.

4. Checks Conducted on Voting System

4.1 Logic and Accuracy Test

So-called *Logic and Accuracy (L&A)* tests, done before or after an election, demonstrate that machines can correctly capture and count votes marked on an officially prepared test deck of marked ballots.

L&A tests provide but limited assurance because the ballot response areas are perfectly marked, and the machines are subject to programmable overrides. Auditor Mickey Duniho, master programmer retired after 37 years with the National Security Agency (NSA) testified in court “[An] L&A test only shows that the machines are working right at that moment.” Court video at https://youtu.be/R4_qNCATt6Y.

Code of Maryland Regulations, Election Title 33 Admin Rules 33.10.02.15 **Preelection Testing—When and How Conducted.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.10.02.15.htm>

B. Processing the Vote Simulation Test Deck.

(1) The preelection test shall be conducted by processing a memory card in the preelection logic and accuracy test mode for each voting unit. The test deck shall contain a predetermined test script of at least one vote for each possible selection for each contest.

(2) To test the Election Management System, the System shall generate, for each voting unit to be used in the election, at least one vote for each possible selection for each contest. This test vote may be produced by the central tabulating system automatically, as long as vote totals can be verified for each voting unit. ...

D. Results. If a voting unit, accessible voting equipment, or the Election Management System does not accurately count the test script or test vote:

- (1) The cause for the error shall be ascertained and corrected; and
- (2) An errorless count shall be made before the System may be used.

The security and accuracy of such electronic testing can no longer be taken for granted in an age when Volkswagen can cheat its industry's most rigorous official testing.

If you have NETFLIX, please watch the 1st episode of the new series called "Dirty Money," which demonstrates that Volkswagen "...deliberately programmed 600,000 diesel cars distributed in the U.S. to deceive users – programming them to turn on pollution controls only WHILE BEING TESTED and then turning off when on the road."

Outside of the rigged testing, the vehicles were emitting pollutants 40 to 80 times over the maximum limit.

Now let's think elections:

Similar override programming can render the similar Logic and Accuracy Test meaningless by displaying correct vote tallies during tests and rigged tallies during real-time count—just like Volkswagen.

Watch: <https://www.netflix.com/title/80118100>.



4.2 Audits

Code of Maryland Regulations, Election Title 33.10.03.13 **Audit Trail Required.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.10.03.13.htm>

The ES-2000 System shall provide an audit trail of all ballots cast so that, in a recount, the election can be reconstructed, starting with the individual votes of all eligible voters.

Code of Maryland Regulations, Election Title 33.08.05.03 **Verification and Audit Required.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.08.05.03.htm>

A. A local board of canvassers may not certify the results of an election until the verification and audit procedures required in this chapter have been completed for that election.

Md. Election Law Code Ann. § 11-308 **Verification of vote count:** <https://tinyurl.com/y7kss5u>

(a) In general. -- Within 10 days after any election, and before certifying the results of the election, each board of canvassers shall verify the vote count in accordance with the regulations prescribed by the State Board for the voting system used in that election. ...

Code of Maryland Regulations, Election Title 33.10.02.01 **Definitions.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.10.02.01.htm>

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined. ...

- (3) "Audit trail" means a randomized record of all votes cast in an election, with each voter's selections stored together as a ballot image.

Code of Maryland Regulations, Election Title 33.21.08.01 **Post-Election Verification and Audit.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.21.08.01.htm>

A. **Purpose.** The purpose of the post-election verification and audit program is to:

- (1) Demonstrate and confirm the accuracy of the voting system's tabulation logic;
- (2) Ensure that each accepted vote-by-mail ballot and provisional ballot met the acceptance criteria and conversely that rejected ballots did not meet the criteria; and
- (3) Confirm that the number of ballots cast in a voting center equals the number of voters who checked in to vote at the voting center;

B. Verification and Audit Program.

- (1) The State Administrator shall establish a post-election verification and audit program for special elections conducted by mail.
- (2) A local board shall perform the post-election verification and audit developed by the State Administrator.

Post-Election Tabulation Audit Pilot Program Report

http://www.elections.state.md.us/press_room/documents/Post%20Election%20Tabulation%20Audit%20Pilot%20Program%20Report.pdf

Maryland State Board of Elections, Oct 2016

Post-Election Tabulation Audit Legislative Report

http://www.elections.state.md.us/press_room/documents/PostElectionTabulationAuditLegislativeReport.pdf

Maryland State Board of Elections, Dec 22, 2016

4.3 Recounts

Md. Election Law Code Ann. § 12-101 **Petition for recount:** <https://tinyurl.com/y8po9rz8>

(a) In general. -- A **candidate** for public or party office who has been defeated based on the certified results of any election conducted under this article **may petition for a recount** of the votes cast for the office sought. ...

Code of Maryland Regulations, Election Title 33.12.03.02 **Attendance.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.12.03.02.htm>

A. **Recount Open to Public.** Every recount shall be conducted publicly, open to candidates and their representatives, other parties to the recount, the media, and the general public.

Code of Maryland Regulations, Election Title 33.12.06.02 **Optional Recount Methods.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.12.06.02.htm>

For votes to be recounted under this chapter, the petitioner shall specify whether the recount shall be conducted by:

- A. Manually retabulating the election totals reports printed from each voting unit on election day;
- B. Reloading all memory cards into the central system;
- C. Manually retabulating the election totals reports obtained from each voting unit's archive memory; or
- D. **Manually retabulating the ballot images.**

Code of Maryland Regulations, Election Title 33.12.05.03 **Using Tabulating Equipment.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.12.05.03.htm>

Code of Maryland Regulations, Election Title 33.12.05.04 **Manual Recount—General.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.12.05.04.htm>

Code of Maryland Regulations, Election Title 33.12.05.05 **Manual Recount—Sort Method.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.12.05.05.htm>

Code of Maryland Regulations, Election Title 33.12.05.06 **Manual Recount—Tally Method.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.12.05.06.htm>

5. Law and Rule Protecting Ballot Images

5.1 "Ballot" definition does not include Ballot Image

Importance: In some states (e.g., AZ, WA) ballot images are legally equated with paper ballots, exposing them to strict security provisions to avoid paper ballot tampering, which include onerous limitations on public access. By excluding "ballot image" from definition of "ballot," Maryland law, rightly, does not impose paper ballot security

provisions on ballot images, recognizing that tampering of disclosed ballot images can never survive exposure by simple comparison with the secure paper ballot of record.

Md. Election Law Code Ann. § 1-101 Definitions: <https://tinyurl.com/yckqem6j>

(d) Ballot or official ballot. --

(1) "Ballot" or "official ballot" includes:

- (i) an absentee ballot;
- (ii) a provisional ballot;
- (iii) a document ballot; or
- (iv) a voting machine ballot.

5.2 Ballot Images Must Be Saved

Federal law requires that all "records and papers" of the election must be kept for 22 months when any federal office is on the ballot:

Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation.

52 USC 20701 Pub. L. 86-449, title III, §301, May 6, 1960, 74 Stat. 88

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election. ... Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Code of Maryland Regulations, Election Title 33.03.01.01 Definitions.

<http://www.dsd.state.md.us/comar/comarhtml/33/33.03.01.01.htm>

B. Terms Defined. ...

(2) Record.

- (a) "Record" means any documentary material, in any form or format, including paper, microfilm, electronic, or any other medium, that is:
 - (i) Created by the State Board or a local board; or
 - (ii) Received by the State Board or a local board in connection with public business.
- (b) "Record" includes any numeric, graphic, textual, or cartographic information that is recorded...

Election Systems and Software EVS 5.2.0.0 Certification Testing Report

www.elections.state.md.us/voting_system/documents/Closed_Certification%20Testing%20Report%20for%20ES&S%20EVS_FINAL.pdf

Maryland State Board of Elections 12-4-14

p. 16: The system has the capability store images of each ballot cast on the memory device.

Code of Maryland Regulations, Election Title 33.10.02.10 Registering and Recording Votes.

<http://www.dsd.state.md.us/comar/comarhtml/33/33.10.02.10.htm>

B. Specific Requirements.

- (1) Votes shall be recorded in audit trail memory, both in the voting unit and on the memory card, in two different formats:
 - (a) As summary totals for each candidate and question; and
 - (b) As individual ballot images of each voter's selections, randomized so as to protect voter secrecy.

Code of Maryland Regulations, Election Title 33.10.01.02 **System Description.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.10.01.02.htm>

A. Precinct Tabulator. The precinct tabulator is digital scanning and tabulating equipment with a: ...

(2) Removable memory device to store ballot images and election results; ...

C. High Speed Tabulator. ...

(2) The high speed tabulator includes: ...

(b) Removable memory device to store ballot images and election results; ...

MD Code, Election Law, § 16-301. **Willful neglect of duties or corrupt or fraudulent acts**

[https://govt.westlaw.com/mdc/Document/N4A0F5DD09CE011DB9BCF9DAC28345A2A?viewType=FullText&originati onContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N4A0F5DD09CE011DB9BCF9DAC28345A2A?viewType=FullText&originati onContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

(a) An election official or an official of a political party may not willfully neglect official duties under this article or engage in corrupt or fraudulent acts in the performance of official duties under this article.

5.3 Records retention, security, storage

MD Code, Election Law, § 16-701 **Destruction, defacement, or removal of records**

[https://govt.westlaw.com/mdc/Document/N4B5C02109CE011DB9BCF9DAC28345A2A?viewType=FullText&originati onContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N4B5C02109CE011DB9BCF9DAC28345A2A?viewType=FullText&originati onContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Person with custody of records

(a) A person with custody of election records may not willfully and knowingly:

(1) destroy, deface, falsify, remove, or conceal any record related to voting; ...

Code of Maryland Regulations, Election Title 33.03.01.03 **Program Components.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.03.01.03.htm>

The Program shall comprise procedures for, among other things, the: ...

(1) Retention of all records for the periods required by law or otherwise as needed...

Code of Maryland Regulations, Election Title 33.10.01.28 **System Security — Retention of Election Databases and Artifacts.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.10.01.28.htm>

A. In General. Each time a local board creates a back-up database, the local board shall secure and retain that back-up database. ...

D. Duration. The election databases and test scripts and decks shall be retained for as long after the election as required by:

(1) Law or regulation;

(2) Court order; or

(3) State Administrator directive.

Code of Maryland Regulations, Election Title 33.10.01.25 **Return of Materials from Voting Locations.**

www.dsd.state.md.us/comar/comarhtml/33/33.10.01.25.htm

A. In General. The judges' manual shall provide detailed procedures for the secure, orderly, and accountable return of all election equipment and other election materials from voting locations.

B. Return of Priority Items.

(1) These procedures shall provide for the priority handling of:

(a) Memory devices;

(b) Voted ballots; ...

C. Secure Storage. On their return to the local board or counting center, unused ballots, spoiled ballots, and all materials required for the official canvass shall be placed in secured storage.

Md. Election Law Code Ann. § 11-306 **Custody and security of documents and records** related to the canvass

<https://tinyurl.com/yaj29hhd>

The person designated to maintain custody of the documents and records required under this title shall maintain and secure those items in accordance with the regulations adopted by the State Board.

Md. Election Law Code Ann. § 9-217 **Prohibited practices:** <https://tinyurl.com/ycmg75ru>

(a) In general. -- A person may not use, distribute, possess, print, or reproduce a ballot other than as authorized...

6. Public Information Act Request for Ballot Images

6.1 Right to Public Records

Md. General Provisions Code Ann. § 4-103 **General right to information:** <https://tinyurl.com/yb5kax9x>

(a) In general. -- All persons are entitled to have access to information about the affairs of government...

(b) General construction. -- To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

...

Code of Maryland Regulations, Election Title 33.04.01.03 **Who, When, and Where.**

<http://www.dsd.state.md.us/comar/comarhtml/33/33.04.01.03.htm>

A. Who May Request. Any person may request to inspect or copy a public record that is in the custody and control of the State Board or a local board.

B. Time of Inspection. An applicant may inspect a public record during the hours of 9 a.m. to 4 p.m. ...

6.2 Maryland Public Information Act Manual

http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf

Office of the Attorney General, Brian E. Frosh, Attorney General, October 2015 Fourteenth Edition

p. 1-4:

...burden falls on any governmental entity or official asserting exclusion from the PIA to show a legislative intent to exempt...

p. 2-1:

A. Right to Inspect Records

...GP § 4-201(a)(1), which states that, "[e]xcept as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." ...

p. 2-3:

The 2011 law also provided that, "if a public record exists in a searchable and analyzable electronic format, the act of a custodian providing a portion of the public record in a searchable and analyzable electronic format does not constitute creating a new public record." ...[A]n agency is obligated to extract data from an existing database if it has the capacity to do so...

p. 2-4:

[An] agency is not required to commit itself to provide records that have not yet been created.

p. 3-1:

The PIA exceptions fall into three basic categories.

First, ...if a source of law outside the Public Information Act prevents disclosure. GP § 4-301.

Second, the mandatory exceptions in Parts II and III impose an affirmative obligation on the custodian to deny...

Third, the exceptions in Part IV allow the custodian to exercise discretion as to whether the specified records are to be disclosed. ...

In addition, Part V contains a "last resort" provision, which allows a custodian to deny inspection temporarily and seek court approval... Unless an agency obtains a special court order under the statute to justify withholding a record, there is no basis for withholding a record other than an exception in the PIA...(there is no discrete "public interest," "personal information," or "unwarranted invasion of privacy" exemption to PIA).

p. 3-7:

Nor may an agency regulation provide an independent basis for withholding a public record... A contrary interpretation would allow State agencies at their election to undermine the Act.

p. 3-42:

Special Court Orders — Preventing Disclosure Where No Exception Applies

A record required to be disclosed under the PIA may be withheld temporarily if the official custodian determines that disclosure would "cause substantial injury to the public interest." GP § 4-358. Within 10 days after this denial, the official custodian must file an action in the appropriate circuit court seeking an order to permit the continued denial of access. ...

After a hearing, the court must make an independent finding that "inspection of the public record would cause substantial injury to the public interest."

p. 3-43:

The fact that some portions of a particular record may be exempt from disclosure does not mean that the entire record may be withheld... If a record contains exempt and non-exempt material, the custodian must permit inspection of the non-exempt portion of a record, typically by redacting the exempt material. GP § 4-203(c)(1)(ii).

6.3 Contents of a Written Request

Maryland Open Government Guide: Access to Public Records and Meetings in Maryland

<https://www.rcfp.org/rcfp/orders/docs/ogq/MD.pdf>

Reporters Committee for Freedom of the Press, Sixth Edition 2011

p. 15 (abridged):

- (1) seeking copies of public records pursuant to the PIA, citing to the relevant provisions;
- (2) particularized and detailed description of the records sought, including relevant dates;
- (3) request for a written statement as to the reason for any denial of the right to copy, with citation to the law or regulation supporting the agency's decision, and the available remedies for review of a denial;
- (4) request for any reasonably segregable portion of the records if parts are exempt;
- (5) request for fee information or fee schedules regarding the search, preparation and reproduction of the records;
- (6) request for a copy of all PIA-implementing regulations adopted by the agency;
- (7) advising agency of applicant's right to timely PIA response;
- (8) advising that the applicant will seek appropriate judicial relief for a denial of records if agency fails to respond within the statutory time.

6.4 Sample Maryland Public Records Request

Source: *Maryland Public Information Act Manual* (14th ed., October 2015) Appendix A-1

http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf

August 31, 2015

Mr. Freeman Information
Executive Director
License Commission
110 First Street
Baltimore, Maryland 21200

Dear Mr. Information:

This is a request under the Maryland Public Information Act, Title 4 of the General Provisions of the Maryland Code. I am making this request on behalf of my client, Wanda Know. In this capacity, I wish to inspect all records in your custody and control pertaining to the following:

(A) the denial by the Commission of the license or permit to Wanda Know which occurred on August 17, 2015; and
(B) any studies, statistics, reports, recommendations, or other records that treat in any fashion the Commission's actions, practices, or procedures concerning the granting or denial of licenses or permits during the last three fiscal years.

If all or any part of this request is denied, I request that I be provided with a written statement of the grounds for the denial. If you determine that some portions of the requested records are exempt from disclosure, please provide me with the portions that can be disclosed.

Please advise me as to the cost, if any, for inspecting the records described above. I anticipate that I will want copies of some or all of the records sought. If you have adopted a fee schedule for obtaining copies of records and other rules or regulations implementing the Act, please send me a copy.

I look forward to receiving disclosable records promptly and, in any event, to a decision about all of the requested records within 30 days. Thank you for your cooperation. If you have any questions regarding this request, please telephone me at the above number.

Sincerely,

Connie Have

Attorney-at-Law

cc: Evan Hand, Commission Attorney

6.5 Who to Send Public Records Request to?

Code of Maryland Regulations, Election Title 33.04.01.06 Filing Written Request.

<http://www.dsd.state.md.us/comar/comarhtml/33/33.04.01.06.htm>

The applicant shall address a written request for a record of the board to the custodian of the record.

Maryland State Board of Elections Public Information Act Representative 2/12/2018

Jared DeMarinis (410) 269-2840 jared.demarinis@maryland.gov

www.election.state.md.us

151 West Street, Suite 200

Annapolis, MD 21401

Local Boards of Elections by County

<http://msa.maryland.gov/msa/mdmanual/41electp/html/local.html>

Most recent list to find the Records Custodian for a State, county, or municipal agency (2/12/2018):

State, county, and municipal Public Information Act representatives

http://www.marylandattorneygeneral.gov/OpenGov/Documents/Appendix_J.pdf

6.6 Time Limits for Agency Response—Statutory, Regulatory or Court-Set

Maryland Open Government Guide: Access to Public Records and Meetings in Maryland

<https://www.rcfp.org/rcfp/orders/docs/ogg/MD.pdf>

Reporters Committee for Freedom of the Press, Sixth Edition 2011

p. 15 (condensed):

Within 30 days after receiving an application, custodian must grant or deny the application.

If approved, custodian must produce the record immediately.

If denied, custodian must immediately notify the applicant within 10 working days, give the applicant a written statement that sets forth the reasons and the legal authority for the denial, and notice of PIA remedies provided for review of denial. This 10-day period is in addition to the maximum 30-days for granting or denying a request. Custodian must permit inspection of any part of the record that is subject to access and is reasonably severable.

If application is submitted to an individual who is not the custodian, then within 10 working days that individual must give applicant notice of that fact and, if known, the name of the custodian and the location of the public record.

Time limits imposed may not in any event be extended for more than 30 days.

Failure to disclose within the prescribed time period will constitute a denial for purposes of judicial review.

7. Ballot Images Must be Disclosed

State Board of Elections is empowered to "direct" all local election officials to retain secured ballot images 22 months AND to be their "depository" AND to make ballot images "available to the general public."

Md. Election Law Code Ann. § 2-102 Powers and duties: <https://tinyurl.com/ydh5qh9w>

(b) ...to ensure compliance with this article and with any requirements of federal law, the State Board shall:

- (1) supervise the conduct of elections in the State;
- (2) direct, support, monitor, and evaluate the activities of each local board;...
- (8) canvass and certify the results of elections as prescribed by law;
- (9) make available to the general public, in a timely and efficient manner, information on the electoral process ... and information gathered and maintained regarding elections;
- (10) subject to § 2-106 of this subtitle and § 13-341 of this article, receive, maintain, and serve as a depository for elections documents, materials, records, statistics, reports, certificates, proclamations, and other information prescribed by law or regulation;...

Md. Election Law Code Ann. § 16-303 Operation of polling place: <https://tinyurl.com/y9owjmsh>

(a) An election judge, while performing official duties at a polling place, may not willfully and knowingly: ...

- (3) refuse to follow the instructions of the election director with respect to...the use of voting equipment...

MD Code, Election Law, § 16-701 Destruction, defacement, or removal of records: <https://tinyurl.com/y9spndb>

Person with custody of records

(a) A person with custody of election records may not willfully and knowingly:

- (1) destroy, deface, falsify, remove, or conceal any record related to voting; ...

ALERT! Md. Election Law Code Ann. § 9-201 In general: <https://tinyurl.com/yd2ah7gm>

(a) Requirement of ballots in voting. -- In any election conducted under this article:

- (1) all voting shall be by ballot; and
- (2) only votes cast on a ballot may be counted.

(b) Compliance with this subtitle. -- All ballots shall comply with the provisions of this subtitle.

(c) Other uses prohibited. -- A ballot may not be used for any purpose not authorized by this article.

Discussion:

This line is weak, but may be among few citations available for officials to muster in support of exempting Ballot Images from disclosure.

But Ballot Images are not legally the same as "ballots," which refer to the paper records.

Paper ballots are susceptible to tampering during any handling, which must be kept to a minimum.

By contrast, simple comparison with the paper will readily expose my slew of photoshopped "votes for me" Ballot Images as tampered counterfeits.

7.1 Ballot Images are already viewed by public watchers

Md. Election Law Code Ann. § 10-311 **Challengers and watchers:** <https://tinyurl.com/y9yykbwd>

(a) Designation and removal of challengers and watchers. --

(1) The following persons or entities have the right to designate a registered voter as a challenger or a watcher at each place of registration and election:

- (i) the State Board for any polling place in the State;
- (ii) a local board for any polling place located in the county of the local board;
- (iii) a candidate;
- (iv) a political party; and
- (v) any other group of voters supporting or opposing a candidate, principle, or proposition on the ballot. ...

Md. Election Law Code Ann. § 11-202 Election judges -- Procedures for vote

counting: <https://tinyurl.com/y85znvs6>

(c) Observation of judges while performing their duties. -- **Judges may be observed, while performing their duties...**

7.2 Maryland Open Government Guide: **Access to Public Records** and Meetings in Maryland

<https://www.rcfp.org/rcfp/orders/docs/ogg/MD.pdf>

Reporters Committee for Freedom of the Press, Sixth Edition 2011

p. 11:

J. **Election records.**

There is **no statutory or case law addressing** this issue.

7.3 **ALERT!** Cast Ballots as Open Records Survey

http://www.nass.org/index.php?option=com_docman&task=doc_download&gid=95

National Association of Secretaries of State; responses received as of March 29, 2007

State	Are Cast Ballots Open Records, Open to Public	If yes, at what point are ballots accessible to public
MD	Maryland law does not treat ballots as records for which inspection is mandatory under the Public Information Act.	However, we have allowed the public and press to review each ballot but only after the canvass and time for recount had passed....

Discussion:

This possibly outdated NASS survey apparently simply pasted in Maryland's 2005 responses.

The left column is at first alarming, as it stands out as the only official declarative statement of non-disclosability of ballots or images found.

However, it cites no authority, and wording suggests it may be officials' makeshift unsupported policy.

Combined with second column, Maryland in 2005 has an open legal door for the critical winning step of *getting the saved images*—even if not in time to correct a fraud or error.

8. Contesting Denial of Ballot Images and Winning Attorney Fees

Maryland Open Government Guide: **Access to Public Records** and Meetings in Maryland

<https://www.rcfp.org/rcfp/orders/docs/ogg/MD.pdf>

Reporters Committee for Freedom of the Press, Sixth Edition 2011

p.5 [condensed]:

Are there **sanctions for noncompliance?**

Yes. The circuit court may

- **enjoin the agency from withholding** the public record,
- pass an **order for the production** of the record,

- **award actual damages including attorneys' fees** to the complainant if the Court finds by clear and convincing evidence that the complainant substantially prevailed in the suit seeking enforcement of the Act.
- **assess damages** against a Defendant governmental unit if the court finds by clear and convincing evidence that it willfully violated the PIA or an order compelling production. § 10-623(d).

8.1 Issues the court will address

Maryland Open Government Guide: Access to Public Records and Meetings in Maryland

<https://www.rcfp.org/rcfp/orders/docs/ogg/MD.pdf>

Reporters Committee for Freedom of the Press, Sixth Edition 2011

p. 16-17 [condensed]:

- Denial.** The court may address all issues relating to denial of access to the public record.
- Fees charged for records.** The court may address fee issues.
- Delays.** Because delay beyond statutory time limits may constitute a denial, the court may address delay issues.

Pleading format.

The complainant files a complaint with the circuit court and the defendant files an answer or otherwise pleads within 30 days after service. The defendant may submit a memorandum in support of its decision to deny access.

Judicial remedies available.

The court may

- **enjoin** the state, political subdivisions, or their employees **from withholding** the public record
- **order production** of the record that was withheld
- **punish** the responsible employee for contempt for noncompliance with the order. *See also Office of the State Prosecutor v. Judicial Watch Inc.*, 356 Md. 118, 127, 737 A.2d 592, 597 (1999) (holding that a trial court's order requiring the Office of the State Prosecutor to produce...was an injunction under the PIA).
- **award actual damages** against the governmental unit if it knew its denial was without basis. § 10-623(d)(1).
- **hold custodian liable for damages** for failure to petition a court for order to continue temporary denial

Litigation expenses.

If the court determines complainant has **substantially prevailed**, the court **may assess reasonable counsel fees and other litigation costs** (good faith of agency taken into consideration in determining whether to award fees and costs).

a. Attorney fees.

The awarding of attorney fees lies with the discretion of the trial court. **When** the condition that the plaintiff **"substantially prevail"** is met, the **court must exercise its discretion** in determining **whether an award of fees** is appropriate. The PIA offers no guidance for the exercise of that discretion. However, the Maryland Court of Appeals has held that the trial court must consider the following non-exclusive **factors**: (1) the **public benefit** derived from the suit; (2) the **nature of the complainant's interest in the released information**; (3) **whether** the agency had a **reasonable legal basis for withholding** the information.

b. Court and litigation costs.

Reasonable court costs actually incurred are also recoverable.

Fines.

A **willful and knowing violation** of the PIA constitutes a misdemeanor and a fine **up to \$1,000** may be imposed. § 10-627(b).

11. Other penalties.

The PIA also provides for **disciplinary action**. § 10-623(e). The court must send a certified copy of its finding to the appointing authority of the custodian, **upon a finding that the custodian acted arbitrarily and capriciously**...

12. Settlement, pros and cons.

Settlement may expedite receipt of the records. Otherwise, the applicant may not gain access to the records until resolution of the lawsuit. On the other hand, if the applicant's entitlement to certain records is unclear, a court ruling may be desirable for future course of action.

E. **Appealing initial court decisions.**

1. **Appeal routes.**

A party may take an expedited appeal of an initial court decision. § 10-623(c). An appeal must first be taken to the **Maryland Court of Special Appeals**, which **must accept the appeal**. Further appeal is available **then to the Court of Appeals**, which has the discretion to accept or reject review.

2. **Time limits for filing appeals.**

The time limit for filing an appeal is **thirty days** after the entry of a final judgment. Md. Rule 8-202.

Maryland Public Information Act Manual

http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf

Office of the Attorney General

Brian E. Frosh, Attorney General

October 2015 Fourteenth Edition

p. 3-42:

Special Court Orders — Preventing Disclosure Where No Exception Applies

A record required to be disclosed under PIA **may be withheld temporarily if the custodian determines disclosure would "cause substantial injury to the public interest."** Within 10 days after this denial, **custodian must file seeking an order to permit continued denial**. The applicant is entitled to notice and has the right to appear before the circuit court. An official custodian is liable for **actual damages for failure to petition**. The **court must make an independent finding that "inspection of the public record would cause substantial injury to the public interest."**

9. Upcoming Elections

candidate filing deadline	February 27, 2018
Statewide closed Primary	June 26, 2018
Statewide General Election	November 6, 2018

9.1 Races to Watch

1. Chelsea Manning vs incumbent Senator Ben Cardin, Democratic Primary

US Senate election in Maryland, 2018—*Wikipedia*

https://en.wikipedia.org/wiki/United_States_Senate_election_in_Maryland,_2018

US Senate election in Maryland, 2018—*Ballotpedia*

https://ballotpedia.org/United_States_Senate_election_in_Maryland,_2018

2. Ben Jealous for Governor, Democratic Primary

Maryland gubernatorial election, 2018—*Wikipedia*

https://en.wikipedia.org/wiki/Maryland_gubernatorial_election,_2018

3. Joel Rubin, election integrity campaigner, for Delegate District 18, Democratic Primary

running to join with current House of Delegates Al Carr to press for state action to secure MD elections

Maryland House of Delegates elections, 2018—*Ballotpedia*

https://ballotpedia.org/Maryland_House_of_Delegates_elections,_2018

Maryland elections, 2018

https://ballotpedia.org/Maryland_elections,_2018

10. Election Officials and Contacts

The 23 Counties and City of Baltimore conduct Maryland Elections.

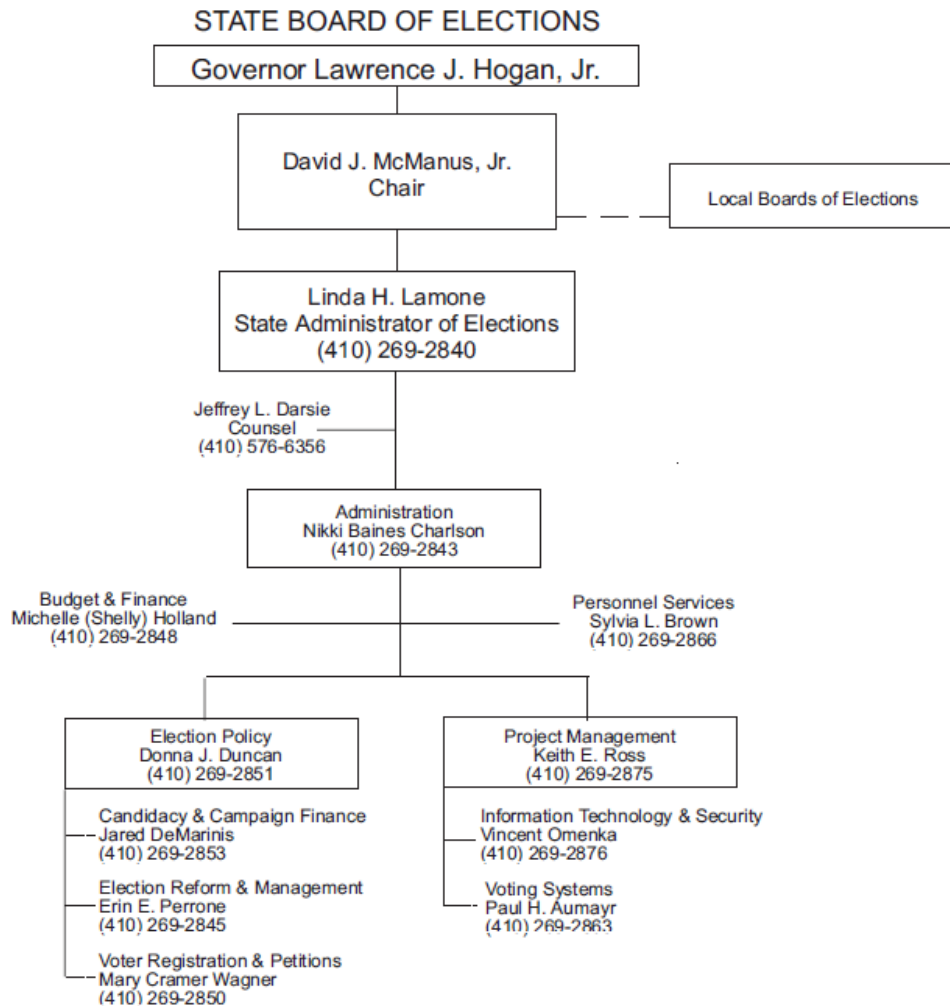
These jurisdictions report State and Federal election returns directly to State Board of Elections.

Maryland upcoming Primaries and General elections in 2018:

- Statewide Primary elections is June 26, 2018
- Statewide General Election is November 6, 2018

10.1 Organization Chart

source: Maryland Manual On-Line, State Board of Elections, 9 March 2017
<http://msa.maryland.gov/msa/mdmanual/25ind/pdf/30elect.pdf>



10.2 State Board of Elections

Linda H. Lamone, Esq.
State Administrator of Elections

P.O. Box 6486

151 West St., Suite 200
Annapolis MD 21401-0486

(410) 269-2840
(800) 222-8683 toll free, Maryland
(410) 974-2019 fax
(800) 735-2258 Maryland relay service

info.sbe@maryland.gov
linda.lamone@maryland.gov
www.electionsmaryland.com

151 West St., Annapolis, Maryland, September 2008. Photo by Diane F. Evartt

10.3 Personnel

source: <http://msa.maryland.gov/msa/mdmanual/25ind/html/30elect.html>

STATE BOARD OF ELECTIONS

Appointed by Governor with Senate advice & consent to 4-year terms:

David J. McManus, Jr., Esq.	(R) 2019; <i>Chair (chosen by Board)</i>
Michael R. Cogan, Esq.	(R) 2019
Kelley A. Howells	(R) 2019
Gloria G. Lawlah	(D) 2020
Patrick J. Hogan	(D) 2021

COUNSEL

Jeffrey L. Darsie, *Counsel* (410) 576-6356

DATA INTEGRITY & REPORTS

Janet L. Smith, *Manager* (410) 269-2864; janet.smith1@maryland.gov

FIELD SUPPORT DIVISION

Kimberly A. Meiklejohn, *State Manager* (410) 269-2878; kim.meiklejohn@maryland.gov

INFORMATION TECHNOLOGY & SECURITY DIVISION

Vincent Omenka, *Director of Information Technology* (410) 269-2842; vincent.omenka@maryland.gov

VOTING SYSTEMS DIVISION

Paul H. Aumayr, *Director* (410) 269-2860; paul.aumayr@maryland.gov

10.4 Local Boards of Elections

Local Boards of Elections by County

<http://msa.maryland.gov/msa/mdmanual/41electp/html/local.html>

Municipal Elections Calendar

<http://msa.maryland.gov/msa/mdmanual/01glance/html/munelect.html>

11. References, Sources, Research Tools

State Board of Elections

<http://msa.maryland.gov/msa/mdmanual/25ind/html/30elect.html>

Elections of Maryland (administrative)

<http://www.electionsmaryland.com/>

Maryland Elections

<http://msa.maryland.gov/msa/mdmanual/41electp/html/00list.html>

Maryland Election Law

[https://govt.westlaw.com/mdc/Browse/Home/Maryland/MarylandCodeCourtRules?guid=NB74427509B6911DB9BCF9DAC28345A2A&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Browse/Home/Maryland/MarylandCodeCourtRules?guid=NB74427509B6911DB9BCF9DAC28345A2A&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

Local Boards of Election

<http://msa.maryland.gov/msa/mdmanual/41electp/html/local.html>

Constitution of Maryland

Only Section Bearing upon Ballot Images:

The General Assembly shall pass Laws necessary for the preservation of the purity of Elections.

[https://govt.westlaw.com/mdc/Document/NC70871D09CD811DB9BCF9DAC28345A2A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/NC70871D09CD811DB9BCF9DAC28345A2A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Article I. Elective Franchise § 7. Preservation of purity of elections

Code of Maryland (Statutes) Unannotated - LexisNexis

<http://www.lexisnexis.com/hottopics/mdcode/>

Annotated Code of Maryland (Statutes)

<http://mgaleg.maryland.gov/webmga/firmStatutes.aspx?pid=statpage&tab=subject5>

Maryland Administrative Procedure Act—Regulations

2010 Maryland Code, Title 10 - Governmental Procedures, Subtitle 1

<https://law.justia.com/codes/maryland/2010/state-government/title-10/subtitle-1>

Code of Maryland Regulations (COMAR) Online—Search

<http://www.dsd.state.md.us/COMAR/ComarHome.html>

Maryland Title 4 Public Information Act

[https://govt.westlaw.com/mdc/Browse/Home/Maryland/MarylandCodeCourtRules?guid=NF6292290F67E11E384FBC0A4074EEC71&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Browse/Home/Maryland/MarylandCodeCourtRules?guid=NF6292290F67E11E384FBC0A4074EEC71&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

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Reporters Committee for Freedom of the Press, Sixth Edition 2011

12. Outstanding Questions for Evaluating Appropriateness for Ballot Image Project

From John R Brakey

I think we visited the promised land of elections today. Montgomery, Maryland looks to be doing it right!

Hi Folks,

Attorney Chris Sautter and I went to Montgomery Maryland to the county board of elections office and met with deputy Election director Allyson McLaughlin and Outreach Coordinator Gilberto Zelaya II, PHD., CERA. I was fortunate that Allyson knew Chris from his work in DC and as a professor.

Maryland Outstanding Questions for Evaluating Appropriateness for Ballot Image Project.

Montgomery County

656,674 registered voters (9/2016)
257 precincts (9/2016)

Election Director

Margaret Jurgensen
18753 N. Frederick Avenue
Suite 210
Gaithersburg MD 20879
Phone (240) 777-8500
Fax (240) 777-8505
[Email](#)
[Website](#)

Q. Voter registration; how hard to reg? A. They going to Barbers Shops and Hair Salons and proving clipboards and registration form Q. how many days before election for cut off? 21 days

Q. Can ex-felons vote? A. YES

Q. Voter ID at polls? NO

Does state have Early voting? A. YES Q. If so, when does it start? A. 8 days

Q. What percent is Absentee Voting and Early voting? Next election could be 25%

- Q. Who Programs elections in MD? A. done by state.
- Q. Do you have a statewide election procedure manual? YES
- Q. Does MD have a Poll workers manual? Yes, and I forgot to get ask before I left. Should be able to find on line.
- Q. How does MD transmit voting system election results? 1) thumb drive "soft shoe network" 2) phone modem 3) Virtual Private Network SIMM card? **A. all done by thumb drive, they use two, one go with runner to central and the other goes with ballots and other election records. IMPORTANT They also confirmed both thump drives from the DS200 have the **Ballot Images, the Cast Vote Record and the totals produced from the DS200.** Basically, they have all they need to upload to this information publicly online election night!!!**
- Q. How does MD allot election oversight powers among political players? 1) Candidate 2) Party 3) Public? A. Everybody has rights, political parities set on county board of elections, candidates and request actions, and public does to.
- Q. In your state are ballots a public record? YES
- Q. Does the election system reporting show the difference between VBM, Precinct Voting and Provisional? Reason, we are looking for red and blue shifts also called the "Splits" from normal. A. The 11 Early Voting centers become a Precinct and are counted election day.
- When does vote tabulation start? A. Early Voting is counted election day and then Provisional ballots and Absentee ballots start counting two days later.

- As to the ES&S DS850 High speed counter, the inkjet, MD state law at this time didn't allow the machine to place a serialize number. That will need to change in time, especially when absentee ballots turn into Vote by Mail and it grows bigger.

We also talk about the ES&S Express Vote, it NOT used in Early Voting except for the Handicap. I call them the \$6,000 pencils. Some counties use them in Early Voting and all it does is produce a ballot that is marked by a machine that then goes into the Digital Scanner. Then on election day, one is send one out to every precinct for handicap voter, this is required by federal law. But using then in early voting is not required except to have one again for handicap. These ballot Images are much easier to forage/ counterfeit. Hand marked are much harder to change.

They basically said that ballot images are very good for auditing and adjudication.

On top of that they've had Larry Moore company's "Clear Ballot" In, to rerun the ballot images for auditing the overall system.

To this date no one has filed a public request for them. They don't see a problem, but they have to obviously run it past her legal department.

Chris thinks and I agree that they should be asked for after the June primary because undoubtedly there are going to be some close elections according to Chris. We are still reaching out to others in the state and working our way up the stream of power. This would be a quick way to resolve and prove that they could be publicly released that way we would have people to work with us, to make it happen plenty of positive pressure from hopefully candidates, public and possibly a party rather than looking outsiders' agitators.

Overall for me, it was great to meet two people who are activist at heart and proud of what they do in elections.

Let's hope that Maryland (or Maine) becomes the 1st State to say, "*As Maryland goes so goes the nation.*" If you're worried about Russians and or Hackers. Transparency is the solution! Make Election Transparent Trackable and Publicly Verified.

We still have much more to di in Maryland but we off off tomorrow to Fairfax County, Virginia, they also have ES&S DS200 and DS850.

Fairfax County

683,561 registered voters (10/2016)

243 precincts (10/2016)

Election Board Chair

Stephen Hubt

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Fax (703) 324-2205

[Email](#)

[Website](#)

Best regard, John R Brakey