

HOUSE WAYS & MEANS**HB 1314: Election Law–Voting Systems – Accessibility for Voter with Disabilities****March 3, 2020 1:00 p.m.****Position: Support**

As the designated protection and advocacy organization for Maryland and by authority of the Help America Vote Act, Disability Rights Maryland (DRM), formerly Maryland Disability Law Center, is charged with assisting persons with disabilities to participate fully in the electoral process. Pursuant to this mandate, DRM seeks to ensure election access to a wide range of individuals with disabilities, including, but not limited to, individuals with physical, cognitive, and sensory disabilities.

DRM supports HB 1314 which would require every voter to use a Ballot Marking Device (BMD). DRM supports the increased usage of the accessible ExpressVote BMD, universal accessibility, and eliminating ballot segregation. Increasing BMD usage and returning to a universally accessible system will eliminate ballot segregation. The disability community was very much opposed to Maryland moving to a paper ballot system and abandoning the universally accessible touch screen system. With the touchscreen voting system, all voters voted on the same system, and while voters with disabilities may have used the accessible feature of the machine, the way in which the ballot choices were made, cast and counted was indistinguishable from other voters.

Maryland Election Law Article §9-102(f)(1), Annotated Code of Maryland, states that a voting system selected and certified by the State Board of Elections (SBE) shall "provide access to voters with disabilities that is equivalent to access afforded voters without disabilities without creating a segregated ballot for voters with disabilities." In 2013, the Maryland Office of the Attorney General issued an opinion stating: "SBE could certify an accessible voting system that produces a ballot that is different in appearance from handwritten ballots so long as non-disabled voters are required to use the system in numbers sufficient to make it impossible to draw the conclusion that the ballot produced by the system was, or was likely to have been, cast by a disabled voter." The Office of the Attorney General determined that the accessible system "would be used by disabled and nondisabled voters alike" thereby avoiding "the creation of a 'segregated ballot' within the meaning of the statute." 98 Md. Att'y Gen. Op. 162-163;
<http://www.marylandattorneygeneral.gov/Opinions%20Documents/2013/98OAG152.pdf>.

As Maryland was moving to a paper ballot and in preparation for the 2016 Elections, SBE selected the ExpressVote BMD as the accessible system that would allow a voter to mark a paper ballot using a touch screen device. However, the ExpressVote uses a paper ballot that is different in size and shape as the hand-marked paper ballot. Prior to the 2016 Primary Elections, SBE established a goal for each Election Day polling place to have at least 30 voters mark their ballot using the ExpressVote electronic BMD, which was deemed a reasonable and sufficient number in keeping the Attorney General's opinion to "make it impossible to draw a conclusion that the ballot was, or was likely to have been, cast by a disabled voter." After candidates raised issues regarding the ExpressVote, SBE severely reduced the number of voters per polling site that must use the BMD from 30 to 2 over the objections

of disability advocates who argued that this change in policy and practice creates a “segregate ballot” in violation of Maryland Election Law Article §9-102(f)(1) and jeopardizes the privacy of the voter. According to the Maryland SBE data the 2 voter minimum was not met during the 2016 or 2018 elections. A review of the 2016 data indicates that 12 of the 24 counties or county equivalents in Maryland had at least one precinct where only one voter used the BMD machine. During the 2018 Primary and General Elections 9 of the 24 counties or county equivalents had at least one precinct where only one voter used the BMD machine. It is very likely that the one voter or even two voters as per the usage policy who used the BMD was a voter with a disability, thereby jeopardizing the privacy of those voters.

The current SBE minimal usage policy of the BMD makes it possible to draw the conclusion that a ballot marked by the BMD was likely by a disabled voter. In keeping with the 2013 Attorney General’s opinion, an increased usage rate is required to ensure ballot secrecy.

Thank you for your consideration of these comments.

For more information contact:

Ben Jackson, Staff Attorney

(410) 727-6352, ext. 2515

BenJ@DisabilityRightsMD.org