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Ronza Othman: Blind voters' right to a secret ballot

By: [Commentary](#): Ronza Othman April 5, 2019

Maryland law guarantees all voters a secret ballot, including the blind. Sadly, however, the Maryland State Board of Elections has deliberately and repeatedly violated Maryland law and the rights of blind voters, despite our repeated protests. We are therefore urgently calling upon the General Assembly to intervene.

Until 2016, blind Maryland voters like me, as well as other voters with disabilities, were able to cast our ballots independently and in secret using the same voting system as all other voters. Everyone at Maryland polling places used touch-screen voting machines, which were also equipped with audio output through a headphone jack and a tactile keypad so that blind voters could use them privately and independently.

When Maryland law was changed to require paper ballots to meet security and recount concerns, new machines called ballot-marking devices (BMD) were leased by the state. Like the electronic voting machines before them, these machines have touch screens, headphone jacks, and keypads, as well as other features for those with physical disabilities, so all voters can use them. These machines use the choices input by the voter to mark and print out a paper ballot rather than storing the votes electronically.

All would have been well if all voters continued to use the same machines, but for the 2016 and 2018 elections the board adopted separate ballot-marking systems for disabled and non-disabled voters. Disabled voters used the BMD and non-disabled voters hand-marked paper ballots. Again, all would have been well, except that the BMD produce paper ballots that are different in size and appearance from the hand-marked ballots, making the ballots of blind or disabled voters segregated, a direct violation of Maryland law.

Maryland's election code recognizes this problem and requires that any voting system certified by the elections board "provide access to voters with disabilities that is equivalent to access afforded voters without disabilities **without creating a segregated ballot for voters with disabilities**" (emphasis mine). In 2013, Maryland's attorney general opined that if a separate voting system producing a ballot different from the hand-marked ballot is used for disabled voters, the elections board "must establish randomized polling-place procedures to ensure that a significant number of non-disabled voters will use the accessible voting system to protect the secrecy of the ballots cast by voters with disabilities."

But the elections board only requires that two non-disabled voters use the single BMD at each polling place. This is not a "significant number" of voters. Even worse, this minimal requirement isn't enforced. According to the elections board's own data on the 2018 general election, nine counties had at least one precinct where only one voter used the BMD, and nine counties had at least one precinct where no voters used it.

Inaccurate claims

State elections officials attempt to justify their separate and unequal treatment of blind voters by claiming that the BMD are difficult to use because a contest with more than seven candidates can't be displayed on a single screen, and voters have trouble navigating to the next screen. But there's no evidence that voters using the machines in an actual election

have had this problem. In fact, State Board of Elections Chairperson David McManus told a recent convention of the National Federation of the Blind of Maryland that non-disabled voters like using the machines so much that counties are requesting more of the devices, instead of just one per polling place.

It is true that some candidates threatened to sue the board in 2016. These candidates were lower on the ballot and were worried that voters wouldn't get to their names. But while the concerns of candidates are important, the elections board can't sacrifice the legal and civil rights of blind voters to accommodate those concerns.

Legislation that has been introduced in both the House of Delegates and the Senate would restore the secret ballot to blind voters by requiring that all voters use the same method of marking their ballots: the ballot-marking devices that many voters of all abilities clearly prefer. Time is running out in this year's legislative session. The House and Senate should pass this legislation immediately so that the separate and unequal treatment of blind and disabled voters will not continue.

Ronza Othman is a civil rights attorney and president of the National Federation of the Blind of Maryland.

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