

HB1314_PGCEX_FAV

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Position: FAV



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

BILL: House Bill 1314– Election Law - Voting Systems - Accessibility for Voters with Disabilities

SPONSOR: Delegate Mosby, *et al.*

HEARING DATE: March 3, 2020

COMMITTEE: Ways and Means

CONTACT: Intergovernmental Affairs Office, 301-780-8411

POSITION: SUPPORT

The Office of the Prince George's County Executive **SUPPORTS House Bill 1314**, which establishes certain voting requirements to ensure that voters with disabilities are provided specified access to voting that is equivalent to access afforded voters without disabilities. Each voter is required to use a ballot marking device that is accessible to voters with disabilities to vote at an early voting center or an Election Day polling place. In addition, a ballot cast by a voter with a disability may not be set apart or distinguishable, in size and form, from a ballot cast by a voter without a disability.

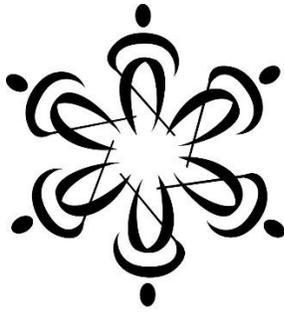
The Prince George's County Human Relations Commission (HRC) seeks to eliminate discriminatory practices within the County in various areas, such as public accommodations. With that purpose in mind, the HRC believes it is most beneficial for voters with disabilities to have equal access to voting, whether that includes the time and place of voting opportunities or a modified system that makes it more accommodating to cast a ballot.

For the reasons stated above, the Office of the Prince George's County Executive **SUPPORTS House Bill 1314** and asks for a **FAVORABLE** report.

Blake HB1314 Voting Test

Uploaded by: blake, louann

Position: FAV



NATIONAL FEDERATION
OF THE BLIND
MARYLAND

Live the life you want.

Subject: Support for HB 1314

To: Members of the House Ways and Means Committee

From: Lou Ann Blake

Contact: Lou Ann Blake
National Federation of the Blind
200 E. Wells Street
Baltimore, MD 21230
Email: lblake@nfb.org

Date: March 3, 2020

My name is Lou Ann Blake, I reside in Baltimore City, and I am a member of the National Federation of the Blind of Maryland. I am appearing before the House Ways and Means committee to urge members to support HB1314 and restore voters with print disabilities to the status of first class citizenship that we enjoyed prior to 2016 when all Maryland voters used the same system to mark and cast their ballot.

By implementing a segregated voting system that poll workers do not know how to set up or operate, and that does not provide a secret ballot, the Maryland State Board of Elections has turned Maryland voters with print disabilities, like myself, into second class citizens, and, as a result, is violating the Americans with Disabilities Act. Requiring SBE to implement one voting system with an accessible ballot marking device (BMD) as the primary method for all voters to mark their ballot in all early voting centers and all polling places, will restore first class citizenship to voters with disabilities by providing them a voting experience that is equal to the experience of voters without disabilities.

Data from the Maryland State Board of Elections (SBE) demonstrates the failure of SBEs policy to require at least two voters per precinct mark their ballot using the ExpressVote BMD. The November 5, 2019, report prepared by Legislative Services under-reported the number of precincts that failed to meet this minimum. For the 2016 general election, the Legislative Services Report states that only 34 precincts failed to meet the minimum, while the actual

number was 151 precincts. The Legislative Services report failed to include that a total of 417 precincts did not meet the minimum requirement for the 2016 primary election. For the 2018 primary and general elections, the Legislative Services report states that 40 precincts and 22 precincts, respectively, failed to meet the two voter minimum requirement, while the actual numbers were 159 and 78.

In addition to providing all voters with an equal voting experience, accessible BMDs are a superior method for marking ballots over hand-marking. BMDs will not allow a voter to over-vote a contest, and will warn the voter if they have under-voted a contest. In addition, the use of accessible BMDs as the primary method of ballot marking eliminates the stray marks associated with the hand-marking of ballots. Finally, a voter who uses an accessible BMD to mark their ballot can change their mind and select a different candidate before the ballot is printed, while a voter who changes their mind about which candidate to vote for while hand-marking their ballot will have to spoil that ballot and start over.

The Legislative Services report claims that requiring all voters to use a BMD to mark their ballot will result in longer lines and longer waiting times, as well as, insufficient warehouse space and insufficient space in some polling places. From 2002 through 2014, all Maryland voters used the accessible touchscreen Diebold voting system. The use of the system did not cause long lines, and the warehouse space and polling space requirements were probably similar to those of the ExpressVote. Finally, the issues related to the number of candidates displayed on the touchscreen, and navigating between multiple screens within a contest would be resolved if the Maryland State Board of Elections would install the updated software on the existing BMDs.

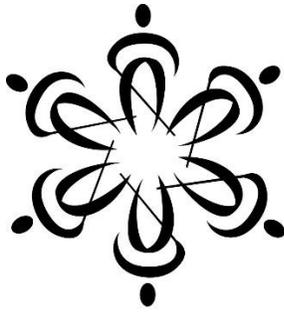
The second generation of BMDs currently on the market are more secure than the direct recording electronic machines they replaced. In addition to producing a paper record, BMDs are not connected to the internet. There has been no documented case of a BMD being hacked in an election setting.

I urge you to restore first class citizenship in voting to voters with print disabilities, and to provide all Maryland voters with a superior ballot marking experience by supporting HB1314.

Woods hb1314 voting test

Uploaded by: blake, louann

Position: FAV



**NATIONAL FEDERATION
OF THE BLIND**

MARYLAND

Live the life you want.

Subject: Support for HB 1314

To: Members of the House Ways and Means Committee

From: Marguerite Woods

**Contact: Marguerite Woods
4312 Springdale Ave
Baltimore, MD 21207-7567
United States
Phone: (443) 271-1668
Email: mwoods719@gmail.com**

Date: March 3, 2020

My name is Marguerite Woods. I want to share my voting experience on February 4, 2020 with you. The segregation and discrimination that I face when voting must come to an end.

Please vote in favor of HB1314 because although the ballot marking devices (BMD) have been in use since the 2016 primary, poll workers still don't know how they work. This demonstrates the fallacy that a state can have two voting systems. My experience demonstrates that I am treated as a second-class voter and that my voting system is separate and very unequal.

When I checked in at my polling location, Liberty Elementary School, 3901 Maine Avenue, Baltimore, MD 21207, I had to tell the poll workers that I wanted to vote using the BMD. When I said I needed help finding the machine, I was accompanied by a democrat and a republican because they thought that I wanted them to physically fill out my ballot. I had to explain that I could fill out my ballot myself using the BMD. I had to find the keypad myself because they didn't know where it was. I asked them how to turn on the screen curtain and they thought I was talking about a physical curtain. Once again, I had to figure out how to turn on the screen curtain myself. The most humiliating part of my frustrating voting experience came when I printed my ballot. The staff couldn't find a folder to put it in, so they took me to the scanner, keeping the

ballot in full view of bystanders. Then they couldn't find my registration paper that counted my vote. When I called the next day, the poll judge said they did find my paper and my vote was counted. I have to take her word for it because I have no way of knowing whether my vote counted.

I am a taxpayer and deserve to be treated as any other voter. Surely the state of Maryland can do better than this. I hope you will end voting discrimination on the basis of disability by voting in favor of HB1314.

HB1314_SUPPORT_POG_KEN CAPONE

Uploaded by: CAPONE, KEN

Position: FAV



Moving Forward • Advocating for Change

Committee: Ways and Means
HB1314 – Election Law – Voting systems –
Accessibility for Voters with Disabilities
Committee: Ways and Means
Position: support
March 3, 2020
By Ken Capone

Hello committee members, my name is Ken Capone. I am the Director of People on the Go of Maryland the statewide advocacy group ran for and by people with intellectual and or developmental disabilities. We are here to testify in support of the proposed legislation to increase protections for people with disabilities with regards to voting. It is the most fundamental right of our democratic process to have the right to vote in privacy and without outside influence.

We think that having people with disabilities as the only ones to use the electronic ballot marking device is a privacy issue. People on the Go feels the State Board of Elections and local boards of elections should expand the use of the ballot marking devices during early voting and on election day. We feel that people with and without disabilities should be able to use both versions of the ballot marking devices. This ensures the privacy of voters with and without disabilities is retained. If only people with disabilities use the electronic ballot marking devices, it would allow the votes of people with disabilities be known since the ballot style is different than the hand-marked ballot.

We want to ensure that all Marylanders have the same protection when voting.

Thank you

accessible ballot letter to SBE

Uploaded by: Delegate Mosby, Delegate Mosby

Position: FAV



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

June 25, 2019

State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401

RE: Accessibility for Voters with Disabilities

Dear Chairman McManus and members of the State Board of Elections (SBE),

During the 2019 legislative session, we introduced SB 363/HB 565, *Election Law - Voting Systems - Accessibility for Voters With Disabilities*. This bill would have ensured that individuals with disabilities right to a secret ballot was protected and that the state is compliant with the current prohibition on providing individuals with disabilities with a segregated ballot. Although this bill did not pass this year, we strongly believe that the issues underlying this bill need to be addressed before the 2020 primary.

Since 2016, individuals with disabilities have been denied their right to a secret ballot because Maryland's voting system requires individuals with certain disabilities to use a different ballot than the general public. Additionally, there have been repeated deficiencies in ensuring that significant numbers of voters without disabilities use the accessible system, which could at least help obscure the ballots cast by voters with disabilities.

As the State Board of Elections prepares for the 2020 election, we are requesting the following considerations:

- SBE develop new policies that at a minimum ensure that the accessible voting system is in significant use by the general public in all voting precincts.
- SBE provide us timely updates on how you plan to improve training to ensure that policies regarding the use of the accessible voting system are consistently applied statewide.
- SBE should evaluate the state's options for certifying a voting system that will either require all voters to use an accessible option or the adoption of a system where the paper ballot generated by the accessible system is identical to the ballot used by the general public. These options are important because, if adopted, they are most likely to ensure that individuals with disabilities receive a secret ballot, that the state can ensure that it is discontinuing the practice of distributing a segregated ballot, and that individuals with disabilities are able to have full faith in the integrity of the state's voting system and the State Board of Elections' commitment to maintaining the anonymity of their votes.

Our offices are open to providing any needed assistance on this matter, and it is our hope that the issues underlying SB363/HB565 can be satisfactorily resolved to preclude the need for the introduction of similar legislation in the 2020 session.

Sincerely,

A handwritten signature in black ink, appearing to read "Clarence Lam".

Clarence Lam, MD, MPH
Senator, District 12

A handwritten signature in blue ink, appearing to read "Nick J. Mosby".

Nick J. Mosby, BS
Delegate, District 40

AG's Opinion

Uploaded by: Delegate Mosby, Delegate Mosby

Position: FAV

ELECTION LAW**VOTING SYSTEMS – STATUTORY CONSTRUCTION – REQUIREMENT THAT VOTING SYSTEMS NOT CREATE A “SEGREGATED BALLOT” FOR VOTERS WITH DISABILITIES**

December 18, 2013

Linda H. Lamone
Administrator, State Board of Elections

On behalf of the State Board of Elections (“SBE” or “the State Board”), you have requested our opinion regarding the meaning of the term “segregated ballot” as it appears in the statutory requirements governing the certification of voting systems for use in Maryland. Those requirements specify that a voting system, to be certified, must meet certain State and federal standards and “provide access to voters with disabilities that is equivalent to access afforded voters without disabilities without creating a segregated ballot for voters with disabilities.” Md. Code Ann., Election Law (“EL”) § 9-102(f)(1). The requirements set forth in § 9-102 also specify that the voting system must be based on the preparation of a voter-verifiable paper ballot. Because many voters with disabilities are unable to prepare a hand-marked paper ballot, however, the voting systems will need to include a computerized ballot-marking device that allows the voter to make selections through other non-written means and then print a paper copy of the ballot.

The State Board of Elections (“SBE”) has begun the process of selecting a new optical scan voting system for use in Maryland beginning with the 2016 Presidential Election. The first step in that process is the certification of those voting systems that are compliant with Maryland’s standards. It is within this context that you ask what constitutes a “segregated ballot” under State law. Specifically, you ask:

1. Does segregation occur by virtue of the fact that the ballot created by the ballot marking device is different and distinguishable from the hand marked ballots? Or, does segregation only occur if ballots are cast, counted, and stored in a physically separate and distinct manner?
2. Does the determination of whether a segregated ballot has been created depend in

part on how the system is intended to be deployed and utilized? For example, assume the ballot marking device could be deployed in a manner such that it is an optional voting method for all voters, as opposed to only an accessible voting solution for voters with disabilities. Would such a deployment and utilization affect the analysis of what constitutes a segregated ballot?

In our opinion, the General Assembly, by using the term “segregated ballot,” intended to ensure that the ballots cast by voters with disabilities could not be identified as such during the process of casting, counting, and, if necessary, re-counting the paper ballots cast in an election. As we see it, the State Board has three options for certifying voting systems that can be used without creating a segregated ballot for voters with disabilities. First, SBE may require all voters to use a voting system that is accessible to voters with disabilities. This option would not segregate ballots in any way, but the cost and inefficiency of such a system—which the statute requires SBE to consider—might weigh against it. Second, SBE may certify an accessible voting system that generates a ballot that is formally identical to those ballots cast by non-disabled voters so long as all ballots are cast, counted, and stored together. Finally, after considering the legislative history and the definitions and usage of the term “segregated,” we conclude that the statute permits SBE to certify an accessible voting system that generates a non-identical ballot, so long as voting procedures are implemented to ensure that non-disabled voters use the accessible system as well and do so in sufficient numbers to prevent the resulting ballots from being identified as having been cast by voters with disabilities.

I

Background

As the twentieth century came to a close, Maryland’s voting infrastructure comprised a wide variety of voting systems, with each county responsible for choosing which type of system to employ. *See 97 Opinions of the Attorney General* 32, 36 n.7 (2012) (describing how, by 2000, Maryland counties employed four different types of voting systems: punch-card, mechanical lever, optical scan, and direct-recording electronic touchscreen). The experience of the 1994 gubernatorial election, with its narrow margin and vote count problems, highlighted the “myriad of administrative problems” associated with Maryland’s patchwork

quilt of voting systems. *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 8 (2004). The potential significance of those problems was magnified by the 2000 presidential election and the national attention it focused on the “unfortunate number” of ambiguous ballots produced by punch-card balloting machines. *Bush v. Gore*, 531 U.S. 98, 104 (2000); see also 97 *Opinions of the Attorney General* at 34-37.

In 2001, the General Assembly responded with legislation to modernize the conduct of elections in Maryland. The legislation mandated a uniform, statewide, voting system for State and federal elections and charged a single agency—the State Board—with overseeing the operation of that system. Under this new system, SBE, “in consultation with the local boards [of elections],” was given the authority to “select and certify a voting system for voting in polling places and a voting system for absentee voting.” 2001 Md. Laws, ch. 564; EL § 9-101(b). The State Board, following the directive in the 2001 legislation, then certified, selected, and procured a “direct recording electronic” or “DRE” unit, which provides for the voting and tabulation of votes directly by a computerized touchscreen system without the need for paper ballots.¹ See generally *Schade*, 401 Md. at 7-9; 97 *Opinions of the Attorney General* at 36-37.

The new DRE system certified by SBE represented an advance over the previously-used paper ballot systems in many respects. The computerized systems eliminated the need to interpret ambiguous handwritten ballots, allowed for easier and more efficient re-counts, and in some ways made the voting process more user-friendly. *Schade*, 401 Md. at 8-9. Most relevant to our purposes, the touchscreen system included features that enabled many voters with disabilities to cast their ballots without assistance, *id.* at 9, and in a manner that made their ballots indistinguishable from non-disabled voters. As the Court of Appeals observed in *Schade*, the touchscreen system represented the “first time [that] blind voters were able to vote independently and secretly” on the same basis as non-disabled voters. *Id.* at 21.

¹ Absentee and provisional ballots—which are completed on paper—were tabulated through the use of an optical-scan system. See, e.g., State Board of Elections, Overview of Maryland’s Voting System, http://www.elections.state.md.us/voting_system/index.html (last visited Dec. 9, 2013).

Although the touchscreen system represented a step forward in many respects, some observers believed that it came at the cost of election integrity because the system did not leave a “paper trail” that would allow for independent verification of the accuracy of the vote tabulation. Because the voter’s selections on the touchscreen were recorded by computer and computer alone, the paper ballot image that the system was able to generate merely verified the *computer’s* selections, not the voter’s. *Id.* at 18 n.22. Concerns about electronic security and the potential for vote manipulation prompted opponents of the new DRE system to file suit to block its use in the 2004 presidential election. That litigation² culminated in *Schade*, in which the Court of Appeals upheld SBE’s procurement of the DRE systems as a reasonable exercise of the “broad discretion” delegated to it by the General Assembly. *See id.* at 38-39.³

Undaunted, the opponents of the computerized system turned to the Legislature and there found success. In 2007, the General Assembly enacted legislation directing SBE to certify, for use in elections after January 1, 2010, a voting system that would provide a “voter-verifiable paper record.” EL § 9-102(d)(1)(vii). A voter-verifiable paper record is defined as “a paper ballot” that is either “prepared by the voter for the purpose of being read by a precinct-based optical scanner,” “mailed to the applicable local board,” or “created through the use of a ballot marking device.” EL § 9-102(a). As required by statute, the paper record must be an individual document that is “not part of a continuous roll”; it must be “sufficiently durable to withstand repeated handling for the purposes of mandatory random audits and recounts”; and it must “use[] ink that does not fade, smear, or otherwise degrade and obscure or obliterate the paper record over time.” EL § 9-102(d)(1)(vii); 2007 Md. Laws, chs. 547, 548.⁴

² The litigation was brought by “a group of registered Maryland voters and candidates.” *Schade*, 401 Md. at 13. SBE defended its decision, and the National Federation of the Blind intervened in support of SBE. *Id.* at 15.

³ The Court initially announced its decision by Order issued after oral argument on September 14, 2004. *Schade v. Maryland State Bd. of Elections*, 383 Md. 208 (2004). The Court later set forth its reasoning in an opinion issued on August 24, 2007. *See* 401 Md. at 25.

⁴ The General Assembly passed two identical, cross-filed bills—S.B. 392 and H.B. 18—which were subsequently signed by the Governor.

Advocates for the disability community opposed the legislation in part on the grounds that it would compromise the secrecy of disabled voters’ selections. Because many voters with disabilities are unable to mark paper ballots, they would have to use “ballot marking device[s],” EL § 9-102(a)(3), to make their selections without assistance. The advocates expressed the concern that the resulting ballots—particularly if cast, counted, and stored separately—could be identified as having been cast by a voter with disabilities, and they proposed an amendment to address the problem. In an effort to alleviate these concerns while still providing for a paper trail, the General Assembly adopted the proposed amendment drafted by one of the opponents of the legislation and enacted the provision we must construe here:

A voting system selected, certified, and implemented under this section 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.

EL § 9-102(f)(1).

For reasons not relevant to this opinion, SBE is just now beginning the process of certifying and selecting a new optical scan voting system for use in polling places. A polling-place optical scan voting system requires the voter to fill out a paper ballot by using a pen or other ink-based marker. That ballot is then fed into a scanner that reads and counts the voter’s selections. Voters who have disabilities that prevent them from hand-marking paper ballots and who wish to vote without the assistance of others must use a ballot-marking device that provides a touchscreen interface for the voter to make his or her selections. The ballot is printed, scanned by the optical scan voting unit, and then stored in the same ballot box as the hand-marked ballots.

You have stated that some ballot-marking devices might produce ballots that are different from those that are hand-marked. For example, the ballots might show only the voter’s selections and not the full contests, the ballots might be a different size from the ballots generated by non-disabled voters, or there may be a barcode at the top of the ballot. You asked whether any of these differences mean that those ballots are “segregated” in violation of § 9-102(f)(1), or whether segregation occurs only when those ballots are cast, counted, and stored in a physically separate and distinct manner. In addition, you asked whether making the accessible

system available to all voters could prevent segregation of the ballots.

II Analysis

The meaning of the term “segregated ballot” within § 9-102(f)(1) is a matter of statutory construction, the cardinal rule of which is “to ascertain and effectuate the real and actual intent of the Legislature.” *Lockshin v. Semsker*, 412 Md. 257, 274 (2010).

To ascertain the intent of the General Assembly, we begin with the normal, plain meaning of the language of the statute. If the language of the statute is unambiguous and clearly consistent with the statute’s apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction. . . . Where the words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme, a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process. . . . In every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.

Id. at 274-76 (citations omitted).

The statute itself does not resolve the issue; it neither defines the term “segregated ballot” nor suggests by its structure or context a specific meaning. Rather, as your questions suggest, the term could be read to imply *difference*, and require that the ballot created by the ballot-marking device be indistinguishable from hand-marked ballots, or it could imply *separation*, and require only that ballots cast by disabled voters not be counted or stored separately from all others. Neither meaning is clear from the text. To resolve the statutory ambiguity, we will look to the usage of the term

“segregated ballot” in other authorities, the dictionary definition of “segregated,” and the legislative history of § 9-102(f)(1).

A. *The Use of “Segregated Ballot” in Other Contexts and the Dictionary Definition of “Segregated”*

There are no reported cases in Maryland or other jurisdictions that construe the term “segregated ballot.” However, one Maryland case and a few authorities in other jurisdictions have used the term in passing. The Maryland case used the term “segregated ballot” to describe absentee ballots that had been set aside because they lacked the statutorily-required application to submit such a ballot. *See Pelagatti v. Board of Supervisors of Elections for Calvert County*, 343 Md. 425, 433 n.8 (1996) (observing that “of the 19 segregated ballots found to be lacking applications, 14 were for O’Donnell, 3 were for Pelagatti, and 2 were for neither candidate”). The only two reported cases from other jurisdictions use the term in a similar way to describe ballots that, because of some irregularity, have been set aside. *See Finkelstein v. Stout*, 774 P.2d 786, 793 (Alaska 1989) (on remand, requiring lower court to deduct the “nine segregated ballots” that were determined to be illegal and had been “counted but not commingled” with the other ballots); *Powers ex rel. LaBelle v. Monahan*, 132 A.2d 97, 99 (R.I. 1957) (describing contention that “the board of canvassers erred in rejecting the three segregated ballots” that were in dispute because of stray markings). These few cases suggest that the term “segregated ballot” denotes separation, rather than difference.⁵

We also looked for the term “segregated ballot” in the federal election laws and regulations as well as those of other states. Maine has the only state or federal statute or regulation that uses the term,

⁵ A number of other cases, even though they do not use the term “segregated ballot,” refer in passing to ballots that must be “segregated” in some way. As best as we can tell, all of these cases also use the word “segregated” to mean some form of separation and not a mere difference between ballots. *See, e.g., Rossello-Gonzalez v. Acevedo-Vila*, 483 F.3d 1, 4 (1st Cir. 2007) (noting that three disputed ballots were “segregated” from the others); *Unger v. Superior Court*, 37 Cal. 3d 612, 633 (1984) (“Candidates for the ‘judicial,’ ‘school’ and ‘county and township’ offices should be segregated from the partisan offices on the ballot.”); *State ex. Rel. Lukovich v. Johnston*, 150 Tex. 174, 178 (1951) (“Where illegal votes can be segregated, only those votes should be thrown out, and the entire vote need not be impeached, but where it is impossible to separate improperly marked ballots from the others the votes of a whole district may be excluded.” (quoting 29 C.J.S. Elections 193)).

and uses it in the sense of being separate from other ballots. The Maine statute describes ballots that, because they have been “spoiled” by the voter, must be “segregate[d] . . . with any other spoiled ballots in an envelope labeled ‘Spoiled ballots.’” 21-A M.R.S. § 693 (2013) (requiring the election official to “package and return the envelope of segregated ballots” in accordance with other provisions). Like the cases discussed above, the Maine statute does not interpret the term “segregated ballot,” does not use it in a regulatory manner, and does not evaluate it within the context of the voting rights of people with disabilities. Nevertheless, its usage of the term is consistent with the cases that use the term to denote separation rather than difference.⁶

We turn next to the “ordinary, popular understanding of the English language” reflected in the dictionary to ascertain the meaning of the term “segregated.” *Kramer v. Liberty Prop. Trust*, 408 Md. 1, 21 (2009) (internal quotation marks omitted). The Merriam-Webster Dictionary defines the term as:

- a. set apart or separated from others of the same kind or group <a *segregated* account in a bank>;
- b. divided in facilities or administered separately for members of different groups or races <*segregated* education>;

⁶ Although Maine’s is the only state code that uses the term “segregated ballot,” many state codes use the word “segregated” to refer to ballots more generally, and each uses it to mean separation. Specifically, most of the statutes use the word to describe the manner in which some ballots must be physically separated from others. *See, e.g.*, Ala. Code § 17-10-2(a)(4) (provisional ballots cast pursuant to court order extending the time for closing the polls must be “segregated from other provisional ballots into a separate sealed container”); Idaho Code Ann. § 34-308 (requiring mail ballots to be segregated by precinct); S.D. Codified Laws § 12-21-27 (providing that, if challenged, a “ballot shall be adequately identified by the board as an exhibit and segregated by the board as a disputed ballot”); Va. Code Ann. § 24.2-629 (requiring that a voting system “segregate ballots containing write-in votes from all others”). Those statutes that do not use the word “segregated” to refer to the physical separation of ballots use it to refer to the separation of items on a ballot. *See, e.g.*, N.M. Stat. Ann. § 1-9-20 (requiring that a voting system generate ballots for primary elections that “segregate the choices . . . by party affiliation”).

- c. restricted to members of one group or one race by a policy of segregation ‹segregated schools›

Webster’s Ninth New Collegiate Dictionary 1063 (1989). All three definitions connote separation rather than difference and, like the authorities discussed above, they suggest that the General Assembly likely envisioned something more than the mere difference between ballots in using the term “segregated ballot.” But they do not alone provide a clear answer. For that we turn to the legislative history, which indicates more clearly the Legislature’s intent.

B. The Legislative History

The bills that were enacted as Chapters 547 and 548 did not originally use the term “segregated ballot.” See H.B. 18, S.B. 392, First Reader (2007). As explained above, the legislation’s primary purpose was to provide an original paper record of a voter’s choices. The lead sponsor of the House bill, Delegate Sheila Hixson, stated publicly that a paper trail would “give people a trust in their vote, that it really counted.” *New Bill Would Create Voting Paper Trail by 2010*, Associated Press (March 21, 2007), available at safevotingmd.org/news/2007/pdfs-docs/3-21-acap-ap-fox21wjz.pdf. In addition, the advocates of a voting system with a voter-verified paper record emphasized their preference for a software-independent paper ballot that could be hand-counted during mandatory routine audits and, if necessary, during a recount. See Hearing on H.B. 18 Before the House Ways and Means Comm., 2007 Leg., Reg. Sess. (Feb. 1, 2007) (testimony of Stan Boyd, SAVE Our Votes); Hearing on S.B. 392 Before the Senate Educ., Health, and Env’tl Affairs Comm., 2007 Leg., Reg. Sess. (Feb. 22, 2007) (testimony of Progressive Maryland).

Although the bills were focused on providing a paper trail, they did include some provisions to protect the voting rights of people with disabilities:

- (a) a voting system selected, certified, and implemented under this section shall:
 - (1) provide access to voters with disabilities that:
 - (i) is equivalent to the access afforded to voters without disabilities;

(ii) facilitates the casting of secret ballots by voters with disabilities; and

(iii) fully complies with the Americans with Disabilities Act, P.L. 101–336, and the Help America Vote Act, P.L. 107–252; and

(2) allow a voter to cast, inspect, verify, and correct the selections by both visual and nonvisual means.

(b) at least one voting system in each polling place shall provide access for voters with disabilities and afford them the opportunity for private and independent inspection, verification, and correction of their ballots.

S.B. 392, First Reader (proposed EL § 9-108). Despite the existence of these protections, advocates for the disabled opposed the bills during committee hearings, expressing concern that the proposed requirements would not allow for disabled voters to “vote privately and independently.” Hearing on S.B. 392 (written testimony of the Maryland Disability Law Center). For many disabled voters, the DRE units then in use provided for complete voter equality, such that a return to a voting system based on paper ballots represented a step backwards.

Although the disability community was unable to defeat the legislation, it was able to obtain an amendment to the disability protections in the bill to prohibit the use of a “segregated ballot.” Specifically, the amendment required that a certified voting system not only must provide “access to voters with disabilities that is equivalent to access afforded voters without disabilities,” but must do so “without creating a segregated ballot for voters with disabilities.” EL § 9-102(f)(1).

The testimony of the advocates for the disabled indicates that the ultimate goal of the amendment was to ensure that the paper ballot voting system would be implemented in a way that protected the privacy of the selections made by disabled voters. Some of that testimony, however, suggests that the advocates’ preferred means for achieving that goal was to require a single voting system for all voters. As the National Federation of the Blind of Maryland stated in its testimony on H.B. 18 before the House Ways and Means Committee:

[T]his bill must be written not only to guarantee nonvisual access, but it must also guarantee that this nonvisual access must be an integral part of the system used by all voters. It is not acceptable to install a separate voting system for blind voters. Therefore, we recommend that . . . the definition of “equivalent access” should specifically prohibit ballot segregation, i.e., the ballots cast by voters using the accessibility features must not be segregated and counted separately from the ballots cast by the voters who do not use these features. If . . . ballot segregation is not expressly prohibited, blind voters will lose the assurance of casting secret ballots.

Hearing on H.B. 18 (written testimony of National Federation of the Blind of Maryland); *see also* Hearing on S.B. 392 (written testimony of The Freedom Center, Inc.) (“It is not acceptable to force people with disabilities to vote differently than everyone else . . .”).

Although requiring all voters to use the same voting system plainly would guarantee a non-segregated ballot, we see no evidence that the General Assembly intended through its use of the term “segregated ballot” to require that result. The Legislature could have expressly required the use of identical voting systems for all voters but did not do so. Instead, it required only that “[a]t least one voting system in each polling place on election day shall provide access for voters with disabilities in compliance with [§ 9-102(f)].” EL § 9-102(g)(1). Similarly, the Legislature could have prohibited the use of a segregated *voting system*. Instead it used the term “segregated ballot,” which, as reflected in the dictionary definitions, cases, and statutes discussed above, refers most naturally to ballots that are or can be *handled* separately from others.

Based on the legislative history and the usage of the term in other authorities, we conclude that the prohibition on “segregated ballot[s]” was intended to enable disabled voters to vote privately and secretly, such that the votes they cast cannot be identified as having been cast by a disabled voter. A difference between ballots does not make them “segregated” *per se*, but if the ballot used by disabled voters—and, as discussed below, *only* disabled voters—has a different appearance from those ballots used by non-disabled voters, it would be identifiable as a ballot cast by a disabled voter. Even if the distinct ballots are scanned by the same optical scan unit and stored in the same ballot box with all other ballots, the ballots used by voters with disabilities would remain distinguishable and

thus capable of being “segregated,” particularly in a recount. By the same token, even if all ballots were identical, those cast by disabled voters would still be distinguishable and, thus, “segregated,” if they were counted and stored separately. Thus, it is neither difference nor separation by itself that controls, but a combination of the two. We understand a “segregated ballot” to be a ballot that has been made distinguishable from other ballots, whether by its form or handling, and resulting in a loss of privacy for the voter.

C. *SBE’s Options in Certifying Accessible Voting Systems that Do Not Produce a “Segregated Ballot”*

We believe that SBE has several options for certifying voting systems consistent with the statute’s mandate that they provide “equivalent” access “without creating a segregated ballot.” EL § 9-102(f)(1). First and perhaps most directly, SBE could certify any accessible voting system that meets the other requirements of the statute so long as *all* voters—disabled and non-disabled alike—cast their ballots through the use of that system. Under that approach, all ballots would be completed using a ballot-marking device and, thus, would be identical in appearance and impossible to be segregated.

We do not believe, however, that requiring all voters to use the same accessible voting system is the only way to avoid the creation of a segregated ballot. Indeed, it is our understanding that acquiring ballot-marking devices for all voters—including those who do not need them—would result in increased costs and inefficiency, factors that the statute specifically requires the State Board to consider in certifying an election system. *See* EL § 9-102(e)(3), (4). In light of SBE’s duty to consider those factors, we believe that the State Board could certify a voting system specifically for use by disabled voters so long as the election process *as a whole* is designed to prevent the creation of a segregated ballot.

As we see it, there are at least two other ways in which SBE may certify an accessible voting system for use within an appropriately designed voting process. First, the State Board could certify a voting system dedicated to use by disabled voters so long as the system produces a ballot that (a) is identical in form to those cast by non-disabled voters, and (b) is cast, counted, and stored with other ballots. Although this approach would not necessarily address the concerns raised by all of the advocates for the disability community, it would achieve what appears to be principal goal of

the “segregated ballot” amendment, namely, to make it impossible to identify a ballot as having been cast by a disabled voter.⁷

Second, 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 a ballot produced by the system was, or was likely to have been, cast by a disabled voter. If the accessible system is used in this way, it does not matter that the ballot is a different size, has a barcode at the top, or shows only the voter’s selections and not the full contests. Provided that enough non-disabled voters use the same system, there would be no way to determine whether a specific ballot was cast by a disabled or non-disabled voter. Because the accessible system would be used by disabled and non-disabled voters alike, we believe that such a system would not result in the creation of a “segregated ballot” within the meaning of the statute.

We caution that, in order to proceed with this last option, it would not be sufficient simply to give non-disabled voters the *option* of using the accessible voting system. If using the accessible voting system requires more time and is more complicated—as we understand may be the case for some systems—a non-disabled voter may be unlikely to choose that option. And, if election judges are less comfortable with the operation of the accessible voting system, they might be reluctant to direct additional, non-disabled voters to that system. Consequently, if SBE elects to proceed in this fashion, it must establish randomized polling-place procedures to ensure that a significant number of non-disabled voters will use the accessible

⁷ Although we understand that a ballot generated by a ballot-marking device might never be *identical* to those filled out by hand, the manufacturers of accessible voting systems appear to be making strides toward that goal. See Letter from Howard Cramer, Executive V.P. of Govt. Relations, Dominion Voting, to Adam D. Snyder, Chief Counsel, Opinions and Advice, Office of Attorney General (Aug. 29, 2013) (noting that Dominion has developed “a library of random individual types of oval marks that mimic the oval marks filled in by hand”). We believe it would be within SBE’s “broad discretion” over voting system certification, *Schade*, 401 Md. at 38-39, to determine whether a particular distinguishing feature makes the ballot produced by a ballot-marking system sufficiently distinguishable from other ballots that it would constitute a prohibited “segregated ballot” even when mixed with other ballots before counting. See 97 *Opinions of the Attorney General* at 39 (observing that “the standards in [EL] § 9-102 allow SBE considerable discretion to decide what sort of evaluation is appropriate and what level of performance will be deemed acceptable”).

voting system.

We are not in a position to say how many ballots cast by non-disabled voters would be sufficient to render the ballots cast by disabled voters indistinguishable as such; that decision is properly left to SBE. We believe that the “broad discretion” afforded SBE to select a voting system, *Schade*, 401 Md. at 38-39, encompasses the discretion to devise polling-place procedures that will ensure that the system it selects is operated in a manner consistent with the statute. *See* EL § 9-102(i)(2) (requiring SBE to promulgate regulations that “specify the procedures necessary to assure that the standards of this title are maintained”). As the Court observed in *Schade*, “[t]he State Board is, no doubt, in a better position to carry out the charge delegated to it than any other entity” 401 Md. at 39; *see also id.* at 38-39 (SBE’s decision regarding the selection and certification of voting systems is “a matter of policy or quasi-legislative in nature” and is subject to an arbitrary and capricious standard of review). It is our opinion that, so long as SBE develops and implements polling-place procedures that result in non-disabled voters using the accessible voting system in sufficient numbers to make the ballots cast by disabled voters unidentifiable as such, the State Board may certify and select any accessible voting system that meets the other requirements of the Election Law without creating a “segregated ballot.”⁸

⁸ We note that SBE regulations may already provide a model for determining how many non-disabled voters would have to use the accessible voting system in order to mask the votes cast by disabled voters. Those regulations provide that, to “preserve the secrecy of provisional ballots and absentee ballots,” the local election boards must withhold from the “initial” canvasses “[a]t least five absentee ballots of each ballot style to be canvassed” during the provisional ballot canvass or the second absentee ballot canvass. COMAR 33.11.04.04A. It is our understanding that the purpose of holding back five ballots during the initial canvass is to ensure that the one or two ballots that typically come in during the second canvass cannot readily be attributed to the voters who cast them. Because the regulation provides for five ballots to mask one or two later ballots, it suggests that a substantial majority of the ballots cast on an accessible voting system should be cast by non-disabled voters. Whether a similar approach is workable here is, again, something best left to SBE to decide.

III

Conclusion

In summary, it is our opinion that the General Assembly, by prohibiting the use of a “segregated ballot,” intended to prevent the certification of a voting system that, for voters with disabilities, creates ballots that are physically set apart or can be easily distinguished from the ballots cast by other voters. We conclude that SBE has three options for certifying voting systems that would not result in creation of a segregated ballot. The State Board could require all voters to use accessible machines. Alternatively, SBE could certify an accessible voting system for the sole use of disabled voters so long as (a) that system produces ballots that are identical to the ballots produced by non-accessible machines, and (b) all ballots, from whatever machine, are cast, counted, and stored together. Or, SBE could certify any accessible system so long as it establishes polling-place procedures to ensure that enough non-disabled voters will use the accessible system that the ballots of disabled voters cannot be identified as such. Any one of these approaches would enable SBE to protect the privacy of disabled voters. Which approach to take, and how to implement that approach, is within SBE’s statutory discretion to determine.

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Voting problem article

Uploaded by: Delegate Mosby, Delegate Mosby

Position: FAV

The Daily Record, April 5, 2019

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.

<https://thedailyrecord.com/2019/04/05/ronza-othman-blind-voters-right-to-a-secret-ballot/>

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HB_1314_DRM_BJ

Uploaded by: Jackson, Ben

Position: FAV

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.

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HB1314_The Arc Maryland_Support_Ande Kolp

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HB1314: Election Law - Voting Systems - Accessibility for Voters With Disabilities
March 3, 2020, 1 p.m. in the Ways and Means Committee

Position: Support

The Arc Maryland is the largest statewide advocacy organization dedicated to the rights and quality of life of people with intellectual and developmental disabilities (I/DD) and we support HB1314.

People with disabilities expect to be treated equally at the polling booths and a uniform ballot system, that is also available to the general public, would support this expectation.

They should not be physically separated at the polls from other voters, and in the position of having to use a personally identifiable ballot such as what is available now through the current alternative "accessible" ballot. We should not have a system that causes the segregation of ballots cast by people with disabilities due to unequal ballot appearance thereby jeopardizing the privacy of a person's vote. This was the reason language prohibiting a segregated ballot was included in Maryland Election Law Article §9-102(f)(1), Annotated Code of Maryland." People with disabilities should have access to a ballot that may not be set apart or distinguishable, in size and form, from a ballot cast by a voter without a disability.

The Arc Maryland encourages people with intellectual and developmental disabilities, to be informed about candidates; to be active in the democratic process and vote. We understand the importance of their votes in private voting system. This bill proposes the use of a uniform ballot, accessible to all.

In summary, we believe this is a GOOD BILL that would improve access to voting for people with disabilities.

Respectfully submitted,

Ande Kolp
Executive Director

Election law journal lazar article

Uploaded by: lazar, johnathan

Position: FAV

Segregated Ballots for Voters with Disabilities? An Analysis of Policies and Use of the ExpressVote Ballot Marking Device

Jonathan Lazar

ABSTRACT

When the Help America Vote Act (HAVA) was enacted in 2002, it meant that, for the first time, people with disabilities were given the right to vote privately and independently. Post-HAVA, most states switched to direct recording electronic (DRE) voting machines, which allowed for people with disabilities to use the same machines, with alternate input/output modalities (e.g., blind voters could use the audio option and a set of headphones to ensure privacy). However, in the light of potential hacking threats (or even just the fear of hacking threats), many states are now moving back to hand-marked paper ballots such as optical scan ballots. Voters with print-related disabilities, unable to use an optical scan ballot by hand, are now forced to use a separate system, called a ballot marking device (BMD), to mark up paper ballots. Some BMDs, such as the ExpressVote[®], produce a ballot that is different in size and content from the hand-marked ballot used in the jurisdiction. If only a small number of people with disabilities are using this BMD in each polling place, this allows for the possibility of determining which votes were cast by people with disabilities, and if only one ballot was cast using the BMD in a precinct, it might eliminate the secrecy of the ballot for that voter. This article presents a case study of Maryland, describing how ballot secrecy may have been violated in the 2016 and 2018 elections. The article also presents empirical data from the 19 other states (and Washington DC) where the ExpressVote BMD is used, on their policies related to the use of the BMD.

Keywords: Help America Vote Act, ballot marking devices, voters with disabilities, discrimination, civil rights, private ballot

INTRODUCTION

IT IS WELL ESTABLISHED in U.S. legal frameworks that people with disabilities have an equal right to participate in elections and the political process. The aftermath of the 2000 U.S. presidential election, including the implementation of the Help America Vote Act (HAVA), offered the opportunity to provide new voting equipment that would allow

individuals with disabilities, including with print-related disabilities, to cast a secret and independent vote, which for many people was a new experience. The voting equipment that made it possible is known as a direct recording electronic (DRE) device. However, in an age of concerns about the potential hacking of State Boards of Elections, voter registration lists, equipment manufacturers, and actual voting machines,¹ several states have either adopted voting

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¹Various news outlets have reported on the ease of hacking, potential hacking or intrusions; see Wines 2019; Ratnam 2019; Patterson 2018; Schwartz 2018.

equipment with a paper trail or voting equipment that utilizes a paper ballot (note: this article is not commenting on the actual threat or incidents of hacking, only on the impact of that perceived threat in states moving away from DREs). This has, inadvertently, led to the possibility of some voters with print-related disabilities no longer having a secret ballot. The research described in this article, involving jurisdictions moving away from DREs towards using ballot marking devices (BMDs), aims to understand (1) how prevalent the violation of a secret ballot is with a case study of Maryland, and (2) what steps other jurisdictions that use BMDs have taken to protect the right to a secret ballot for those with disabilities.

It is important to note that voting rights for people with disabilities is a very broad area of research, including the topics of polling places that are physically inaccessible, ballots that are inaccessible or do not provide secrecy and independence (Waterstone 2003), voting rates of people with disabilities (Shur and Adya 2013), the prevalent use of absentee ballots by people with disabilities (Tokaji and Colker 2007), the rights of people with severe cognitive impairment or severe mental illness to vote (Karlavish et al. 2004), voting rights outside of the USA (Lord 2017), and voting rights contained within the United Nations Convention on the Rights of Persons with Disabilities (2018) (not binding law within the USA since the USA has signed the Convention but not yet ratified it). This research article only focuses on policies for protecting ballot secrecy and eliminating ballot segregation for voters with disabilities where BMDs are used.

LEGAL FRAMEWORK

Until the 1960s, there was no statutory basis in the USA for providing people with disabilities the right to vote. The Voting Rights Act of 1965 was a landmark piece of legislation, with a primary focus on protecting the voting rights of people of color, but it also stated that “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” (52 U.S.C. § 10508) The Voting Accessibility for the Elderly and Handicap-

ped Act (1984) requires that states take steps to make their voting process more accessible, however, it has very vague provisions (42 U.S.C. § 1973ee-6(1)). These two laws do not truly establish the right to a private and independent vote (Waterstone 2003), a reality confirmed by cases in the Fifth Circuit (*Lightbourn v. County of El Paso* 1997) and the Sixth Circuit (*Nelson v. Miller* 1999). There are two antidiscrimination statutes, the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) (1990), that broadly address disability rights, and therefore cover voting, but do not provide any specific thresholds or requirements related to voting.²

The strongest statutory basis for people with disabilities to have the right to a private and independent vote is the Help America Vote Act (2002), often known as HAVA. Pre-HAVA, in 2001, a U.S. General Accounting Office (GAO) report documented that 84% of the polling places that they visited had physical accessibility barriers, and none of the polling places that they visited had ballots or machines that would be accessible for blind voters (GAO 2001). The four previously mentioned statutes (the Voting Rights Act, the Voting Accessibility for the Elderly and Handicapped Act, the Rehabilitation Act, and the Americans with Disabilities Act), were not effective in ensuring that Americans with disabilities had access to a private and independent vote (Weis 2004). While HAVA was passed primarily due to the need for accurate vote counts, and various technical and security problems that occurred in the 2000 general election, access to voting for people with disabilities was also included, primarily due to pressure from disability rights activists (Weis 2004).

HAVA requires, *inter alia*, that each polling place have at least one voting machine that is accessible

²Waterstone (2003) notes about the Rehabilitation Act and the Americans with Disabilities Act (ADA):

The Rehab Act provides that “no otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

for people with disabilities, and “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”³ HAVA also provides mechanisms to fund states for the costs of upgrading their voting machines, as well as “making polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”⁴ While HAVA in theory provides the statutory path to equal voting rights for people with disabilities, the situation on the ground is still very problematic. Reports from the U.S. GAO in both 2013 and 2017 document that a majority of polling places they sampled still had physical barriers to accessibility, and many polling places did not have an accessible voting machine.⁵

THE MOVE AWAY FROM ACCESSIBLE DRES TO OPTICAL SCAN BALLOTS AND BALLOT MARKING DEVICES

The direct recording electronic voting machines were the primary voting machines used after the passage of HAVA, however, due to concerns about hacking and the integrity of DREs (Ribeiro 2016), approximately half of all jurisdictions in the USA now use optical scan voting, where voters fill out bubbles or connect arrows using a pencil or pen on paper ballots, which are then scanned (Desilver 2016). The recent evidence in the Mueller Report of the Russian government hacking county governments and voting equipment manufacturers only increases the already-existing concern about potential hacking (Wines 2019). This has led to a perceived trade-off between accessibility and integrity (although I do not believe that it is an actual trade-off). The benefits that people with disabilities received from the DREs, of private and independent voting, have in some cases disappeared.

A ballot marking device allows a voter with a print-related disability to mark up a paper ballot privately and independently. If a voter is blind, they can use the audio option with a headset and a keypad to make their voting selection. If a voter has

motor impairments, they can utilize either the keypad (depending on their motor skills, this may still be feasible for people with arthritis or mild Parkinson’s disease), or alternate methods such as sip-and-puff (e.g., for a voter who is paralyzed). The BMD then prints out their choices on a ballot. Another way to think of a BMD is essentially an accessible DRE (allowing for audio-based interaction) machine that will also create a physical paper ballot as output.

Some of the BMDs create/mark up physical ballots that are identical in size and content to the hand-marked optical scan ballots (which are frequently, but not always, 8.5 inch by 11 inch letter or legal paper-sized), so at least on a cursory look, the ballots appear identical (although on closer inspection, it may be possible to determine whether the marks were made by hand or by machine). Some BMDs, such as ExpressVote[®], create a completely different format, and only list the name of the contest and the candidates selected, which is not what appears on hand-marked ballots. If all voters (voters with disabilities and those without) use the same BMD, or the BMD marks up a ballot that is identical in size and content to the hand-marked ballot being used by voters without disabilities, there is no segregation of ballots or threat to secrecy of the ballot, as all ballots are identical, exist in large numbers, and are counted together. Ideally, the ballots created/used by the BMD should be identical to the hand-marked ballots, in terms of size and content (as was true with AutoMark[®], a device previously manufactured by Election Systems & Software). If the size and content for the BMD ballots and the hand-marked ballots are not identical, then it is especially important that large quantities of voters use the BMD. Otherwise, if only one or two ballots are cast in a polling place using a BMD which creates nonidentical ballots, it may be possible to identify that the votes came from voters with disabilities, or even reidentify the ballots to individual voters, causing a loss of ballot secrecy.

³42 U.S.C. § 15481a(3). Note: the Department of Justice (DOJ) website says that this is an accurate citation, but Lexis/Nexis disagrees on the citation.

⁴42 U.S.C. § 15421b(1). Note: the DOJ website says that this is an accurate citation, but Lexis/Nexis disagrees on the citation.

⁵See U.S. General Accounting Office (2013) and (2017).

The gradual changes in voting equipment, switching from DREs to a combination of optical scan ballots and BMDs, have the potential to provide an effective outcome for all, or instead to violate the right of people with disabilities to have a secret ballot. The unknown effect of this new wave of voting equipment motivated this exploratory research. This article focuses specifically on the use of the ExpressVote BMD, a product of Election Systems & Software (ES&S) which uses a ballot that is a non-standard size (14 inch by 4.25 inch) compared to the hand-marked optical scan ballots, which exacerbates the potential problems with having different types of ballots.

RESEARCH METHODOLOGY

To better explore the impact of BMDs on the ballot secrecy of voters with disabilities, two research methods were used:

1. The first research method is a case study of Maryland, examining materials provided to the public by the attorney general's office and the State Board of Elections, as well as precinct-level voting data provided by the State Board of Elections for the 2016 general election and the 2018 primary and general elections. The purpose of the case study is to better understand the specific stakeholders involved in decisions, the policies used in association with the BMDs, and the outcomes related to the use of BMDs in primary and general elections and the potential loss of ballot secrecy based on the precinct-level data.
2. The second research method is collecting empirical data from election jurisdictions that Verified Voting indicates used the ExpressVote BMD in 2018. According to VerifiedVoting.org, 20 states and the District of Columbia utilize the ExpressVote BMD in at least one jurisdiction. The extent to which each state uses the device varies. For example, in Maryland and Maine, every jurisdiction uses the device, and in states like Virginia (42 of 132 jurisdictions), and Florida (25 of 67 jurisdictions), the devices are widely used, but in states like Illinois and Indiana, only one jurisdiction uses the device. The data were collected with phone calls to state- and jurisdiction-level election officials,

with some communication being provided by election officials via follow-up e-mail message.

CASE STUDY OF MARYLAND

Maryland provides a representative case study in the complexity of repeatedly switching voting machines, and how our patchwork of voting laws and policies across the U.S. leads to potential problems such as the violation of ballot secrecy. In the year 2000, the 24 voting jurisdictions in Maryland (the 23 Maryland counties and the City of Baltimore, which is not a part of a county) used four different types of voting machines: punch-card, mechanical lever, optical scan, and DREs (Maryland Attorney General 2013). By the 2004 elections, the State Board of Elections (SBE) had standardized on Diebold AccuVote® touch screen-based DRE voting machines for all counties (Kazanjan 2013). In 2007, the General Assembly enacted legislation requiring the SBE to certify, for use in elections after January 1, 2010, voting machines that would provide a paper trail (Maryland Attorney General 2013). Due to budgetary reasons, this change back to paper ballots did not occur until the 2016 elections (Maryland Attorney General 2013). The Diebold Accuvote voting machines used from 2004 to 2014 had built-in accessibility features, and poll workers simply needed to attach a keypad and headphones for voters who needed an accessible machine, yet they did not provide a paper trail of any type. Everyone voting in the polling place, with and without disabilities, used the same voting machines, and it was impossible to determine which votes came from people with disabilities and which votes came from people without disabilities.

For voters with print-related disabilities (primarily those who are blind or low vision or have trouble physically handling printed ballots), the new optical scan paper ballots in Maryland utilized starting in 2016 are inaccessible, and so the voters with disabilities were asked to vote using the ExpressVote BMD. The ExpressVote BMDs create ballots that are immediately visually identified as being different, 14 inch by 4.25 inch, compared to the paper ballots designed for being hand-marked (which are generally letter or legal sized). Unlike standard paper ballots, which list all candidates, an ExpressVote ballot only lists the candidates that the voter

selected. Due to the difference in size and format, it is visually obvious that the ballot was cast using ExpressVote, and unless there are significant numbers of people without disabilities using the ExpressVote BMD, that ballot can be assumed to be cast by someone with a disability (Maryland Attorney General 2013). Figure 1 illustrates the dif-

ference between a standard-size paper ballot in Maryland and a ballot utilized in the ExpressVote ballot-marking device. It is important to note here that there isn't a forced trade-off between ballot accessibility and ballot security. It's the size and format of the ExpressVote ballot, which differs greatly from the standard optical scan ballot,

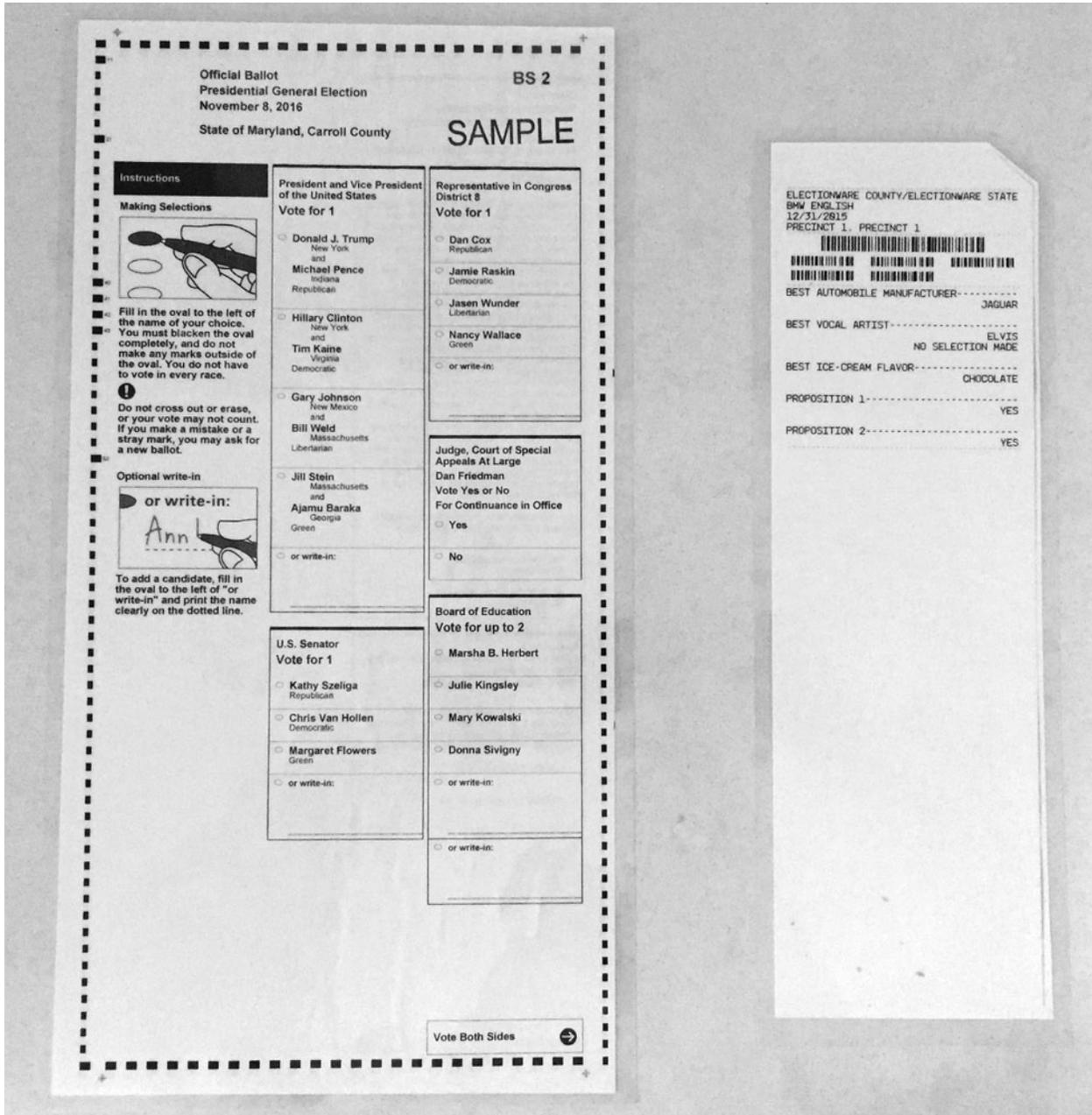


FIG. 1. An illustration of the difference in size between a ballot utilized in the ExpressVote ballot-marking device (right) and a standard-size paper ballot (left).

which is causing many of the problems with ballot segregation and ballot secrecy described in this article.

There are four main stakeholders in the debate over the use of ExpressVote BMDs in Maryland: (1) the Maryland attorney general's office, (2) Maryland disability rights activists, (3) the Maryland State Board of Elections, and (4) the Maryland Legislature.

The Maryland attorney general's office

In 2013, the administrator of the State Board of Elections (SBE) asked the Maryland attorney general to issue a statement on the meaning of the term “segregated ballot” within Maryland election law (Maryland Attorney General 2013). The Maryland attorney general stated that Maryland law requires the state to “provide access to voters with disabilities that is equivalent to access afforded voters without disabilities without creating a segregated ballot for voters with disabilities” (Maryland Attorney General 2013). The attorney general indicated that “the ballots cast by voters with disabilities could not be identified as such during the process of casting, counting, and, if necessary, re-counting the paper ballots cast in an election.” (Maryland Attorney General 2013) According to the attorney general, there are only three ways to meet this statutory requirement:

First, SBE may require all voters to use a voting system that is accessible to voters with disabilities. This option would not segregate ballots in any way, but the cost and inefficiency of such a system—which the statute requires SBE to consider—might weigh against it. Second, SBE may certify an accessible voting system that generates a ballot that is formally identical to those ballots cast by non-disabled voters so long as all ballots are cast, counted, and stored together. Finally, after considering the legislative history and the definitions and usage of the term “segregated,” we conclude that the statute permits SBE to certify an accessible voting system that generates a non-identical ballot, so long as voting procedures are implemented to ensure that non-disabled voters use the accessible system as well and do so in sufficient numbers to prevent the resulting ballots from being identified as having been cast by voters with disabilities. (Maryland Attorney General 2013)

The Maryland attorney general's opinion states that Maryland is the only state that specifically uses the term “segregated ballot” to apply to the votes of people with disabilities. It is rarely used in other jurisdictions, and when it is, it describes ballots that are “spoiled” and therefore are of questionable validity (e.g., due to stray markings). The Maryland attorney general states that, if the third option is selected, requiring voters without disabilities to use the ballot marking devices, there would need to be sufficient procedures in place to ensure that it actually occurs:

It would not be sufficient simply to give non-disabled voters the option of using the accessible voting system. If using the accessible voting system requires more time and is more complicated—as we understand may be the case for some systems—a non-disabled voter may be unlikely to choose that option and voters without disabilities would need to be forced to use the device... if SBE elects to proceed in this fashion, it must establish randomized polling-place procedures to ensure that a significant number of non-disabled voters will use the accessible voting system.... so long as SBE develops and implements polling-place procedures that result in non-disabled voters using the accessible voting system in sufficient numbers to make the ballots cast by disabled voters unidentifiable as such, the State Board may certify and select any accessible voting system that meets the other requirements of the Election Law without creating a “segregated ballot.” (Maryland Attorney General 2013)

If the third option is taken, the attorney general's opinion leaves the question of how many voters per polling place must use the ballot marking device to the State Board of Elections: “We are not in a position to say how many ballots cast by non-disabled voters would be sufficient to render the ballots cast by disabled voters indistinguishable as such; that decision is properly left to SBE” (Maryland Attorney General 2013). In December 2015, the SBE stated that their goal was to have 30 voters per polling place use the ballot marking device, and to encourage the use of the devices during early voting, to help increase the numbers. However, by March 2016, the SBE had indicated that they had changed their plans, and would only require two voters per polling place to use the ballot marking devices (Letter from NFBMD to SBE 2016).

Note: on June 28, 2019, the State Board of Elections voted to increase the target goal of minimum number of BMD votes per polling place to five.

Maryland disability rights activists

There have been a number of efforts by disability advocacy groups, primarily the National Federation of the Blind of Maryland (NFBMD), and Disability Rights Maryland (DRM) (formerly known as the Maryland Disability Law Center or MDLC), expressing their concern about the current ballot situation in Maryland. One comment from a 2017 letter, although certainly not the beginning of discussions on this topic, sums up the attitude of disability rights activists in Maryland:

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. Disability advocates were vocal that they did not want two systems that would cause the physical segregation of voters with disabilities as well as the segregation of their ballots by physical appearance thereby jeopardizing the privacy of their vote—for this reason language prohibiting a segregated ballot was included in Maryland Election Law Article §9-102(f)(1), Annotated Code of Maryland. (Letter from NFBMD to SBE 2017)

According to a March 2016 letter from NFBMD and MDLC:

In December 2015, SBE, in collaboration with NFBMD and MDLC, established a goal for each election day polling place to have at least thirty voters mark their ballot using the ExpressVote electronic ballot marking device, which we deemed a reasonable and sufficient number in keeping with 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." (Letter from NFBMD to SBE 2016)

It is important to note [opinion of the author] that there was no scientific or statistical basis for the

number 30 being selected as the threshold. The letter from March 2016 further aimed to

express our objection to SBE's draft concept which seeks to severely limit the use of the ExpressVote electronic ballot marking device (BMD) during Maryland's primary election and proposes that only two voters per day use the BMD ... we believe that SBE's proposal is not sufficient to protect the privacy of voters with disabilities who may use the BMD. Moreover, a minimum of two voters is not consistent with the Attorney General's 2013 opinion regarding the segregated ballot issue. (Letter from NFBMD to SBE 2016)

In October 2017, NFBMD and DRM (note that the name change occurred during the time in between these two letters) again expressed their concern about how the State Board of Elections was utilizing ExpressVote, and suggested three approaches for addressing this: "1) Give local boards of elections the ability to deploy more than one BMD; 2) increase the minimum number of voters who must use the BMD to ensure the privacy of voters with disabilities; and 3) continue to require the mandatory statement at check-in that lets voters know that there is an accessible way to read and mark a ballot" (Letter from NFBMD to SBE 2017). The letter goes on to suggest that potentially there may have been Maryland voters with disabilities who would have benefitted from ExpressVote but were not made aware of it or encouraged to use it: "According to SBE data, during the 2016 General Election only 1.8% of voters used the BMD. This low percentage is particularly alarming given the population of Marylanders with disabilities who may have benefited from using the accessible feature of the ExpressVote" (Letter from NFBMD to SBE 2017).

The most recent letter from NFBMD and DRM was in response to the July 2018 letter from the Maryland State Board of Elections to the Maryland State Legislature (described in the next section). In the letter, NFBMD and DRM noted that SBE is still not taking this issue seriously, and stated that "If the ballots of any other protected class of citizen were identifiable by gender, race or ethnicity, for example, the General Assembly would surely insist that SBE revise its policies" (Letter from NFBMD to House and Senate 2018).

The Maryland State Board of Elections

It's important to note that the SBE takes a viewpoint that is different from both the attorney general's office and disability rights activists, a view detailed in a July 2018 letter. In July 2018, the State Board of Elections wrote a letter to chairs of two Maryland legislative committees, which had asked SBE to provide an update and detail why they made these decisions about limiting the use of the BMDs (Letter from SBE to House and Senate 2018). The main reason listed was that there were complaints from candidates about how names were displayed in races with more than seven candidates, moving some candidates on to a "second screen" with confusing navigation. The "more" button moved voters to the next screen of candidates in the same contest, but "previous" and "next" buttons moved voters to the next contest, and there was potentially confusion among voters about the meanings of "next" versus "more." While the SBE expected that the vendor would make changes to eliminate this problem in time to be tested and certified for the 2018 primary and general elections, the vendor indicated that there was a delay; therefore, the modifications would not be ready in time for 2018.

The SBE further framed the discussion in a way very different from the framing of disability rights activists: "... the 2016 and 2018 policy aims to strike a balance between the rights of candidates to have their names be viewed and considered by all voters, the ability of voters to make selections without confusion, and the requirement to ensure ballot secrecy" (Letter from SBE to House and Senate 2018). The letter further describes: "As the vendor has committed to addressing the navigation issues before the 2020 election, the limited use of the ballot marking device should not be needed after the 2018 elections" (Letter from SBE to House and Senate 2018). It is unknown whether that prediction will come to fruition. It is also important to note that, from the data collected in the next section of this article, no other jurisdictions which utilized ExpressVote reported having any problems of this type.

The Maryland Legislature

During the 2019 legislative session (which runs from January to the first week of April), a bill was introduced in the Maryland House of Delegates

and State Senate (known as House Bill 565 and Senate Bill 363, respectively), which would require that all voters in Maryland, with and without a disability, use a BMD to vote. The relevant text from the bills, which would modify existing Maryland election law, is as follows (note: capitalization is from the bill, not the author):

(1) TO ENSURE THAT ACCESS IS PROVIDED TO VOTERS WITH DISABILITIES IN ACCORDANCE WITH SUBSECTION (F)(1) OF THIS SECTION:

(I) EACH VOTER SHALL USE A BALLOT MARKING DEVICE THAT IS ACCESSIBLE TO VOTERS WITH DISABILITIES TO VOTE AT AN EARLY VOTING CENTER OR AN ELECTION DAY POLLING PLACE; AND

(II) A BALLOT CAST BY A VOTER WITH A DISABILITY MAY NOT BE SET APART OR DISTINGUISHABLE, IN SIZE AND FORM, FROM A BALLOT CAST BY A VOTER WITHOUT A DISABILITY.

While the bill had a hearing in the House Ways and Means Committee and the Senate Education, Health, and Environmental Affairs Committee (both in February), no committee vote was held in either case, and the respective bills never made it to a floor vote. While the Maryland SBE came out against the bill (as expected), and disability rights groups came out for the bill (as expected), a voting rights group, Save Our Votes, first came out against the bill during the House hearing, but then changed and supported the bill during the Senate hearing. It is unknown whether the bill will be introduced again in the 2020 legislative session.

Empirical data on the use of ExpressVote in Maryland

Data were acquired from the Maryland State Board of Elections on the utilization of the ExpressVote BMD in the 2016 and 2018 elections. According to the State Board of Elections, they did not collect any data related to ExpressVote usage in the 2016 primary election, the first time that the BMDs were used in Maryland. So only three data sets from the State Board of Elections can be analyzed: the 2016 general election, the 2018 primary election, and the 2018 general election. To understand the magnitude of the problem of having small numbers of voters using a ballot that is

sized and formatted differently, the data were analyzed to determine how many precincts in Maryland had only one voter who cast a vote using ExpressVote. In summary, in the 2018 general election, there were 22 precincts in Maryland where only one ballot was cast using ExpressVote, and in the 2018 primary election, there were 40 precincts

where only one ballot was cast using ExpressVote. See Table 1 for a list of where the precincts with only one vote using ExpressVote were located in the 2018 general election and primary election.

A few other notes: separate data on *early voting* was provided for the 2018 primary election (and only the primary election), and while no early voting centers in Maryland had only one vote using ExpressVote, one early voting center (in Harford County) had only two ballots with ExpressVote out of a total of 1,299 ballots cast, and three early voting centers in Prince George’s County had a surprising 33.9%, 36.5%, and 73.5% of early votes cast using the ExpressVote BMD. It is unknown what occurred in those early polling places. As a comparison between 2018 and 2016, in the 2016 general election there were 34 precincts that had only one ballot cast using ExpressVote.

TABLE 1. PRECINCTS IN THE 2018 GENERAL ELECTION (22) AND 2018 PRIMARY ELECTION (40) WHERE THERE WAS ONLY ONE BALLOT CAST USING EXPRESSVOTE

2018 General election		2018 Primary election	
Jurisdiction of precinct	Total number of ballots cast in precinct	Jurisdiction of precinct	Total number of ballots cast in precinct
Anne Arundel	806	Anne Arundel	159
Anne Arundel	656	Anne Arundel	205
Baltimore City	15	Baltimore City	71
Baltimore City	466	Baltimore City	76
Baltimore City	417	Baltimore City	13
Baltimore City	259	Baltimore City	54
Baltimore City	330	Baltimore City	7
Baltimore County	1,199	Baltimore City	373
Baltimore County	187	Baltimore City	214
Charles	194	Baltimore City	132
Frederick	2,212	Baltimore City	67
Harford	2,118	Baltimore City	9
Harford	1,737	Baltimore City	172
Harford	838	Baltimore City	52
Harford	1,374	Baltimore City	300
Harford	1,270	Baltimore City	19
Harford	1,123	Baltimore City	54
Montgomery	1,207	Baltimore City	156
Prince Georges	686	Baltimore City	253
Prince Georges	132	Baltimore County	250
Wicomico	552	Cecil	332
Wicomico	314	Harford	235
		Harford	137
		Harford	174
		Harford	431
		Harford	368
		Harford	321
		Harford	557
		Howard	255
		Montgomery	320
		Montgomery	429
		Prince Georges	509
		Prince Georges	289
		Prince Georges	480
		Prince Georges	100
		Prince Georges	199
		Prince Georges	175
		Prince Georges	751
		Washington	119
		Washington	242

EMPIRICAL DATA ON THE USE OF EXPRESSVOTE IN OTHER JURISDICTIONS

To better understand the policies associated with the use of the ExpressVote BMD, a series of phone calls were made by the author in March and April 2018. For states that have five or more voting jurisdictions using ExpressVote, the State Board of Elections (or equivalent) was contacted (11 states, plus Maryland and the District of Columbia, although Maryland was not contacted as a part of this portion of the data collection, since the policies were already well documented in the materials supplied by the Maryland SBE). For states that have fewer than five voting jurisdictions using ExpressVote, the individual jurisdictions (usually at a city or county level) were contacted (eight states) (data on usage of ExpressVote came from VerifiedVoting.org). It is important to note that the definition of “jurisdiction” for voting purposes differs depending on the state; for instance, in some states only counties count as jurisdictions, whereas in other states cities or municipalities count as jurisdictions. See Table 2 for a listing of states and the associated number of jurisdictions in each state that use ExpressVote. It is acknowledged that the policies mandated at a state level quite possibly may not be carried out by every individual polling place, as some requirements are set at a state level, while others are left for local jurisdictions to decide.

TABLE 2. STATES THAT IN 2018 ELECTIONS WERE USING EXPRESSVOTE

State	<i>Number of jurisdictions in state that use ExpressVote</i>
<i>States with 5+ jurisdictions using ExpressVote</i>	
Arkansas	15
Arizona	8
DC	All 143 precincts (only one jurisdiction)
Florida	20
Idaho	13
Iowa	13
Kansas	6
Maine	All
Maryland	All (but not included in data collection)
Michigan	7
Virginia	40
Wisconsin	211
West Virginia	13
<i>States with <5 jurisdictions using ExpressVote</i>	
Illinois	1 (Bloomington)
Indiana	1 (Marion County, aka Indianapolis)
Kentucky	1 (Jefferson County, aka Louisville)
Nevada	1 (Carson City)
Ohio	2 (Knox County and Portage County)
South Dakota	1 (Aurora County)
Tennessee	3 (Hardin, McNairy, and Wilson County)
Texas	1 (Kaufmann County)

In general, there were three approaches by voting officials in response to the phone calls: (1) the researcher was connected to the person who could answer the question or told to call back later that day or another day when the person in question was available, (2) the researcher was asked to leave a message and wait for a return phone call, and (3) the researcher was asked instead to please submit the questions via e-mail. Three short questions were asked by the researcher, related to policies on use of the ExpressVote device. The three questions were:

1. Are people without disabilities encouraged or required to use the ballot marking devices (BMD), so that there are more ballots created using the BMD, and it then becomes impossible to determine which votes came from people with disabilities?
2. Is there a minimum number of people at each polling place who are required to use the ballot marking device?
3. Are any actions taken to ensure that the ballots of people who used the ballot-marking device are not counted separately?

If the answer to the first question rendered the second and third questions moot, the researcher did not ask any additional questions. If the researcher was not able to reach someone the first time, or did not receive an e-mail or phone call in response, a follow-up call was made one week later, and then two weeks later.

The responses to the phone calls to election officials documented that there appear to be seven policy options on a spectrum of who is allowed to, is requested to, or may use the ExpressVote BMD. These seven policies are listed in terms of the likely percentages of votes cast using ExpressVote (from least to greatest), along with nicknames created by the author. Table 3 lists the seven types of policies, along with which states and jurisdictions reported policies within each of these seven policies. It is important to note that Stein et al., in 2008, said that voters in an election having a choice between two voting technologies is “an unusual circumstance,” which clearly is no longer the case (Stein et al. 2008).

The second interview question related to the minimum number of people at each polling place who are required to use the ballot marking device. Most of the election officials contacted indicated that there was no minimum number of voters as a target per precinct. A rare exception was Michigan where they encourage at least a minimum of two ExpressVote ballots per precinct, and Knox County, Ohio, where they have a goal of at least one ExpressVote ballot in each precinct (it was unclear why that was encouraged, as that is generally a problem situation). However, a few election officials indicated that they have policies in place to increase the number of ExpressVote ballots at each precinct by encouraging poll workers to vote using ExpressVote. For instance, in Iowa, Maine, and Michigan, as well as Bloomington, Illinois, poll workers are encouraged to use ExpressVote to personally vote. One election official noted an additional bonus: by using ExpressVote for their personal vote, the poll workers also learn how ExpressVote works. One election official noted: “Each polling place has a minimum of three poll workers, so if we could get all three of them to vote using ExpressVote, we could avoid the problem of ballot secrecy.” In Iowa, individuals who work for disability rights organizations are also encouraged to vote with ExpressVote.

TABLE 3. POLICY STRATEGIES UTILIZED RELATED TO THE EXPRESSVOTE BMD

<i>Paper required</i> —Unless they appear to have a disability, voters in that state or jurisdiction are not given the option to use ExpressVote	Portage County, OH
<i>Paper encouraged</i> —Voters in that state or jurisdiction are encouraged to use a paper ballot, but if they ask to use the ExpressVote, they are allowed to do so	Marion County, IN—Indianapolis Aurora County, SD Iowa Wisconsin Maine
<i>Paper encouraged unless there is a wait</i> —Voters in that state or jurisdiction without disabilities are directed to use the paper ballot (non-neutral), unless there is a long wait for paper ballots, in which case voters are directed to use ExpressVote	Knox County, OH
<i>Neutral</i> —Voters in that state or jurisdiction are told that they have a choice of paper or electronic ballot, in a neutral way	Jefferson County, KY—Louisville Idaho Kansas
<i>Neutral unless there is a wait</i> —Voters in that state or jurisdiction are told that they have a choice of paper or electronic ballot, in a neutral way, but when lines are long at the polling place for paper ballots, polling workers then switch and encourage voters without disabilities to use the ExpressVote machines	Washington DC
<i>BMD encouraged</i> —Voters in that state or jurisdiction are encouraged to use the ExpressVote device, and only get paper ballots upon request	Bloomington, IL Hardin County, TN McNairy County, TN Michigan (note: ExpressVote is one of three different BMDs used throughout the state) West Virginia
<i>BMD required</i> —Voters in that state or jurisdiction are required to utilize ExpressVote unless they are using a provisional ballot or an absentee ballot.	Carson City, NV Wilson County, TN Kaufmann County, TX Arkansas (for counties that choose to be all-machine counties, they use ExpressVote and allow for no paper ballots; for counties that choose to be an all-paper county, they use iVotronic as their accessible machine instead)
<i>States where they give no advice on the voting issues presented in this article</i>	Arizona Florida Virginia

Related to the third interview question, there was very little useful information collected. Every election official said that either (1) there were no policies about ballot storage or separateness, or (2) all ballots are stored and counted together, because the scanners can handle differently sized ballots. However, one state-level election official did say in response to this question, that “we count all of the ballots together . . . [but] we can’t control how it happens in every jurisdiction.”

CONCLUSION AND IMPLICATIONS

The Maryland precinct voting data from 2016 and 2018 demonstrates that there is a frequent problem where ballot secrecy is violated. In the 2018 general election, there were 22 precincts where one vote was cast using ExpressVote; in the 2018 primary election, there were 40 precincts where

one vote was cast using ExpressVote; and in the 2016 general election, there were a total of 34 precincts that had only one vote cast using ExpressVote. The situation in Maryland can benefit from understanding what other states and jurisdictions are doing in conjunction with the ExpressVote BMD.

It is important to reiterate that the potential problems only occur when ExpressVote ballots are used in conjunction with standard-sized, hand-marked paper ballots. In a number of jurisdictions (e.g., in Wilson County, Tennessee, and Kaufmann County, Texas), they require all voters to use the ExpressVote BMD for in-person voting, so there are no concerns about potential segregation of ballots or loss of ballot secrecy. Also, some jurisdictions allow for paper ballots but encourage voters (either in general or specifically when waiting lines are long) to use the ExpressVote (these jurisdictions include Bloomington, Illinois; Hardin County,

Tennessee; and McNairy County, Tennessee), and so, it is likely that a majority of the ballots are voted using ExpressVote, avoiding the core problems.

The data presented in this article provide a number of suggestions from other jurisdictions on how Maryland (and any jurisdictions with similar policies) could avoid the potential problems of ballot segregation and the lack of ballot secrecy. For instance, in very few places do these rules for how voters are given instructions seem to be written or formalized in any manuals or election codes. So, it's theoretically possible that changes to these policies could potentially be made outside of formal regulatory or statutory processes. Unless otherwise required by formal rule, it seems possible to change the "Paper required" or "Paper encouraged" default in some jurisdictions, to a default of "Neutral" or "Neutral unless there is a wait," with limited political requirements. To avoid the problems involving ballot secrecy, you only need a substantial number of voters using it (i.e., you don't need to move the policy all the way to one end of the spectrum). There is likely another concern here that no jurisdiction mentioned—if you encourage more people to use the ExpressVote BMD, there will be more demand for the machines from jurisdictions, and that may have budgetary implications, as more machines will be needed.

Another promising approach to avoiding the potential loss of ballot secrecy is to add a requirement (or a strong suggestion) that polling workers themselves vote using the ExpressVote, both to increase the number of ExpressVote ballots and also to help poll workers learn how to use it so that they can help other voters. This simple policy modification wouldn't impact the mainstream voters, or have budgetary implications. Unpublished data collected by the National Federation of the Blind in Maryland in 2016 (the first year that ExpressVote was used in Maryland) found that 28% of voter-respondents indicated that the poll workers couldn't provide any instructions on how to use the ExpressVote BMD, and in 2018, a third of blind voter-respondents said that poll workers had problems setting up or operating the ExpressVote.⁶ Requiring that poll workers themselves vote using the BMD would likely improve both the ballot secrecy situation and also the situation of poll workers being unfamiliar with the device.

The data collected in this article, and the situations facing jurisdictions across the USA, lead to a

number of new, unanswered questions which are suggested for future research and are described in the following paragraphs.

1. *How does the potential loss of ballot secrecy impact on the attitude and behavior of voters with disabilities?* Do voters perceive that they or their vote will be discriminated against, and if so, does that change voting patterns or habits?

2. *How do the policies described impact overall voting patterns?* While this research article only examined existing policies, in the future, it would be useful to collect data about the actual number of votes cast using traditional paper ballots versus the ExpressVote ballots, given a specific policy related to choice or encouragement. It would also be interesting to run empirical studies examining how different groups of voters interact with the ExpressVote devices. For instance, it would be interesting to determine, for voters without any print-related disabilities, which method is faster: using paper ballots or using the ExpressVote devices. If empirical research documented that it is faster for a majority of voters to use ExpressVote BMDs than paper ballots, would that influence policies?

3. *How do policies on using the ExpressVote impact on voters who wouldn't classify themselves as having a disability, and therefore wouldn't ask for the "disabled" option, but might have minor impairments?* While the focus in this article is on blind voters, what about those who have poor eyesight but wouldn't classify themselves as low vision? What about people who have arthritis or hand tremors which make writing with pen and paper challenging? What about people with cognitive challenges or learning disabilities, where hearing the choices on a headset might make the voting experience easier to understand? All of these individuals may benefit from a BMD where adjustments to the presentation of the ballot can be made without having to ask for special help or identify as "disabled."

4. *In precincts where there was only one ExpressVote ballot, and there was a recount, how was the ballot actually handled by election officials?* Our discussions so far focus on the potential loss of ballot secrecy. But in practice, when a recount occurs in a precinct with only a few

⁶From a conversation with Lou Ann Blake of the National Federation of the Blind in Baltimore, Maryland.

ExpressVote ballots, or even only one, how was that ballot treated?

In an ideal world, all of voting machines and technologies would be designed to be fully accessible for people with disabilities, using the same machines and ballots for all voters, in a fully secure manner, and providing a paper trail for recounts. To roll out such a “perfect design” solution across the U.S. would require expert designers, sufficient funding, and political pressure. Given that state and local jurisdictions have the authority to decide how to run their elections, even if there was a “perfect design solution,” it is unlikely that it could be consistently implemented across the USA. So instead, we must investigate various situations that may occur given the patchwork of election ballot technologies, policies, and approaches used around the U.S., and try to identify issues and come up with solutions to the problems of ballot segregation and the loss of ballot secrecy.

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Lazar HB1314 test

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Support for HB 1314, March 3, 2020
Jonathan Lazar, Ph.D., LL.M.
Professor of Information Studies, University of Maryland

Testimony to the House Ways and Means Committee

I am here today to state my support for HB 1314, because HB 1314 addresses the serious problem that currently exists in Maryland related to ballot segregation and ballot secrecy.

1. Background

From 2004-2014, all voters in Maryland used the same ballot approach: the Diebold Accuvote DRE (Direct Recording Electronic) machines. While critics complained that the machines lacked a paper trail, voters with and without disabilities all used the exact same voting machine, which was an ideal situation. In the 2016 and 2018 elections, Maryland used a two-tier approach. Voters primarily used the optical scan paper ballots, however, voters with print-related disabilities, unable to use the optical scan ballots, instead used the ExpressVote ballot marking device (BMD). The ExpressVote creates a ballot size and format which is 4.5 x 14 inches (known as the “skinny ballot”), and only lists the candidates selected. The standard optical scan ballot in Maryland is closer to legal paper size, and lists all candidates, not only those for whom votes were cast.

If all voters (voters with disabilities and those without) use the same BMD, or the BMD marks up a ballot that is identical in size and content to the hand-marked optical scan ballot being used by voters without disabilities, there is no potential segregation of ballots or threat to secrecy of the ballot, as all ballots are identical, exist in large quantities, and are counted together. **This is not the case in Maryland.** If the size and content for the BMD ballots and the hand-marked ballots are not identical, then it is especially important that large quantities of voters use the BMD which creates the “skinny ballot.” This would be the only way to ensure that BMD-marked ballots cannot be identified to be ballots only from people with disabilities.

2. What the law requires

In 2013, the Administrator of the State Board of Elections asked the Maryland Attorney General to issue a statement on the meaning of the term “segregated ballot” within Maryland election law.¹ The Attorney General indicated that “the ballots cast by voters

¹ Maryland Attorney General (2013). Election Law: Voting Systems-Statutory Construction-Requirement that Voting Systems Not Create a “Segregated Ballot” for Voters with Disabilities. Available at: <http://www.marylandattorneygeneral.gov/Opinions%20Documents/2013/98OAG152.pdf>

with disabilities could not be identified as such during the process of casting, counting, and, if necessary, re-counting the paper ballots cast in an election.”¹ According to the Attorney General, there are only three ways to meet this statutory requirement:

1. “SBE may require all voters to use a voting system that is accessible to voters with disabilities.”
2. “SBE may certify an accessible voting system that generates a ballot that is formally identical to those ballots cast by non-disabled voters so long as all ballots are cast, counted, and stored together.”
3. “The statute permits SBE to certify an accessible voting system that generates a non-identical ballot, so long as voting procedures are implemented to ensure that non-disabled voters use the accessible system as well and do so in sufficient numbers to prevent the resulting ballots from being identified as having been cast by voters with disabilities.”¹

3. The problem

The way that Maryland has implemented the use of the ExpressVote ballot marking device has led to two problems:

1. If very few ballots are cast using the ExpressVote BMD, it is possible to identify that all of the ballots came from voters with print-related disabilities, and the ballots may potentially be segregated and/or treated differently.
2. If only one or two ballots are cast in a polling place using the ExpressVote, it may be possible to re-identify the ballots to individual voters, causing a loss of ballot secrecy. According to data sets provided to me by the Maryland State Board of Elections, in the 2018 general election, there were 22 precincts in Maryland where only one ballot was cast using ExpressVote, in the 2018 primary election, there were 40 precincts where only one ballot was cast using ExpressVote, and in the 2016 general election, there were 34 precincts that had only one ballot cast using ExpressVote (SBE was not able to provide a data set from the 2016 primary election). This is clearly not within the requirements set out by the Attorney General’s office, which I described in the previous section.

4. My data collection on this topic

My research involving the 19 other states (and the District of Columbia) which use the ExpressVote ballot marking device, was published in the December 2019 issue of the

*Election Law Journal: Rules, Politics, and Policy*². During March-May 2018, I placed a series of phone calls to election officials in the 19 other states (and the District of Columbia) which use the ExpressVote ballot marking device, to learn more about how they handled the potential problems of the unique “skinny ballot” shape of the ExpressVote ballot. If the state had 5 or more jurisdictions which used ExpressVote, I spoke with state election officials. If a state had less than 5 jurisdictions which used ExpressVote, I spoke directly with election officials in each of the jurisdictions. The responses to the phone calls by election officials described a series of 7 policy options on a continuum. These policies describe who is allowed to, who is requested to, or who is encouraged to use the ExpressVote BMD. These 7 policies are listed in terms of the likely percentages of votes cast using ExpressVote (from least to greatest), along with nicknames that I created to describe the policy:

1. (“Paper required”) Unless they appear to have a disability, voters in that state or jurisdiction are not given the option to use ExpressVote (e.g. Portage County, OH).
2. (“Paper encouraged”) Voters in that state or jurisdiction are encouraged to use a paper ballot, but if they ask to use the ExpressVote, they are allowed to do so (e.g. Iowa and Wisconsin).
3. (“Paper encouraged unless there is a wait”) Voters in that state or jurisdiction without disabilities are directed to use the paper ballot (non-neutral), unless there is a long wait for paper ballots, in which case voters are directed to use ExpressVote (e.g. Knox County, OH).
4. (“Neutral”) Voters in that state or jurisdiction are told that they have a choice of paper or electronic ballot, in a neutral way (e.g. Kansas).
5. (“Neutral unless there is a wait”) Voters in that state or jurisdiction are told that they have a choice of paper or electronic ballot, in a neutral way, but when lines are long at the polling place for paper ballots, polling workers then switch and encourage voters without disabilities to use the ExpressVote machines (e.g. Washington DC).
6. (“BMD Encouraged”) Voters in that state or jurisdiction are encouraged to use the ExpressVote device, and only get paper ballots upon request (e.g. West Virginia, and Hardin and McNairy Counties, TN).

² Lazar, J. (2019). Segregated Ballots for Voters With Disabilities? An Analysis of Policies and Use of the ExpressVote Ballot Marking Device. *Election Law Journal: Rules, Politics, and Policy*, 18(4), 309-322.

7. (“BMD Required”) Voters in that state or jurisdiction are required to utilize ExpressVote unless they are using a provisional ballot or an absentee ballot. In this case, there is no issue of the non-standard shape of the ExpressVote ballot, since there are no equivalent paper ballots (e.g. Carson City, Nevada, Wilson County, Tennessee, and Kaufmann County, Texas).

The ballot secrecy problems that exist in Maryland do not exist in most jurisdictions nationwide because voters in other states are using the ExpressVote BMD in large numbers. In these jurisdictions, voters are given the neutral option to vote using ExpressVote, are encouraged to vote using ExpressVote, or are only allowed to vote using ExpressVote.

Furthermore, many jurisdictions have policies in place to increase the number of ExpressVote ballots at each precinct by encouraging poll workers to vote using ExpressVote. For instance, in Iowa, Maine, and Michigan, as well as Bloomington IL, poll workers are encouraged to use ExpressVote to personally vote. There is an additional benefit here: by using ExpressVote for their personal vote, the poll workers also learn how ExpressVote works, and can then assist voters who want to use it.

Maryland is not currently using any of these approaches to increase the number of voters who vote using ExpressVote.

5. Why I support HB 1314

The current implementation of voting in Maryland clearly does not meet the statutory requirement, as described by the Maryland Attorney General. We currently have a segregated ballot in Maryland, and for some voters in Maryland who have print-related disabilities, they have been denied access to a secret ballot. Other jurisdictions around the country who use the ExpressVote BMD (as described in earlier sections of my testimony), have used it in ways which do not lead to a segregated ballot. However, the Maryland State Board of Elections continues to implement voting policies which create a segregated ballot. HB 1314 would clearly eliminate these practices, with the current text of the bill:

“A BALLOT CAST BY A VOTER WITH A DISABILITY MAY NOT BE SET APART OR DISTINGUISHABLE, IN SIZE AND FORM, FROM A BALLOT CAST BY A VOTER WITHOUT A DISABILITY.”

I enthusiastically support HB 1314 because it would end the practice of segregated ballots in the state of Maryland.

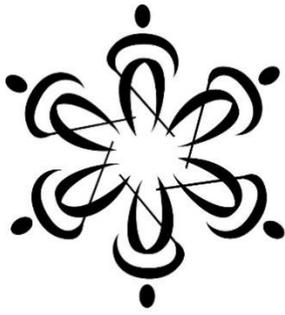
Dr. Jonathan Lazar is a Professor in the College of Information Studies (iSchool) at the University of Maryland. At the University of Maryland, Dr. Lazar is the associate director of the Trace Center, the nation's oldest research center on technology and disability, and is a faculty member in the Human-Computer Interaction Lab. Dr. Lazar joined the iSchool in 2019, after 19 years as a Professor of Computer and Information Sciences at Towson University, where he served as director of the information systems program for 14 years. Dr. Lazar has authored or edited 12 books, including Research Methods in Human-Computer Interaction (2nd edition, co-authored with Heidi Feng and Harry Hochheiser), Ensuring Digital Accessibility Through Process and Policy (co-authored with Dan Goldstein and Anne Taylor), and Disability, Human Rights, and Information Technology (co-edited with Michael Stein). He has published over 140 refereed articles in journals, conference proceedings, and edited books, and has been granted two US patents for his work on accessible web-based security features for blind users. He frequently serves as an adviser to government agencies and regularly provides testimony at federal and state levels, and multiple US federal regulations cite his research publications. Dr. Lazar has recently been honored with the 2017 University System of Maryland Board of Regents Award for Excellence in Research, and the 2016 SIGCHI Social Impact Award, given annually to an individual who has promoted the application of human-computer interaction research to pressing societal needs.

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HB1314 Voting Test

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Position: FAV



**NATIONAL FEDERATION
OF THE BLIND**
MARYLAND

Live the life you want.

Subject: Support for HB 1314

To: Members of the House Ways and Means Committee

From: Members of the National Federation of the Blind of Maryland

Contact: Sharon Maneki, Director of Legislation and Advocacy
National Federation of the Blind of Maryland
9013 Nelson Way
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Date: March 3, 2020

Members of the National Federation of the Blind of Maryland urge the House Ways and Means Committee to end voting discrimination on the basis of disability by voting in favor of HB 1314. This problem has occurred in the last five elections held in Maryland from the primary in 2016 through the special election for the congressman in District 7 held on February 4, 2020. This bill will end segregated voting in Maryland by requiring the use of one uniform voting system for all citizens. Here is a review of how disabled voters have been deprived of a secret ballot.

As you know, since you heard this bill last year and you studied it in the summer, the ballots cast by using the Ballot Marking Device (BMD) look very different, both in size and content, from ballots that are marked by hand. In the 2016 and 2018 elections the State Board of Elections (SBE) required poll workers in each precinct to encourage only two voters to use the BMD. A review of the data from these elections clearly shows that this policy was a failure because in many precincts only one voter used the BMD, and in some precincts no one used the BMD (see appendices A,B, and C in our testimony). BMD ballots are easily identifiable during recounts and when they are placed on the internet to demonstrate that election results were correct. In June 2019, SBE changed its policy raising the number of voters in each precinct that would be encouraged to use the BMD from two to five. In the small special election on February 4, 2020, this policy also failed.

The National Federation of the Blind and the National Federation of the Blind of Maryland are in the process of suing the Maryland State Board of Elections. The attached evidence collected for this lawsuit concerning the February 4, 2020 elections clearly demonstrates the continued failure of the policies of the SBE. It also demonstrates that discrimination will never be eliminated until the state adopts one voting system. Please read these declarations to see how little knowledge the poll workers have on how to work the BMD. The declarations

are only a sample of the problems that blind and disabled voters experienced at the polls. Even sighted voters who wished to use a BMD to cast their vote could not do so.

These problems will not be solved by the courts quickly. However, they can be solved by the Maryland General Assembly if you have the will to do so. Members of the National Federation of the Blind of Maryland urge the Maryland General Assembly to enact legislation that creates one voting system for all voters in Maryland. The Supreme Court ruled that separate is not equal, 65 years ago. It is time for Maryland to recognize this truth by eliminating discrimination against voters with disabilities. If the ballots of any other protected class of citizen were identifiable, the General Assembly would surely insist that SBE revise its policies. Blind and disabled voters deserve the right to equality in voting and a secret ballot, too. Please vote in favor of HB 1314.

Declaration of Anne Blackfield.

On February 4, 2020, at around 1:00 p.m., I voted in the Special Congressional District 7 Primary Election at my assigned polling place, Enoch Pratt Free Library Central Branch, 400 Cathedral Street, Baltimore, MD 21201.

I am legally blind with limited useable vision. I do not have sufficient useable vision to hand mark a paper ballot. When I go to vote on election day, I need to use an accessible voting machine to mark my ballot privately and independently. I use the machine's enlargement capability to allow me to read my ballot in large print.

Previously, I used the ballot marking device (BMD) to vote privately and independently in the 2016 general election, but had to prompt the poll workers that the machine was available before being permitted to use it.

On February 4, 2020, when my partner, who is sighted, and I arrived at our polling place, the poll worker with whom we checked in first asked my partner whether he (my partner) would be helping me vote. After a pause, the poll worker then said that there was a "ballot thing" available for me to use. I asked if she was referring to the ballot marking device and she said yes.

I provided the poll worker with my name and address to check in and was given a piece of paper to sign and an empty folder.

A different poll worker (male) showed me to the BMD. When we got there, a female poll worker was sitting in the chair in front of the BMD. She got up from the chair and I sat down.

The male poll worker stated that he was putting a blank ballot into the machine. He asked me if I had a "device to plug into the machine." I said I did not. I assumed that he meant headphones or a braille device. I had not brought either, since I had planned to use the BMD's enlargement capability and am not familiar with using the audio/tactile interface.

I asked the poll workers if they could enlarge the text on the screen or tell me how to enlarge the text because I couldn't remember how the machine worked. Both poll workers responded that there was no way to enlarge the text.

The male poll worker walked away. The female poll worker began asking me if I was a Democrat or a Republican. I repeated my request that I be allowed to use the machine with enlarged text, and she said again that there was no way to enlarge the text. She said she would enter the information for me. She did not call anyone for assistance.

I eventually decided to accept her offer of assistance and told her my party and then the name of the candidate for whom I was voting, which she audibly confirmed in a loud voice that would have been loud enough for others standing nearby to hear.

I was upset that I could not vote privately and independently and that my ballot was not secret. It is important to me to be able to have a secret ballot.

Declaration of William Jacobs.

On February 4, 2020, I voted in the Special Congressional District 7 Primary Election at my assigned polling place, Edmondson Heights Elementary School, 1600 Langford Road, Baltimore, MD 21207. I arrived at my polling place with my wife, Bernadette Jacobs, who is blind, at approximately 6:00 PM.

When I arrived to vote in the February 4 election, the poll worker first asked me if I was there to assist my wife with voting. When we went to the table where ballots are distributed, the poll worker started to hand me a ballot to hand mark for her. We informed the poll worker that she wanted to use the accessible method of voting. The poll worker then replaced the paper ballot for hand-marking with paper to insert into the ballot marking device (“BMD”).

Bernadette then went to the BMD to vote, while I went to go mark my ballot by hand. I finished marking my ballot quickly, scanned it in, and then went over to Bernadette when I saw she was still at the BMD.

Bernadette told me that the BMD’s audio was not working. I read the screen and saw that she was being asked to select her ballot type. I selected her ballot type, but the audio and tactile control still would not work. I left to get a poll worker.

The poll worker came back to the BMD with me and asked Bernadette if he could use the BMD to vote for her. She told him that she wanted to vote independently. The poll worker then asked if I could vote for Bernadette. She refused and asked if he could get the BMD to work so that she could use it on her own.

The poll worker then left to do something and after trying to get the machine to work a little bit more on our own, I went to go find him. I suggested that he turn the BMD off and restart it. The poll worker returned to the BMD with me, powered it down, and restarted it. He then left again while the machine restarted. I had to go find him to enter the security code. Once the machine was running again, I saw that the screen said “remove device.” We again called the poll worker over, but he gave up and said that I would just have to mark a paper ballot for my wife.

We returned to the ballot distribution table to get a new paper ballot for me to use to mark Bernadette’s vote. I eventually marked Bernadette’s ballot for her. We spent a total of about 45 minutes at the polling place, even though I was done voting much earlier.

None of the poll workers ever called for any outside help to fix the BMD, nor did they give us any timeframe for when the BMD would be fixed or replaced.

During my time at the polling place, I went up to the ballot distribution table about three or four times. Each time, I observed the poll worker distributing ballots to voters. I did not hear the poll worker offer the BMD to anyone. Instead, the poll worker simply gave everyone a paper ballot to hand mark.

Declaration of Lizabeth Braun.

I am registered to vote in Maryland and my assigned polling place is Commodore John Rodgers Elementary School, 100 N. Chester Street, Baltimore, MD 21231. I voted there in the February 4, 2020 Special Congressional District 7 Primary Election.

I am sighted and can hand mark a paper ballot, but wanted to vote using the ballot marking device (“BMD”).

I arrived to vote in the February 4 election at approximately 6:00 P.M. The poll worker at first handed me a paper ballot and directed me to a booth where I could hand mark it. No poll worker informed me that I also had the option of using the BMD to mark my ballot.

I then requested to use the BMD and was directed to the machine by a poll worker. When the poll worker tried to insert a paper into the BMD to activate it for me, he received an error message indicating there was a paper jam. Other poll workers came over to assess the situation and they called for a tech person already at the polling place to come fix the machine. While the tech person attempted to fix the machine, a poll worker told me that the machine had jammed when a previous voter had tried to use it.

Although I waited about 20 minutes for the BMD to be fixed, the same error message kept appearing after the tech person had managed to reboot the BMD. Because I had a meeting to attend at 7:00 P.M. that night, I gave up and decided to hand-mark a paper ballot. I was thus unable to use the BMD.

Appendix A

2016 GENERAL ELECTION DATA

According to the Maryland State Board of Elections (SBE)¹ data, 12 of the 24 counties or county equivalents in Maryland had at least one precinct where only one voter used the BMD machine. Those locations are:

County	Poll Name	Expressvote Ballot Cast ²
Anne Arundel	Earleigh Heights VFD	1
Anne Arundel	Southern Middle School	1
Anne Arundel	Odenton Regional Library	1
Baltimore City	Engine House No. 2	1
Baltimore City	Murty Center- Poe Auditorium	1
Baltimore County	Kingsville Elementary School	1
Baltimore County	Hernwood ES Cafeteria	1
Baltimore County	Stembridge Community Center	1
Baltimore County	Middle River VFD Hall	1
Baltimore County	Long Green VFC Hall A	1
Baltimore County	Gunpowder ES Gym	1
Baltimore County	Pinewood ES Cafeteria	1
Baltimore County	Warren ES Gym	1
Baltimore County	Owings Mills HS Senior Café	1
Baltimore County	Wards Chapel Methodist Church Hall	1
Baltimore County	Church Lane ES M/P Rm	1
Carroll	Francis Scott Key HS Band Room	1
Charles	LaPlata High School Commons Area	1
Cecil	Bayview Elementary School S	1
Dorchester	North Dorchester MS Foyer	1
Dorchester	South Dorchester K-8 School	1
Harford	Old Post Road Elementary School	1
Howard	Northfield ES Cafeteria	1
Howard	Lisbon VFD Hall	1
Howard	Howard HS Gym	1
Prince George's	Kettering Elementary School	1
Prince George's	Greater Lighthouse Church	1
Prince George's	Cesar Chavez Elementary SCHL	1
Prince George's	Hyattsville Public Library	1
Washington	Washington County Technical HS	1
Washington	Williamsport High School	1
Wicomico	Faith Baptist Church Salisbury	1
Wicomico	East Side VFW Memorial Post 2996	1
Wicomico	Sharptown Firemens Memorial Bldg	1

¹This chart was created from an SBE data export for each county with the ExpressVote (the trade name of the ballot marking device machine) filter applied. The cells indicate voting locations where only one vote was cast using the Ballot Marking Device.

² This chart does not include the precincts where no ballots were cast using the ExpressVote BMD.

Appendix B

2018 PRIMARY ELECTION DATA

According to SBE data, nine counties had polling places where only one vote was cast using the BMD.

County	Poll Name	Expressvote ³ Ballot Cast	Total Ballot Cast
Anne Arundel	Brooklyn Park Community Library	1	159
Anne Arundel	Northeast High School	1	205
Baltimore City	Murty Ctr-Poe Auditorium	1	71
Baltimore City	School #27 Rodgers Elem	1	76
Baltimore City	School #13 Tench Tilghman Elem	1	13
Baltimore City	School #7 Cecil Elem	1	54
Baltimore City	School #122 - Samuel Coleridge-Taylor Elem	1	7
Baltimore City	School #53 Brent Elem	1	373
Baltimore City	School #53 Brent Elem	1	214
Baltimore City	School #39 Dallas F. Nicholas Sr. Elem	1	132
Baltimore City	Enoch Pratt Free Library Pennsylvania Ave Br	1	67
Baltimore City	School #28 William Pinderhughes Elem	1	9
Baltimore City	School #4 Steuart Hill Elem	1	172
Baltimore City	School #4 Steuart Hill Elem	1	52
Baltimore City	Mary E. Rodman Rec Ctr	1	300
Baltimore City	Academy of Success	1	19
Baltimore City	Community Building	1	54
Baltimore City	School #235 Glenmount Elem/Mid	1	156
Baltimore City	Govans Boundary Umc	1	253
Baltimore County	Maiden Choice School - Gym	1	250
Cecil	5-5 Bayview Elementary School	1	332
Harford	Magnolia Elementary School	1	235
Harford	Edgewood Elementary School Cafeteria	1	137
Harford	Edgewood Recreation & Community Center	1	174
Harford	Emmorton Elementary School	1	431
Harford	Joppatowne High School	1	368
Harford	Aberdeen Senior High School Cafeteria	1	321
Harford	Forest Lake Elementary School	1	557
Howard	Running Brook Elem School - Cafeteria	1	255
Montgomery	Chevy Chase United Methodist Church	1	320
Montgomery	Stedwick Elementary School	1	429
Prince Georges	Harmony Hall Regional Center	1	509
Prince Georges	William Beanes Elem Sch	1	289
Prince Georges	Pgcps Bldg.	1	480
Prince Georges	Benjamin D. Foulois Creative & Performing Arts	1	100
Prince Georges	Northview Elem. Sch. Cafe. - A.	1	199
Prince Georges	Benjamin Tasker Middle Sch	1	175
Prince Georges	Waldon Woods Elem Sch	1	751
Washington	Washington County Technical Hs	1	119
Washington	Big Pool Community Hall	1	242

³ This chart does not include the precincts where no ballots were cast using the ExpressVote BMD.

Appendix C

2018 GENERAL ELECTION DATA

In the 2018 general election, nine counties had at least one precinct where only one voter used the BMD machine. Nine counties also had at least one precinct where zero voters used the BMD machine.

County	Poll Name	Expressvote Ballot Cast	Total Ballot cast
Anne Arundel	Annapolis Middle School	0	549
Anne Arundel	Roger "pip" Moyer Recreation Center	0	320
Anne Arundel	Roger "pip" Moyer Recreation Center	0	11062
Anne Arundel	Lindale Middle School	1	806
Anne Arundel	Severna Park Middle School	1	656
Baltimore City	Engine House #5	0	744
Baltimore City	School #16 Johnston Sq Elem	0	156
Baltimore City	School #55 Hampden Elem	0	49
Baltimore City	School #28 William Pinderhughes Elem	0	27
Baltimore City	School #122 Samuel Coleridge-Taylor Elem	0	41
Baltimore City	School #225 Westport Elem	0	276
Baltimore City	Engine House #5 l	0	130
Baltimore City	Engine House #42	0	599
Baltimore City	Grace United Methodist Church (040)	0	765
Baltimore City	Grace United Methodist Church (041)	0	822
Baltimore City	School #122 Samuel Coleridge-Taylor Elem	1	15
Baltimore City	Solo Gibbs Rec Ctr	1	466
Baltimore City	St Nicholas Church Hall	1	417
Baltimore City	Carroll Cook Rec Ctr	1	259
Baltimore City	Open Bible Baptist Church	1	330
Baltimore County	Ridge Ruxton School- Multi Purpose Rm	0	899
Baltimore County	Colgate Elementary School - Cafe	0	454
Baltimore County	Sussex Elementary School-Gym	0	765
Baltimore County	Warren Elementary - Gym	1	1199
Baltimore County	White Marsh Library-Meeting Room	1	187
Charles	St Ignatius Church Hall, Hilltop	0	650
Charles	Trinity Church Hall, Newport	0	1034
Charles	St Marys School Bryantown	1	194
Frederick	Mt Pleasant Ruritan Club	1	2212
Harford	Trinity Lutheran School	0	1510
Harford	Edgewood Elementary School Cafeteria	0	462
Harford	Joppatowne Elementary School	0	1207
Harford	Deerfield Elementary School	0	672
Harford	Abingdon Fire Hall	0	1274
Harford	Old Post Road Elementary School	0	1834
Harford	Church Creek Elementary School	0	2456
Harford	Highlands School	0	782
Harford	St. Mary's Episcopal Church Emmorton	0	323
Harford	Riverside Elementary School	0	889
Harford	Level Fire Hall	0	1661
Harford	Aberdeen Vfw 10028	0	534

County	Poll Name	Expressvote Ballot Cast	Total Ballot cast
Harford	Hickory Elementary School	0	818
Harford	Forest Hill Elementary School	0	1951
Harford	Mountain Christian Church	0	1288
Harford	Newport Terrace	0	1302
Harford	Forest Lake Elementary School	0	1541
Harford	Bel Air Elementary School Gym	0	987
Harford	Mt. Ararat Lodge	0	808
Harford	Bel Air Middle School	0	843
Harford	Red Pump Road Elementary School	0	1360
Harford	Bel Air High School	0	837
Harford	Southampton Middle School	0	2007
Harford	Wakefield Elementary School	0	995
Harford	C. Milton Wright High School	0	1267
Harford	Prospect Mill Elementary School	0	1029
Harford	Fountain Green Elementary School	0	1303
Harford	St. Matthew Lutheran Church-Great Hall	0	1188
Harford	Victorious Faith Fellowship Church	0	949
Harford	Jarrettsville Elementary School Cafeteria	0	1108
Harford	Youth's Benefit Elementary School	0	1154
Harford	Norrisville Elementary School	0	1297
Harford	North Bend Elementary School	0	1067
Harford	Veronica 'roni' Chenowith Activity Center	0	1245
Harford	Jarrettsville Library	0	723
Harford	North Harford Elementary Cafeteria	0	1193
Harford	Darlington Elementary School	0	717
Harford	Havre De Grace High School	0	768
Harford	Meadowvale Elementary School	0	1120
Harford	Havre De Grace Elementary School	0	859
Harford	Havre De Grace Middle School	0	1557
Harford	Abingdon Elementary School Gym	1	2118
Harford	Fallston Senior High School Cafeteria	1	1737
Harford	Ring Factory Elementary School	1	838
Harford	Harford Technical High School	1	1374
Harford	Dublin Elementary School	1	1270
Harford	North Harford High School	1	1123
Howard	Manor Woods Elem School - Cafeteria	0	852
Montgomery	Martin Luther King, Jr. Middle School	0	1256
Montgomery	Capt. James E. Daly, Jr. Elementary School	0	1074
Montgomery	Tilden Middle School/Gym	1	1207
Prince Georges	Green Valley Academy	0	669
Prince Georges	Dwight D. Eisenhower Middle School	0	489
Prince Georges	Melwood Church of the Nazarene	0	1045
Prince Georges	Harmony Hall Regional Center	1	686
Prince Georges	F.T. Evans Elem Sch - M/P Rm	1	132
Washington	Girls' Inc.	0	318
Wicomico	Wicomico High School - Cafeteria	1	552
Wicomico	East Side Vfw Memorial Post	1	314

HB1314 Written

Uploaded by: WALMSLEY, KEITH

Position: FAV



Maryland Developmental Disabilities Council

EMPOWERMENT • OPPORTUNITY • INCLUSION

Ways & Means Committee

HB 1314: Election Law - Voting Systems - Accessibility for Voters With Disabilities

March 3, 2020

Position: Support

The Maryland Developmental Disabilities Council (DD Council) is an independent, public policy organization that works to improve policies, programs and services that support people with developmental disabilities and their families in our communities. The DD Council is led by people with developmental disabilities and their families. **From that perspective, the DD Council supports HB 1314 which requires the use of ballot marking devices by all voters beginning in 2022.**

WHY is this legislation important?

- Voting is a fundamental right that Maryland's citizens with developmental disabilities want and need to participate in.
- We must ensure all of Maryland's voters can access their fundamental right to vote privately and independently.
- There can be many barriers to voting for a person with a disability, widespread ballot marking devices, removes one barrier.
- Helps ensure absolute compliance with the Americans with Disabilities Act and the Help America Vote Act.

WHAT does this legislation do?

- Ensures that voters with disabilities are provided access to voting by requiring each voter to use a ballot marking device that is accessible to voters with disabilities to vote at an early voting center or an Election Day polling place.
- A ballot cast by a voter with a disability may not be set apart or distinguishable from, in size and form, a ballot cast by a voter without a disability.
- The bill applies to all elections beginning with the 2022 statewide primary election.

Prior to the 2016 election, the State Board of Election reduced the number of voters that must use the ballot marking device from 30 to 2. During the 2016 general election, 12 of the 24 counties had precincts that did not reach the 2 voter minimum. During the 2018 primary election, 9 counties had polling places where only one vote was cast using a ballot marking device.

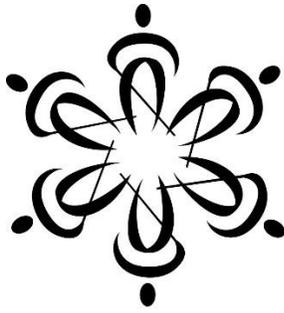
While much has been done to increase access to voting in Maryland; **consistent and widespread usage of ballot marking devices will allow citizens to vote privately and independently and ensure voters with disabilities have equivalent access to exercise the fundamental right to vote.**

Contact: Keith Walmsley, Director of Public Policy Initiatives; kwalmsley@md-council.org

Blake HB1314 Voting Test

Uploaded by: woods, marguerite

Position: FAV



NATIONAL FEDERATION
OF THE BLIND
MARYLAND

Live the life you want.

Subject: Support for HB 1314

To: Members of the House Ways and Means Committee

From: Lou Ann Blake

Contact: Lou Ann Blake
National Federation of the Blind
200 E. Wells Street
Baltimore, MD 21230
Email: lblake@nfb.org

Date: March 3, 2020

My name is Lou Ann Blake, I reside in Baltimore City, and I am a member of the National Federation of the Blind of Maryland. I am appearing before the House Ways and Means committee to urge members to support HB1314 and restore voters with print disabilities to the status of first class citizenship that we enjoyed prior to 2016 when all Maryland voters used the same system to mark and cast their ballot.

By implementing a segregated voting system that poll workers do not know how to set up or operate, and that does not provide a secret ballot, the Maryland State Board of Elections has turned Maryland voters with print disabilities, like myself, into second class citizens, and, as a result, is violating the Americans with Disabilities Act. Requiring SBE to implement one voting system with an accessible ballot marking device (BMD) as the primary method for all voters to mark their ballot in all early voting centers and all polling places, will restore first class citizenship to voters with disabilities by providing them a voting experience that is equal to the experience of voters without disabilities.

Data from the Maryland State Board of Elections (SBE) demonstrates the failure of SBEs policy to require at least two voters per precinct mark their ballot using the ExpressVote BMD. The November 5, 2019, report prepared by Legislative Services under-reported the number of precincts that failed to meet this minimum. For the 2016 general election, the Legislative Services Report states that only 34 precincts failed to meet the minimum, while the actual

number was 151 precincts. The Legislative Services report failed to include that a total of 417 precincts did not meet the minimum requirement for the 2016 primary election. For the 2018 primary and general elections, the Legislative Services report states that 40 precincts and 22 precincts, respectively, failed to meet the two voter minimum requirement, while the actual numbers were 159 and 78.

In addition to providing all voters with an equal voting experience, accessible BMDs are a superior method for marking ballots over hand-marking. BMDs will not allow a voter to over-vote a contest, and will warn the voter if they have under-voted a contest. In addition, the use of accessible BMDs as the primary method of ballot marking eliminates the stray marks associated with the hand-marking of ballots. Finally, a voter who uses an accessible BMD to mark their ballot can change their mind and select a different candidate before the ballot is printed, while a voter who changes their mind about which candidate to vote for while hand-marking their ballot will have to spoil that ballot and start over.

The Legislative Services report claims that requiring all voters to use a BMD to mark their ballot will result in longer lines and longer waiting times, as well as, insufficient warehouse space and insufficient space in some polling places. From 2002 through 2014, all Maryland voters used the accessible touchscreen Diebold voting system. The use of the system did not cause long lines, and the warehouse space and polling space requirements were probably similar to those of the ExpressVote. Finally, the issues related to the number of candidates displayed on the touchscreen, and navigating between multiple screens within a contest would be resolved if the Maryland State Board of Elections would install the updated software on the existing BMDs.

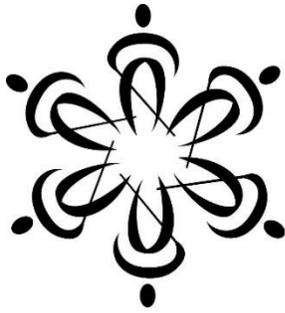
The second generation of BMDs currently on the market are more secure than the direct recording electronic machines they replaced. In addition to producing a paper record, BMDs are not connected to the internet. There has been no documented case of a BMD being hacked in an election setting.

I urge you to restore first class citizenship in voting to voters with print disabilities, and to provide all Maryland voters with a superior ballot marking experience by supporting HB1314.

zimba hb1314 voting test

Uploaded by: Zimba, Joel

Position: FAV



NATIONAL FEDERATION
OF THE BLIND
MARYLAND

Live the life you want.

Subject: Support for HB 1314

To: Members of the House Ways and Means Committee

From: Joel Zimba

Contact: Joel Zimba
2824 Saint Paul Street, Apartment 1
Baltimore, MD 21218-4316

Date: March 3, 2020

My name is Joel Zimba and I am asking you to support HB 1314, a bill to restore the secret ballot to disabled voters, such as me. I am tired of facing discrimination every time I go to vote.

For the past few election cycles, I voted at Margaret Brent Elementary School, 100 East 26 St. in Charles Village in Baltimore City. In the 2018 primary election, I was the only person in my precinct who used the ballot marking device (BMD). I lost the secrecy and privacy of my vote, since my ballot was easily identifiable during the recounts in Baltimore City. This is blatant discrimination. State and Federal voting laws specify that a vote must be secret.

On February 4, 2020, I voted in the Special Congressional District 7 Primary Election at my same assigned polling place. I arrived at my polling place at approximately 4:15 PM.

I am blind. I thus cannot hand mark a paper ballot. When I go to vote on election day, I need to use an accessible voting machine to mark my ballot privately and independently. I use the machine's audio interface and tactile controls to review and mark my ballot.

When I attempted to vote using the BMD at my precinct, the BMD was not reading my ballot aloud to me. The two poll workers at my polling place who assisted me could not independently determine why the ballot was not being read. After calling the technical support hotline for assistance, they learned that they had to select either the Democratic or Republican ballot before the ballot could be read aloud. Once they selected my ballot type, I was able to vote independently using the BMD.

I had to wait about a half hour while the poll workers attempted to figure out how to correctly configure the BMD for me.

It is obvious to me that, once again, very few voters used the BMD in my precinct.

Please vote in favor of HB 1314. I deserve the same right to a secret ballot and to cast my vote independently and privately as you have.

HB1314_GMOM_Cooper_FWA_030320

Uploaded by: COOPER, CHARLIE

Position: FWA

GET MONEY OUT

Maryland

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**STATEMENT TO THE WAYS AND MEANS COMMITTEE
HOUSE BILL 1314 – ELECTION LAW - VOTING SYSTEMS
ACCESSIBILITY FOR VOTERS WITH DISABILITIES
SUPPORT WITH AMENDMENT
March 3, 2020**

Get Money Out (GMOM) is an all-volunteer organization that was established just over seven years ago. We now have engaged more than 8,500 citizen supporters. We work in Maryland toward the goals that all citizens should have equal access to the ballot and an equal say in governance.

We support the intent of this bill to allow certain disabled voters to vote in a manner that is indistinguishable from other voters. We believe, however, that the current ballot-marking devices that produce a bar code create a serious risk of hacking that could subvert voters' intent and that is not auditable. The intent of the bill can be accomplished in a stepwise fashion if the General Assembly adopts the amendments and the State takes the steps advocated by Save Our Votes.

An article last year in *Salon* summarized the situation:

- *Most ballot marking devices (BMDs) that are intended for use as a primary voting system put [barcodes](#) on the paper printouts, which purport to encapsulate the voters' selections. Although voters can't read barcodes, the barcodes are the only portion of the printout counted as their vote.*
- *The barcodes can be maliciously programmed to instruct the scanners to [flip votes](#).ⁱ*

Please adopt the recommended amendments and issue a favorable report on HB 1314.

ⁱ https://www.salon.com/2019/03/28/new-hybrid-voting-system-can-change-paper-ballot-after-its-been-cast_partner/

HB1314-SOVtestimony2020

Uploaded by: Ferraro, Robert

Position: FWA



HB 1314: Election Law—Voting Systems—Accessibility for Voters With Disabilities

Ways & Means Committee, March 3, 2020

Position: FAVOR WITH AMENDMENTS

Chair Kaiser and Committee Members,

This bill seeks to address the problem that voters who use the ExpressVote Ballot-Marking Device (BMD) have a ballot that is different in size, shape, and format from those who mark their ballots by hand. Since voters with many types of disabilities need to use these devices to mark a paper ballot, some disability advocates fear that this provides a means to determine how the disabled community voted, or potentially even how a specific voter voted.

We completely support the concerns of voters with disabilities about the privacy of their votes. Voting by secret ballot is fundamental to American democracy because it prevents voter intimidation and coercion. Therefore, we support the requirement in this legislation that ballots marked by the BMD must match ballots marked by hand.

Not only do the ballots produced by the current BMDs look different from the ballots marked by hand, they also are counted differently. Instead of reading the darkened ovals as on the hand-marked ballots, they read a proprietary barcode (see attached diagram). However, voters cannot read this barcode to verify that their votes were recorded accurately. Instead the voter reads the tiny text beneath the barcode and has to trust that the text and the barcode say the same thing. This means that these ballots are not voter-verifiable, as required by state law.

These ballots are also audited differently in the automated audits performed after each election. The hand-marked ballots are re-interpreted from the marks the voter made on the ballot to see if the scanner interpreted the voter's marks correctly. But the BMD ballots count only from the barcodes and no check is performed to ensure that they match the text the voter was able to verify. This means that the BMD can "lie" to the voter using it by creating a barcode that does not match the voter-verifiable text and it would probably go undetected.

There are voting systems on the market that create ballots from the BMD that match those marked by hand. Some of these were not available when the state leased the current voting system, and we support transitioning to such a voting system when the lease expires on our current equipment at the end of this year.

We do not support the requirement that all voters must use a ballot-marking device. That would necessitate, as the fiscal note says, at least 18,000 additional BMDs to be added to the current stock of about 1,900 BMDs statewide, which would more than double the current costs

of MD's voting system. Even that quantity probably would not be enough to accommodate all voters during peak voting hours, and we know from past experience with our previous touch-screen voting system that when voters are forced to wait an hour or more to vote, some are disenfranchised. Elderly or infirm voters, those waiting in line with small children, or those who have to report for shift work or pick up children by a specific time are examples of voters often unable to stay long enough to vote. The rights of voters with disabilities must be balanced with the rights of all voters to use an efficient and cost-effective voting system.

While we do not support having all voters use BMDs, until we have a voting system where BMDs produce ballots that are the same as those marked by hand, we do support specifying the minimum number of voters in each precinct who must use the existing BMDs to preserve the privacy of all voters who use it. Last summer the SBE issued regulations specifying that at least 5 voters in each precinct must use the BMD. In the first election conducted since that regulation went into effect, the CD-7 special election in early February, compliance was 100% in 2 of the 3 jurisdictions (Baltimore and Howard Counties) and 97% in the third (Baltimore City), according to the SBE's [February meeting packet](#).

The amendments we propose are:

- 1) Strike "(I) EACH VOTER SHALL USE A BALLOT MARKING DEVICE THAT IS ACCESSIBLE TO VOTERS WITH DISABILITIES TO VOTE AT AN EARLY VOTING CENTER OR AN ELECTION DAY POLLING PLACE; AND"
- 2) Retain this language: (II) A BALLOT CAST BY A VOTER WITH A DISABILITY MAY NOT BE SET APART OR DISTINGUISHABLE FROM, IN SIZE AND FORM, A BALLOT CAST BY A VOTER WITHOUT A DISABILITY;
- 3) Add requirements that the BMD ballot:
 - must be voter-verifiable through both visual and nonvisual means, and
 - the marks verifiable by the voter must be the same marks used to tabulate the votes.
- 4) Change the effective date to January 1, 2022.

We urge you to amend and pass this legislation to move Maryland forward to a voting system that is fairer and more verifiable, yet would be at least as cost-effective and efficient as our current voting system.

With greatest respect for all that you do to improve our elections,

Robert Ferraro and Rebecca Wilson, Co-Directors
SAVE our Votes: Secure, Accessible, Verifiable Elections for Maryland
ferraro@SAVEourVotes.org 301.661.2989
rebecca@SAVEourVotes.org 202.601.8182

Ballots printed by the
ES&S ExpressVote Ballot-Marking Device
 are not verifiable by the voter
 because the voter can't read the barcodes
 used to count the votes

Ballot scanner and automated "audit" software can read only the barcodes, not the text

Voter can read only the text, not the barcodes, and cannot verify that they match

Paper ballots marked by hand are voter-verifiable

MONTGOMERY COUNTY
DEMOCRATIC PRIMARY ELECTION
OF THE STATE OF MARYLAND
 June 26, 2018

<p>Instructions Instrucciones</p> <p>Making Selections Como Marcar sus Selecciones</p> <p>Fill in the oval to the left of the name of your choice. You must blacken the oval completely, and do not make any marks outside of the oval. You do not have to vote in every race.</p> <p>Llene el óvalo a la izquierda del nombre de su selección. Debe rellenar completamente el óvalo. No haga ninguna marca fuera del óvalo. No tiene que votar en cada contienda.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Comptroller Vote for 1 Contralor</p> <p><input type="radio"/> Peter Franchot Unopposed/Sin Oponente</p> <p>Attorney General Procurador General</p> <p><input type="radio"/> Brian E. Frosh Unopposed/Sin Oponente</p> <p>U.S. Senator Senador de EE.UU.</p> <p><input type="radio"/> Ben Cardin <input type="radio"/> Erik Jetmir <input type="radio"/> Chelsea Manning <input type="radio"/> Marcia H. Morgan <input type="radio"/> Jerome "Jerry" Seal <input type="radio"/> Richard "Rikki" Vaughn <input type="radio"/> Debbie "Rica" Wilson <input type="radio"/> Lih Young</p> <p>Representative in Congress Distrito 6</p> <p><input type="radio"/> Roger Berliner Representante en el Congreso Distrito 6 <input type="radio"/> Andrew Duck <input type="radio"/> George English <input type="radio"/> Chris Graves <input type="radio"/> Nadia Hashimi <input type="radio"/> Christopher Hearsey <input type="radio"/> Roger Manno <input type="radio"/> Aruna Miller <input type="radio"/> David Trone</p> <p>Governor / Lt. Governor Vote for 1 Gobernador / Vicegobernador</p> <p><input type="radio"/> Rushern L. Baker, III</p> </td> <td style="width: 50%; vertical-align: top;"> <p>House of Delegates Distrito 16 Vote for up to 3 Cámara de Delegados Distrito 16 Vote hasta por 3</p> <p><input type="radio"/> Jordan Cooper <input type="radio"/> Nuchli Currier <input type="radio"/> Joseph Aloysius Hennessy <input type="radio"/> Ariana Kelly <input type="radio"/> Marc Korman <input type="radio"/> Marc Lande <input type="radio"/> Sara Love <input type="radio"/> Samir Paul</p> <p>County Executive Vote for 1 Ejecutivo del Condado</p> <p><input type="radio"/> Roger Berliner Vote por 1 <input type="radio"/> David Blair <input type="radio"/> Marc Eirlich <input type="radio"/> Bill Frick <input type="radio"/> Rose Krasnow <input type="radio"/> George L. Leventhal</p> </td> </tr> </table>	<p>Comptroller Vote for 1 Contralor</p> <p><input type="radio"/> Peter Franchot Unopposed/Sin Oponente</p> <p>Attorney General Procurador General</p> <p><input type="radio"/> Brian E. Frosh Unopposed/Sin Oponente</p> <p>U.S. Senator Senador de EE.UU.</p> <p><input type="radio"/> Ben Cardin <input type="radio"/> Erik Jetmir <input type="radio"/> Chelsea Manning <input type="radio"/> Marcia H. Morgan <input type="radio"/> Jerome "Jerry" Seal <input type="radio"/> Richard "Rikki" Vaughn <input type="radio"/> Debbie "Rica" Wilson <input type="radio"/> Lih Young</p> <p>Representative in Congress Distrito 6</p> <p><input type="radio"/> Roger Berliner Representante en el Congreso Distrito 6 <input type="radio"/> Andrew Duck <input type="radio"/> George English <input type="radio"/> Chris Graves <input type="radio"/> Nadia Hashimi <input type="radio"/> Christopher Hearsey <input type="radio"/> Roger Manno <input type="radio"/> Aruna Miller <input type="radio"/> David Trone</p> <p>Governor / Lt. Governor Vote for 1 Gobernador / Vicegobernador</p> <p><input type="radio"/> Rushern L. Baker, III</p>	<p>House of Delegates Distrito 16 Vote for up to 3 Cámara de Delegados Distrito 16 Vote hasta por 3</p> <p><input type="radio"/> Jordan Cooper <input type="radio"/> Nuchli Currier <input type="radio"/> Joseph Aloysius Hennessy <input type="radio"/> Ariana Kelly <input type="radio"/> Marc Korman <input type="radio"/> Marc Lande <input type="radio"/> Sara Love <input type="radio"/> Samir Paul</p> <p>County Executive Vote for 1 Ejecutivo del Condado</p> <p><input type="radio"/> Roger Berliner Vote por 1 <input type="radio"/> David Blair <input type="radio"/> Marc Eirlich <input type="radio"/> Bill Frick <input type="radio"/> Rose Krasnow <input type="radio"/> George L. Leventhal</p>
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Voter, scanner and automated "audit" software are all reading the same thing — the ovals filled in on the ballot

Please note: These ballot images are for purposes of illustration only and are not intended to reflect a political viewpoint.

HB 1314 _Written

Uploaded by: Bradford, Tierra

Position: UNF

March 3, 2020

Testimony on HB 1314
Election Law - Voting Systems - Accessibility for Voters With Disabilities
Ways and Means

Position: Unfavorable

Common Cause Maryland opposes HB 1314, which would require that every early voter in Maryland use ballot marking devices.

We do not disagree with HB 1314's intent, which is to help ensure the secrecy and accessibility of the vote for disabled Marylanders. We believe that further efforts should be taken to ensure these values are met. However, we believe that HB 1314 goes too far to solve this problem, increasing our dependence on third party voting machine manufacturers, decreasing our election security, and potentially lessening the efficiency of our current voting processes in a way that could reduce access by increasing wait times at the polls.

Ballot marking devices are vital tools to assist certain disabled Marylanders in having their voices heard in elections. Marylanders with decreased motor functions, or limited eyesight, may find it impossible to vote on a paper ballot without assistance. While Maryland allows for this assistance, disabled Marylanders understandably prefer the secrecy and independence in their vote allowed by ballot marking devices.

However, because these devices provide unique benefits to disabled Marylanders, and there are a limited number of machines per precinct (if there is even more than one), the current system reduces secrecy for disabled Marylanders. Current law tries to alleviate this problem by allowing voters to pick their method of voting – whether it is by ballot marking device or paper ballot at the precinct. Additionally, we believe if Maryland had the opportunity to have Accessible Ballot Machines that printed ballots that looked exactly like paper ballots, that would allow Marylanders utilizing accessible ballots to maintain their privacy.

HB 1314 laudably tries to alleviate this situation, but we are concerned that it goes too far. Common Cause Maryland prefers as many voters as possible vote paper ballots – they are easily auditable, clear to the voter, and while imperfect, never break down.

Because HB 1314 would require all Marylanders to use ballot marking devices, we urge the committee to give an unfavorable report.

HB1314_MACo_UNF

Uploaded by: Kinnally, Kevin

Position: UNF



House Bill 1314

Election Law - Voting Systems - Accessibility for Voters With Disabilities

MACo Position: **OPPOSE**

To: Ways and Means Committee

Date: March 3, 2020

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **OPPOSES** HB 1314. This bill would require each voter to use a ballot marking device that is accessible to voters with disabilities to vote at an early voting center or an Election Day polling place. The legislation places a very substantial administrative and cost burden onto local Boards of Elections, whose functions are supported by county funding.

HB 1314 seeks to ensure that voters with disabilities are provided specified access to voting that is equivalent to access afforded voters without disabilities. **MACo does not raise policy objections with this goal – county concerns are merely practical and cost-driven.** Moreover, this legislation should be deferred until litigation pending before the U.S. District Court for the District of Maryland is resolved.

The National Federation of the Blind (NFB) filed a lawsuit in the U.S. District Court for the District of Maryland in August 2019 against the State Administrator of Elections and members of the State Board of Elections (SBE) alleging that the defendants have violated and continue to violate Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 by denying blind individuals an equal opportunity to vote in person by secret ballot. Subsequently, in September 2019, SBE filed a motion to dismiss the suit and the NFB filed a motion for a preliminary injunction, seeking an order requiring SBE to offer ballot marking devices as the default voting option to all Maryland voters in time for the 2020 general election. In February 2020, the court denied both motions.

As a rule, MACo resists state policies that result in costly or burdensome local implementation. This bill would result in substantial costs to local Boards of Elections, driving needs for additional ballot marking devices (approximately 18,000 statewide) to accommodate all eligible voters, as well as increased storage and transportation costs. Furthermore, local Boards of Elections indicate substantial costs for information technology personnel to test, prepare, troubleshoot, and maintain the additional ballot marking devices. According to the bill's fiscal and policy note, county expenditures would increase by approximately \$5.5 million per year.

Under state law, counties have no choice but to fund these costs – competing for limited local funds against education, public safety, roadway maintenance, and other essential public services.

With litigation pending, this bill is premature, and would place a costly mandate on county governments to carry out new state policy. Accordingly, MACo urges the Committee to issue an **UNFAVORABLE** report on HB 1314.