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May 29, 2018

Mariana C. Cordier, Esq.  
Cordier Law Offices, LLC  
966 Hungerford Drive, #30B  
Rockville, Maryland 20850

Re: 2018 Gubernatorial Primary Election Ballot

Dear Ms. Cordier:

I write in response to your letter of May 28, 2018 to Linda Lamone in her capacity as State Administrator.

As you note in your letter, § 5-1204 of the Election Law Article governs changes to ballots following the filling of the vacancy in the contest for the Democratic nomination for Governor and Lieutenant Governor in this year's primary election. That statute tasks the State Administrator with determining whether, if "a vacancy in candidacy is properly filled and certified to the appropriate board within the prescribed under this title," there is "sufficient time for the local board to change the ballots." Elec. Law § 5-1204(a) – (b). If the State Administrator determines, in consultation with the election director of the local board, that there is sufficient time, "the local board shall change the ballots." *Id.* § 5-1204(a). On the other hand, if, as here, the State Administrator determines that there is not sufficient time, "the local board shall take appropriate measures to notify the voters of:

- (1) the change in candidacy;
- (2) the procedure to be used by the voter to record the voter's vote; and
- (3) the procedure to be used by the local board to conduct the canvass.

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*Id.* § 5-1204(b).<sup>1</sup>

On May 17, 2018, shortly after Valerie Ervin timely filed papers with the State Board of Elections to fill the vacancy in candidacy caused by the May 10 death of Kevin Kamenetz, the State Administrator determined that there was not sufficient time to change the ballots to reflect the successor candidacy of Ms. Ervin and her Lieutenant Governor candidate, Marisol Johnson. The State Administrator made this determination after consulting, through her staff, with the State Board’s vendors and with the election directors of local boards of election across the State. Contrary to the allegations in your letter, the State Administrator did not “disregard . . . the option to reprint the ballot,” Letter at 1; she considered that option and determined that there is not sufficient time. The State Administrator rejects your assertion that this determination was in anyway “arbitrary and capricious.” *Id.*

Please find attached a list of the measures that the State Board and the local boards will be taking to notify voters of the change in candidacy, the procedure to be used by the voter to record the voter’s vote, and the procedure to be used by the local board to conduct the canvas, as contemplated by § 5-1204(b) (the “Measures”). Also included is the notice that will be posted prominently at polling sites and in polling booths, delivered with absentee ballots, and made available to voters via the State Board and local board websites and social media (the “Notice”).<sup>2</sup> I believe that these Measures address several of the “purposes” you identified in your letter. Regarding your other points, the State Administrator would be happy to discuss the Measures and any remaining questions you may have about them.<sup>3</sup>

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<sup>1</sup> Although the statute refers to the printing of ballots by local boards of election, voting systems have been uniform across the State since 2006 and the generating and printing of ballots has been coordinated by the State Board since that time.

<sup>2</sup> The Measures and the Notice are attached together as Exhibit A to this letter. These materials were provided to local boards of election on the afternoon of May 24, 2018.

<sup>3</sup> In your letter, you “object” to an email purportedly sent by Ms. Lamone on May 25, 2018 “regarding a proposed notice and an arbitrary and capricious disregard for the option to reprint the ballot.” Letter at 1. Ms. Lamone is not aware of the e-mail to which you are referring. On May 22, 2018, Ms. Lamone provided a draft of the proposed notice via e-mail to Ms. Ervin and invited her to respond with “any questions about the distribution of this notice.” *See* E-mail from L. Lamone to V. Ervin RE: Notice, May 22,

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Your letter concludes with the threat that if Ms. Lamone should “choose to refuse to reprint the ballot or in the alternative create a sticker to affix on the ballot in the Kamenetz/Ervin portion of the ballot, immediate legal action will be taken on Tuesday, May 29, 2018.” Letter at 2. To be clear, based on the lack of availability of sufficient quantities of the specialized ballot paper stock and the operating schedule of the mill from which such paper is sourced, it would be impossible to reprint the ballots in advance of the primary election. Nor will it be possible to “correct” the printed ballots with stickers reflecting the Ervin-Johnson candidacy, since the uniform voting system currently in use across the State cannot accommodate stickers. *See* Elec. Law § 9-208(b)(3). Litigation will not change either of these facts.

Please let me know if Ms. Ervin is interested in discussing the Measures the State Board has developed to provide sufficient notice about the change in candidacy to voters.

Sincerely,

*/s/ Andrea W. Trento*

Andrea W. Trento  
Assistant Attorney General

cc: Linda Lamone (via email)  
Valerie Ervin (via email)  
Marisol Johnson (via email)

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2018 (attached hereto as Exhibit B). Ms. Lamone did not receive a response.

# **Exhibit A**

As a result of the recent death of Kevin Kamenetz, Democratic candidate for Governor, the State Administrator has determined that the local boards of elections must notify Democratic voters of the impact of his death. The notice is necessary, as it is not possible at this time to change each county's ballot database and generate, proof and print ballots with the successor ticket of Valerie Ervin and Marisol Johnson.

Accompanying this document is the required notice. As it has been reviewed and approved by the Office of the Attorney General, the content and format of this notice cannot be changed. Each local board shall print or copy this notice on white paper.

To ensure adequate notice is provided, each local board of elections shall:

1. Post the notice on the inside of every voting booth deployed for early voting and Election Day.
2. Post the notice on the inside of every ExpressVote privacy booth deployed for early voting and Election Day.
3. Post the notice inside the voting booth, privacy booth, or other area where provisional voters mark their ballots.
4. Post the notice in the same general location as other signs providing information to voters at voting locations.
5. Include the notice in absentee ballot packets issued to walk-in voters and packets issued as part of each local board's nursing home and assisted living program.
6. Post the notice at each canvassing session of the local board of canvassers.
7. At the start of each canvass, refer to the posted notice and state that a vote for Mr. Kamenetz and Ms. Ervin will be counted as a vote for Ms. Ervin and Ms. Johnson.
8. Incorporate into upcoming election judges' trainings the notice and train election judges on the verbal instructions for voters using the ExpressVote ballot marking device.
9. Distribute to election judges SBE's "last minute instructions" that will include the notice and the requirement to provide this information verbally to voters using the ExpressVote ballot marking device.
10. Provide on its homepage a link to SBE's webpage with the notice. (The address of the specific webpage will be provided shortly.)
11. Every Monday, Wednesday and Friday through Election Day, post on social media accounts language provided by SBE.
12. Instruct LBE staff members to read the notice to voters who call asking how to vote for the Ervin/Johnson ticket.

In addition to these efforts, SBE has or will do the following:

1. Add to SBE's homepage and the "2018 Elections" webpage the notice.
2. Update SBE's online candidate listing to reflect the successor ticket.
3. Post on SBE's social media accounts a link to the notice.
4. Instruct SBE staff members and SBE's call center staff members to read the notice to voters who call asking how to vote for the Ervin/Johnson ticket.
5. Update the list of Democratic gubernatorial candidates on SBE's online voter look-up system. (This list is found under the "My Candidate Information" tab.)
6. Incorporate into SBE's online voter look-up system the notice for voters who want to view their sample ballots. (This is found under the "Sample Ballot" tab.)

7. Require the vendor responsible for mailing absentee ballot packets to include the notice in packets mailed to requesting Democratic voters.
8. Incorporate the notice into SBE's online ballot delivery system.
9. Include the notice in the absentee ballot packets for Democratic voters who requested electronic delivery of their absentee ballots.
10. Notify (via mail or email) Democratic voters whose absentee ballots have already been mailed or transmitted electronically.
11. Distribute to the local boards revised written and verbal instructions to incorporate in upcoming election judges' training sessions.
12. Distribute to the local boards "last minute instructions" for election judges with instructions to provide voters using the ExpressVote ballot marking device with verbal notice.
13. Provide the notice to the Department of Defense's Federal Voting Assistance Program, the Maryland Democratic Party, the National Federation of the Blind (which produces and distributes an audio ballot), and other requesting organizations.

If a local board has suggestions for alternate or additional ways to provide notice, please contact SBE. Since uniformity is of critical importance, a local board must obtain SBE's approval before providing notice in an alternate or additional way.

## **IMPORTANT NOTICE ABOUT THE DEMOCRATIC CONTEST FOR GOVERNOR AND LT. GOVERNOR**

The following candidates for Governor and Lt. Governor will appear on Democratic ballots for the 2018 Primary Election:

- Rushern L. Baker, III and Elizabeth Embry
- Ralph Jaffe and Freda Jaffe
- Ben Jealous and Susan Turnbull
- James Hughes Jones, II and Charles S. Waters
- Kevin Kamenetz and Valerie Ervin\*
- Rich Madaleno and Luwanda Jenkins
- Alec Ross and Julie C. Verratti
- Jim Shea and Brandon M. Scott
- Krish O'Mara Vignarajah and Sharon Y. Blake

\* On May 10, 2018, Kevin Kamenetz, a candidate for Governor for the Democratic Party, died. The former candidacy of Kevin Kamenetz and Valerie Ervin has been replaced by the candidacy of Valerie Ervin and Marisol Johnson.

If you wish to vote for Valerie Ervin and Marisol Johnson, mark your ballot for Kevin Kamenetz and Valerie Ervin. All votes cast for Kevin Kamenetz and Valerie Ervin will be counted as votes for Valerie Ervin and Marisol Johnson.