

**2018**  
**Report of the**  
**Ballot Questions Advisory Committee**  
**of the**  
**Montgomery County Democratic Party**

as submitted to the  
Precinct Organization of the Montgomery County Democratic Party  
and the  
Montgomery County Democratic Central Committee

September 1, 2018

## Introduction

The fundamental rules governing the endorsement of ballot questions by the Montgomery County Democratic Party are set out in § E(2)(d) of the Precinct Organization Rules. Within that framework, the Montgomery County Democratic Central Committee (MCDCC) adopted the Party's Policy on Ballot Questions on November 13, 2007. The Policy was subsequently amended on May 13, 2014.

At its August 14, 2018, meeting, the Central Committee appointed the membership of the Advisory Committee:

- Steven Cename
- Elliot Chabot
- Scott Goldberg
- Eliot Greenwald

Elliot Chabot was appointed to chair the Advisory Committee by Central Committee Chair Scott Goldberg. The Advisory Committee held its organizational meeting on August 23.

On August 27, the Advisory Committee conducted a public hearing on the ballot questions at MCDCC headquarters in Kensington. (The hearing was announced on the Montgomery County Democratic Party's Web site and by e-mail.)

On September 20, 2018, the Precinct Organization will meet to review this report and adopt its positions on the ballot questions. At the conclusion of the Precinct Organization meeting, the Central Committee will meet to adopt its positions. On each ballot question where the Precinct Organization and the Central Committee adopt the same position, that position will be the position of the Montgomery County Democratic Party. On each ballot question where the Precinct Organization and the Central Committee adopt different positions, the County Democratic Party will be neutral on that ballot question.

Ballot Questions Advisory Committee reports in previous election cycles have included recommendations by the Committee as to what positions the Party should take on individual ballot questions. On May 13, 2014, the MCDCC amended the Party's ballot questions rules to specify that the Advisory Committee "shall not make any recommendation about what position to take on any ballot questions."

## **Question 1: Education – Commercial Gaming Revenues**

**Concise Summary:** This question, if approved, will amend Article XIX, Section 1 of the Maryland Constitution to require casino revenue set aside for schools be used to enhance education funding above the amount now required in state formulas.

**Ballot Question:** Constitutional Amendment (Ch. 357 of the 2018 Legislative Session)

Requiring Commercial Gaming Revenues that are for Public Education to Supplement Spending for Education in Public Schools

The amendment requires the Governor to include in the annual State Budget, as supplemental funding for prekindergarten through grade 12 in public schools, the revenues from video lottery operation licenses and any other commercial gaming dedicated to public education in an amount above the level of State funding for education in public schools provided by the Bridge to Excellence in Public Schools Act of 2002 (otherwise known as the Thornton legislation) in not less than the following amounts: \$125 million in fiscal year 2020; \$250 million in fiscal year 2021; \$375 million in fiscal year 2022; and 100% of commercial gaming revenues dedicated to public education in fiscal year 2023 and each fiscal year thereafter. The amendment also requires the Governor to show in the annual budget how the revenues from video lottery operation licenses and other commercial gaming are being used in a manner that is in addition to the level of State funding for public education provided by the funding formulas established by the Bridge to Excellence in Public Schools Act. The State Constitution currently authorizes video lottery operation licenses for the primary purpose of raising money for public education.

(Amending Article XIX, Section 1(c)(1) and (g), and adding Section 1(f) to the Maryland Constitution)

**Background:** Maryland voters approved constitutional amendments that allowed slots and table games in 2008 and 2012, respectively. Proponents of those measures advertised them as being able to generate more funding for the education system through casino tax revenue, saying that allowing the state to have casinos and expanding gambling would pump hundreds of millions of dollars directly into schools. Maryland created the Education Trust Fund in 2009, which tax revenue from casinos has added an estimated \$1.9 billion to since 2009.

According to Benjamin Orr, Director of the Maryland Center on Economic Policy, and the Maryland State Education Association, general fund revenue that was used to fund education prior to 2009 was used for other purposes as casino tax revenue increased, meaning that the revenue earned from gambling replaced the tax money used for education rather than increasing the overall funding for education.

In 2002, The Bridge to Excellence in Public Schools Act was passed. It is commonly referred to as the Thornton Funding Formula which established a state school aid formula so that schools have the necessary resources to “provide every child with an adequate and equitable education.” This amendment to the Thornton Funding Formula would stop future governors and lawmakers from using revenue from casinos on anything other than K-12 education.

The amendment would incrementally dedicate gambling revenue to education through 2023, and would also dedicate revenue as supplemental to minimum required education funding levels. This means that casino revenue couldn't be counted in the minimum education spending

formulas and would have to be spent on education in addition to those minimum required levels under the amendment. The following amounts of casino revenue would be used as supplemental funding for public education under the measure:

- \$125 million for fiscal year 2020
- \$250 million for fiscal year 2021
- \$375 million for fiscal year 2022
- 100% of revenues raised for fiscal year 2023 and for each fiscal year after.

The Maryland Department of Legislative Services estimated that the tax revenue of Maryland's six casinos is projected to be \$517 million.

The bill to create the "lock box" for casino money to go to education was introduced as SB 1122 in the 2018 session of the General Assembly by 23 Senators, including 7 from Montgomery County. The state Senate unanimously approved the amendment as SB 1122 on March 17, 2018. On April 6, 2018, the state House approved the amendment 130 to 2.

### **Reasons to support Question 1:**

- Casinos have pumped more than \$1.7 billion into the state's Education Trust Fund, but over time those funds have not gone over what the state was already required to spend, and some jurisdictions like Baltimore City have suffered funding cuts.<sup>1</sup> With Maryland losing the top spot in best state education systems, this money could be use to help reclaim that spot.<sup>2</sup>
- Voters approved the gambling-related ballot questions in 2008 and 2012. During those campaigns, the proponents of both initiatives told voters that the revenue earned from gambling would go to education.<sup>3</sup> This promise has not been upheld, as the gambling revenue have replaced as opposed to supplement the money required for education under the Thornton Funding Formula. This amendment is meant to fix this broken promise, as the public has always had the expectation that the money would be used to enhance education.<sup>4</sup>
- Before casinos opened in 2011, Maryland spent 21 percent of its \$31 billion general fund revenue on public schools. In 2017, with revenues at \$42 billion, the state spends just 18 percent of its general fund on public schools. The casino money allowed general funds to be spent elsewhere.<sup>5</sup>

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<sup>1</sup> Broadwater, L. (28 August 2018). "Maryland Democrats say Hogan is taking credit for their work with ad on sending casino revenues to schools." *The Baltimore Sun*. <http://www.baltimoresun.com/news/maryland/politics/bs-md-hogan-lockbox-20180828-story.html>.

<sup>2</sup> Broadwater, L. and E.L. Green. (22 January 2017). "Maryland casinos are pumping out billions for education. So why are there school budget deficits?" *The Baltimore Sun*. <http://www.baltimoresun.com/news/maryland/bs-md-casino-education-20170121-story.html>

<sup>3</sup> For Maryland Jobs & Schools, Inc. (2012). LaVar Arrington Vote for 7 advertisement. <https://www.youtube.com/watch?v=SDvWSGWWCXk>

<sup>4</sup> Broadwater, 2018.

<sup>5</sup> Broadwater, 2018.

### **Reasons to oppose Question 1:**

- Even though this amendment is meant to fix a broken promise, the campaign promises of 2008 and 2012 did not necessarily say that all of the money would be used for K-12 education. Instead, that ads carefully spotlighted education as one of the most important things that the money could be spent on. Many of the television advertisements in favor of the 2012 proposal only promised that “millions”<sup>6</sup> to “hundreds of millions”<sup>7</sup> would go to education, never “all.” Gambling revenues have totaled over \$1 billion, far higher than the explicit promises in the advertisement, so failing to spend 100% of the revenue on education does not necessarily constitute a broken promise.
- The amendment will take away much of the flexibility that is provided by the current system allowing the money from casinos to be used anywhere in the state budget at the discretion of the governor and state lawmakers. Therefore, requiring that all casino money go to education would tighten up the budgets elsewhere in the state government.
- Before casinos opened in 2011, Maryland spent 21 percent of its \$31 billion general fund revenue on public schools. In 2017, with revenues at \$42 billion, the state spends just 18 percent of its general fund on public schools. The casino money allowed general funds to be spent elsewhere. This is identical, word for word, as one of the reasons to support the proposal. However, this could also be a reason to oppose because freeing up general funds to be spent elsewhere could mean more money for other critical state programs related to healthcare, environmental protection, and infrastructure, to name a few.

### **Reasons to be neutral on Question 1:**

- Gambling is a very divisive issue, regardless of partisan identification. Because of this, many may not want the Montgomery County Democratic Party to take an official position regarding anything related to gambling.
- While the 2008 ballot initiative to legalize slot machines passed by a fairly decisive 59% - 41% margin, the 2012 ballot initiative to allow the construction of a new casino in Prince George’s County passed by a narrow 52% - 48% margin, which was the closest outcome out of the seven ballot questions in the 2012 cycle. The 2012 ballot question result indicates that there may still be much opposition to gambling within the Democratic Party and that the Montgomery County Democratic party should not take a risk in angering either the pro- or anti-gambling rank-and-file party members.
- The closer margin in 2012 may also be because voters were already aware that the money from slots was not all going to education, a point that the opposition campaign brought up repeatedly during the cycle.

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<sup>6</sup> For Maryland Jobs & Schools, Inc. (2012). Stephanie Rawlings-Blake Vote for 7 advertisement.  
<https://www.youtube.com/watch?v=ZoqLJBD1jD4>.

<sup>7</sup> For Maryland Jobs & Schools, Inc. (2012). Vote for Question 7 advertisement.  
<https://www.youtube.com/watch?v=xoDmqWrCRWA>.

## **Statewide Question 2: Elective Franchise – Registration & Voting at Precinct Polling Place**

**Concise Summary:** Authorizing the General Assembly to allow a qualified individual to register and vote at a precinct polling place on Election Day.

**Ballot Question:** Constitutional Amendment (Ch. 855 of the 2018 Legislative Session)

Same-Day Registration and Voting at the Precinct Polling Place on Election Day

Authorizes the General Assembly to enact legislation to allow a qualified individual to register and vote at a precinct polling place on Election Day. The current law requires voter registration to close before Election Day.

(Amending Article I, Sections 1 and 2, and adding Section 2A to the Maryland Constitution)

**Background:** The measure would amend the state constitution to authorize the Maryland Legislature to enact a process for registering qualified individuals to vote at a precinct polling place on election day.

As of June 2018, 16 states and the District of Columbia currently or will soon permit Election Day registration, which allows voters to register or update their existing registration on Election Day.

Since July 1, 2013, Maryland has allowed voters to register or update their existing registration during the early voting period, although a change of party made during the early voting period is not processed until after the polls have closed for that election. The Attorney General advised that if registration were to be allowed on Election Day, an amendment to the state’s constitution was required. That proposed amendment was introduced in the 2018 General Assembly session (HB 532), sponsored by 30 Democratic delegates of the Maryland House of Delegates, 12 from Montgomery County, and it was adopted by the required 60% of the Senate and the House of Delegates. (In the House of Delegates, the vote was 91-47, with 2 Republicans joining 89 of the 91 Democrats to vote in favor of the amendment. The other 2 Democrats did not vote. 47 Republicans voted against the amendment, and 1 was absent. In the Senate the vote was 33-14, 11 Democrats in favor, all Republicans in opposition.)

Del. Al Carr (D-18), one of the sponsors of the bill, said, “A number of states are making it harder and harder to vote but in Maryland, we’re trying to make it easier. Passing this measure is a step forward in the right direction.”

### **Reasons to support Question 2:**

- Congressman John Lewis has often said that the right to vote is precious, and people have shed their blood to support voting rights.
- Democrats have supported voting rights for more than half a century.
- The amendment could encourage more people to vote since they would be able to register and vote on election day, even if they did not register earlier.
- There have been no known incidents of problems as the result of same-day registration during Early Voting.

### **Reasons to oppose Question 2:**

- Same day registration could encourage voter fraud, because there is no time to verify the validation of the individual before the voter casts their vote.
- It will either:

- cost more money to have same day registration because the Board of Elections will need to hire additional election poll personnel to handle registration in addition to voting on election day; or
- lines will be longer while election judges are processing new voter registrations

**Reasons to be neutral on Question 2:**

- The Montgomery County Democratic Party may feel this is not an issue on which it wants to take a position because it is partisan, involving elections.
- The Montgomery County Democratic Party may not want to be seen as supporting a position that may increase the cost of holding an election.
- Same-day voting puts two bedrock Democratic Party principles at odds with one another – integrity of elections vs. ease of voting. Good Democrats may take either side in this.

## **Montgomery County Question A: Redistricting Procedure – Composition of Redistricting Commission**

**Concise Summary:** Alters the composition of the Redistricting Commission, which reviews and proposes a map for Council districts every 10 years from 9 members to 11 members.

**Question:** Charter Amendment by Act of County Council

Redistricting Procedure – Composition of Redistricting Commission

Amend Section 104 of the County Charter to remove party central committees from the process for selecting the Redistricting Commission appointed by the Council every ten years to review the boundaries of Council districts, and providing that the Redistricting Commission must:

- be composed of 11 County residents who are registered voters;
- include at least one, but no more than four members of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the last preceding regular election; and
- include at least one member from each Council district

**Background:** The County Charter now provides that after each federal census the county appoints a Redistricting Commission consisting of 9 members, 4 each selected from lists of 8 names supplied by the Democratic and Republican Central Committees, plus one more person selected by the County Council. In practice, the Democratic members prepare a map, the Republican members prepare a map and the Commission chooses a map for presentation to the County Council. The Council can then accept, reject, alter or take no action. If the Council takes no action, the map that is presented becomes law.

The current Charter Review Commission (“CRC”) studied the current procedure for appointing a Redistricting Commission and found alternate possibilities. Their main objections to the current system is that it excludes about 25% of county voters from even being considered for appointment to the Redistricting Commission and it allows the Democratic and Republican Central Committees too much power in the redistricting process, The CRC recommended the following major changes: (a) expand the size of the Redistricting Commission from 9 to 11, to allow more citizen input, (b) eliminate the role of the Democratic and Republican Central Committees as too partisan, (c) allow any registered voter to apply for membership on the Redistricting Commission, (d) allow at last 1 but no more than 4 members on the Redistricting Commission who are members of parties that receive 15% or more of the vote in our county – Democrats and Republicans, and (e) by requiring that no more than 4 can be from any party, on an 11-member commission, require that compromises must be made.

### **Reasons to support Question A:**

- This is an incremental step towards removing political parties from drawing boundaries used for elections
- The MCDCC will have one less task and be able to focus on core functions like party building, fundraising and campaigning.

- The 2nd largest group of voters in our county are Unaffiliated with any party. Now they cannot even apply to be on the Redistricting Commission. If this question is adopted they would be able to apply.
- The County Council has better resources, ie staff, to thoroughly vet candidates
- The current system empowers more Republicans than unaffiliated voters even though there are 15,000 more unaffiliated voters than Republicans.

**Reasons to oppose Question A:**

- If this question is adopted, MCDCC will lose its ability to name 4 members of the 9 member Redistricting Commission.
- This doesn't remove politics from creating the map but shifts solely to the County Council, who possess self interest in the final result.
- A less partisan Commission could draw a map that would potentially elect a Republican.
- There is a strong likelihood that passage of this question will result in a map that would elect a Republican.
- The ballot question would County Council can select 4 Democrats and just one Republican, which would be seen as more partisan than the current process.

**Reasons to be neutral on Question A:**

- Some might consider MCDCC to be an interested party on this question, and thus it should not make a recommendation.
- This would have little effect, since the County Council would still control the process.

## **Montgomery County Question B: Property Tax Limit – Votes Needed to Override**

**Concise Summary:** Amend the County Charter to require a unanimous vote (instead of 9 votes) to levy a property tax rate that exceeds the limit in contained in the Charter.

**Ballot Question:** Charter Amendment by Act of County Council

Property Tax Limit - Votes Needed to Override

Amend Section 305 of the County Charter to require an affirmative vote of all current Councilmembers, rather than the specific nine votes currently required, to levy a tax on real property that will produce revenue that exceeds the annual limit on property tax revenue set in that section.

**Background:** In 2008, Robin Ficker initiated a successful petition drive, approved by the voters, to add to the County Charter that the property tax rate could not exceed the increase in the consumer price increase unless all 9 members of the County Council voted to do so.

The County Council is a 9-member body, so 9 votes is the same as a unanimous vote, when all seats are filled. Occasionally, however, due to either the death or resignation of a sitting member of the Council, there have been only 8 filled seats on the Council. During those periods, the current language in the Charter would not allow the Council to exceed the consumer price index because the current Charter requires 9 affirmative votes.

### **Reasons to support Question B:**

- This is a technical correction to deal with an unusual case that was not raised when the 2008 ballot question was presented to the voters.
- The ballot question was recommended by the County Government's non-partisan Charter Review Commission.
- Takes into account a vacancy on the Council.

### **Reasons to oppose Question B:**

- Supporting this ballot question sends a message that the Democratic Party is pro-tax. We don't need that reputation over a situation (vacancy on the Council) that seldom comes up. Promptly filling Council vacancies solves the problem.

### **Reasons to be neutral on Question B:**

- The odds are small that all the members of the Council would want to increase the property tax rate above the consumer price index at a time when there was a vacancy on the Council. Passing or defeating this ballot questions is not likely to change anything.
- Under the current law, even with a vacancy the Council could raise the property tax rate to the limit set out in the Charter and then (once the vacancy is filled) raise it to the level the Council wants it raised to. This gives you the same end result, whether the ballot question passes or not.

## **Montgomery County Question C: Merit System – Councilmembers’ Aides**

**Concise Summary:** Amend the County Charter to allow County Council members to hire more than one aide in a non-merit position.

**Ballot Question:** Charter Amendment by Act of County Council

Merit System - Councilmembers' Aides

Amend Section 401 of the County Charter to permit each Councilmember to have one or more aides as non-merit employees, rather than the one confidential aide currently permitted.

**Background:** The Merit System in our county is similar to the Civil Service System in the Federal Government. It provides, for example, for an appeal to the Merit System Protection Board, which protects County Government employee and job applicant rights guaranteed under the merit system law.

Currently, the Charter allows each member of the County Council to designate a confidential aide who is not protected by the Merit System. The proposed charter amendment would allow Councilmembers to designate any or all of their staffers to be outside the Merit System. Each Councilmember’s staff would be answerable only to that Councilmember.

### **Reasons to support Question C:**

- Councilmember staffers are privy to confidential information of their elected boss.
- The Charter allows the County Executive to designate 5 staffers as confidential aides, who are outside the Merit System.
- The ballot question is supported by all of the current County Council members.
- This would treat County Council members’ staffers the same way that the staffers of members of the U.S. House of Representatives are treated.
- Council members ought to be able to hire people who are aligned with their legislative agendas and fire people who turn out not be aligned with their legislative agendas without regard to the Merit System.
- Problematic employees can be terminated quickly.
- Allows for hiring staff without having to advertise the position.

### **Reasons to oppose Question C:**

- The Democratic Party has historically been the champion of civil service protections for government employees.
- Just because the employees that work for individual County Council members are not currently unionized, the right to be protected by a union should not be taken away from them.
- Allows for hiring staff without having to advertise the position.

### **Reasons to be neutral on Question C:**

- The equities on this issue are evenly divided and reasonable Democrats will disagree.
- This ballot question was not vetted by the Charter Review Commission. The County Democratic Party was instrumental in having the Charter Review Commission included in the Charter – so that there would be an independent review of Charter Amendments. The County Council chose to bypass the Charter Review Commission on putting this question on the ballot. The Party should disassociate itself from such actions.

Unnumbered Statewide Question: Retention of Judge Donald E. Beachley

**Concise Summary:** Retaining Judge Donald E. Beachley on the Maryland Court of Special Appeals.

**Ballot Question:** Judge, Court of Special Appeals At Large, Donald E. Beachley for continuation in office.

**Background:** At the General Election following the appointment of a judge to the Maryland Court of Special Appeals, the voters are given the opportunity to vote whether or not the judge should be retained on the court for a full term. At the end of each term, the question is again submitted to the voters.

In 2001, the Montgomery County Democratic Central Committee adopted a resolution stating that it is the policy of the County Democratic Party that judges should be retained in office unless they have “demonstrated through the performance of his or her duties that such Sitting Judge is not qualified to continue in office.”

Judge Beachley was appointed to the Maryland Court of Special Appeals in 2016. From 1997 to 2016, Judge Beachley served as a judge on the Washington County Circuit Court. From 1994 to 1997, Judge Beachley served as a U.S. Magistrate Judge for the U.S. District Court for the District of Maryland.

**Review:** The Advisory Committee reviewed the disciplinary opinions of the Maryland Commission on Judicial Disabilities;<sup>8</sup> reviewed the complaints filed with the Maryland Judicial Campaign Conduct Committee;<sup>9</sup> reviewed the disciplinary actions of the Maryland Attorney Grievance Commission;<sup>10</sup> requested input from the judicial selection committees of the Montgomery County Bar Association, Asian Pacific American Bar Association of Maryland, LGBTQ Bar Association of Maryland, Alliance of Black Women Attorneys of Maryland, Maryland Hispanic Bar Association, Women’s Bar Association of Maryland, Maryland Criminal Defense Attorney’s Association, and Maryland State’s Attorneys’ Association; and, on August 27th, conducted a public hearing.

The Advisory Committee received no adverse information about Judge Beachley.

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<sup>8</sup> <http://www.courts.state.md.us/cjd/index.html>.

<sup>9</sup> <http://www.mdjccc.info/index.html>.

<sup>10</sup> <http://www.courts.state.md.us/attygrievance/sanctions.html>.

Unnumbered Statewide Question: Retention of Judge Matthew J. Fader

**Concise Summary:** Retaining Judge Matthew J. Fader on the Maryland Court of Special Appeals.

**Ballot Question:** Judge, Court of Special Appeals At Large, Matthew J. Feder for continuation in office.

**Background:** At the General Election following the appointment of a judge to the Maryland Court of Special Appeals, the voters are given the opportunity to vote whether or not the judge should be retained on the court for a full term. At the end of each term, the question is again submitted to the voters.

In 2001, the Montgomery County Democratic Central Committee adopted a resolution stating that it is the policy of the County Democratic Party that judges should be retained in office unless they have “demonstrated through the performance of his or her duties that such Sitting Judge is not qualified to continue in office.”

Judge Fader was appointed to the Maryland Court of Special Appeals in 2017. From 2010 to 2017, Judge Fader served in the Office of the Maryland Attorney General – as an Assistant Attorney General from 2010-2012, Deputy Chief of the Civil Litigation Division from 2012-2017, and Chief of Litigation of the Civil Litigation Division in 2017.

**Review:** The Advisory Committee reviewed the disciplinary opinions of the Maryland Commission on Judicial Disabilities;<sup>11</sup> reviewed the complaints filed with the Maryland Judicial Campaign Conduct Committee;<sup>12</sup> reviewed the disciplinary actions of the Maryland Attorney Grievance Commission;<sup>13</sup> requested input from the judicial selection committees of the Montgomery County Bar Association, Asian Pacific American Bar Association of Maryland, LGBTQ Bar Association of Maryland, Alliance of Black Women Attorneys of Maryland, Maryland Hispanic Bar Association, Women’s Bar Association of Maryland, Maryland Criminal Defense Attorney’s Association, and Maryland State’s Attorneys’ Association; and, on August 27th, conducted a public hearing.

The Advisory Committee received no adverse information about Judge Fader.

<sup>11</sup> <http://www.courts.state.md.us/cjd/index.html>.

<sup>12</sup> <http://www.mdjccc.info/index.html>.

<sup>13</sup> <http://www.courts.state.md.us/attygrievance/sanctions.html>.