

2021 JCRC SB 271 Election Law Voting systems- disa

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Testimony in SUPPORT of Senate Bill – 271
Election Law – Voting Systems – Accessibility for Voters With Disabilities
Education, Health and Environmental Affairs Committee
February 18, 2021

The Jewish Community Relations Council of Greater Washington (JCRC) serves as the public affairs and community relations arm of the Jewish community. We represent over 100 Jewish organizations and synagogues throughout Maryland, Virginia, and the District of Columbia. The JCRC is strongly committed to cultivating a society based on freedom, justice, and pluralism. We work tirelessly throughout the entire Greater Washington area to advocate for our agencies that serve the most vulnerable residents, support our Jewish day schools and community centers, and to campaign for important policy interests on behalf of the entire Jewish community.

Senate Bill 271 establishes voting requirements to ensure that voters with disabilities are provided 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 JCRC has a long history of prioritizing the needs and rights of people with disabilities. Our agency is committed to advancing and supporting policy measures to empower individuals with disabilities to achieve maximum independence and to break down barriers to opportunity and inclusion. For these reasons, we urge a favorable vote on SB 271.

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Moving Forward • Advocating for Change

Education Health and Environmental Affairs

SB271 – Election Law – Voting systems – Accessibility for Voters with Disabilities

February 18, 2021

Position: support

Hello members, my name is Ken Capone. I am the Director of People on the Go of Maryland the statewide advocacy group run 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

Ken Capone

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SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS
SB 271 : Election Law–Voting Systems – Accessibility for Voter with Disabilities

February 18, 2021 1:30 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 SB 271 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 transitioned to paper ballots 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. During the 2020 General Election, 160 precincts failed to reach the increased 5 voter threshold. It is clear that policy changes are not enough, and state and local boards must change implementation to secure the rights of disabled voters. It is very likely that the voters who used the BMD were disabled voters, 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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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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Attorney General

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Assistant Attorney General

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Lam_FAV_SB0271-Final.pdf

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Education, Health, and Environmental Affairs
Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and
State Personnel Oversight

Vice Chair

Baltimore County Senate Delegation

Chair

Howard County Senate Delegation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Support: SB 271

Election Law - Voting Systems - Accessibility for Voters With Disabilities

Issue:

- The Maryland State Board of Elections (SBE) currently denies blind individuals, and others with disabilities, an equal opportunity to vote in person by secret ballot in violation of Title II of the American with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973.
- Maryland Election Law Article §9-102(f)(1), Annotated Code of Maryland, states that a voting system selected and certified by the 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."
- Since 2016, Maryland has maintained two separate and unequal voting systems, one for voters with disabilities and one for everyone else.
- Voters with disabilities are being deprived of their right to a secret ballot.
- Individuals who are blind or have other disabilities wish to exercise their right to vote in a manner that is equal to that afforded to individuals without disabilities.
- The State Board of Elections (SBE) has known about this problem, since the 2016 election, and has failed to resolve the problem with policy changes in every subsequent election; legislative action is required to fix this problem.

What SB 271 does:

- Requires SBE to certify a ballot system where all voters use an accessible ballot marking device (BMD.)
- Prohibits ballots cast by voters with disabilities from being distinguishable from ballots cast by voters without disabilities.

How SB 271 helps:

- Ensures that voters with disabilities receive a secret ballot.
- Avoids the difficulties faced by SBE in ensuring that a sufficient number of non-disabled voters use a BMD in order to obscure the ballots of voters with disabilities.

Background:

- Maryland requires a protected class to use a separate ballot system than the general public.

- Many people with disabilities, and elderly voters, use an electronic BMD to mark their ballots.
- The BMD used in Maryland creates a ballot that is significantly different in size and form than the bubble sheets used by the general public.
- The policy of the State Board of Elections (SBE) having only five voters uses a BMD is not sufficient to obscure the ballots cast by people 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>
- SBE has had persistent difficulties preventing voters with disabilities from receiving a segregated ballot despite numerous policy changes over multiple election cycles.

What SB271 does not do:

- As long as the voting system is accessible, SB 271 does not mandate what type of BMD should be used.
- SB271 does not require that Maryland continue to use its current BMD voting system.
- SB 271 does not move us back to direct-recording electronic voting.
- SB271 does not make our elections more vulnerable; BMDs are not networked and they create a paper trail, as required by Maryland law.

SB 271 Election Law - Voting Systems - Accessibili

Uploaded by: Lam, Clarence

Position: FAV

SB 271

Election Law - Voting Systems - Accessibility for Voters With Disabilities

Senator Clarence Lam

Background

- Since 2016, Maryland voters have primarily used handmarked bubble sheets ballots
- These ballots are not accessible to people with certain disabilities (e.g. people who are blind or have motor function difficulties)
- Many people with disabilities use an electronic ballot marking device

Electronic Ballot Marking Device (BMD)

- BMDs allow individuals with disabilities to cast a ballot independently
- They can read the ballot via headphones, can magnify print or allow voters to mark their ballot with a keypad, touch screen or use sip and puff tube as an input device
- Records the voters selections on a ballot that is still inserted into the tabulating scanner
 - Does not tabulate, store or cast ballots

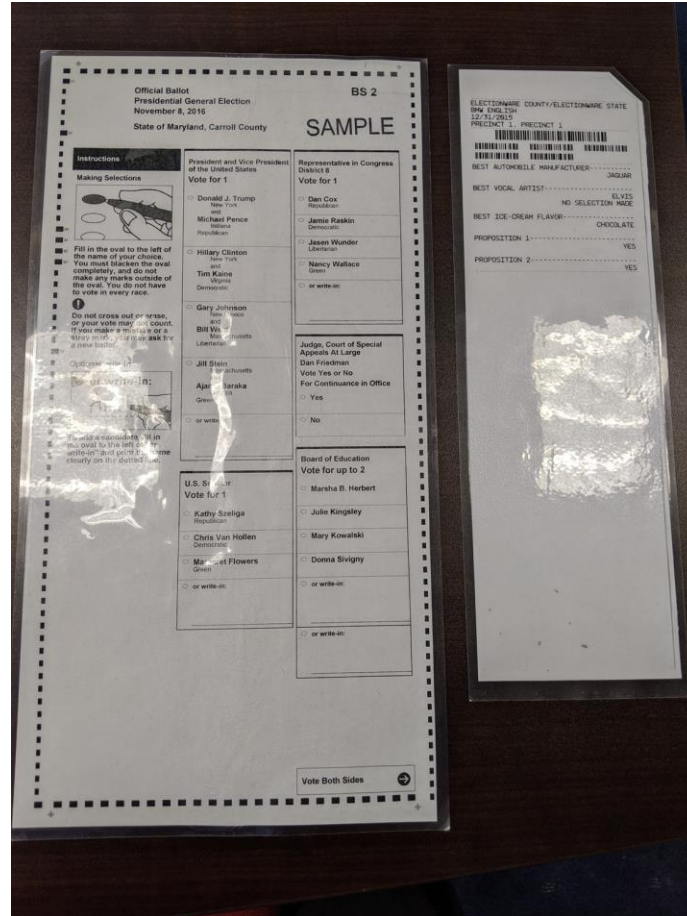


Issue

- Members of a protected class are required to use a different voting system than the general public
- The BMDs used in Maryland generate a ballot that is significantly different in size and form from the ballot used by the general public
- Voters with disabilities are being denied their right to a secret ballot because their ballots can be identified as likely being cast by a voter with a disability
- The State Board of Elections (SBE) has known about this problem, since the 2016 election, and has failed to resolve the problem with policy changes in every subsequent election

Hand Marked Ballot

BMD Marked Ballot



Segregated Ballot

- Maryland law prohibits using a voting system that creates “a segregated ballot for voters with disabilities” and requires “the independent, private casting, inspection, verification, and correction of **secret ballots** by voters with disabilities”
- Per AG opinion 98OAG152, a segregated ballot is created if a ballot cast by a person with a disability is “**distinguishable from other ballots, whether by its form or handling**, and resulting in a loss of privacy for the voter”




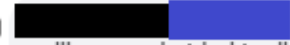
Preventing a Segregated Ballot

- Per the AG, if SBE uses non-identical ballots they must use procedures to ensure that a **significant number of non-disabled voters will use the accessible voting system**
 - AG recommended that a **substantial majority** of the ballots cast on an accessible voting system be cast by non-disabled voters
- Prior to the 2019, SBE only required two voters to use a BMD
- Following the filing of an ongoing lawsuit by the National Federation of the Blind of Maryland (NFB), SBE changed their policy to require five voters to use a BMD
- Neither two nor five ballots seem to be a sufficient protection for ballot secrecy of voters with disabilities

Lack of Uniform Training

- SBE's very low BMD use threshold is not uniformly applied across the state
- SBE data shows that there have been polls with 0 or 1 BMD marked ballot in every election since 2016 - including the 2019 special election
 - In the 2018 general, 41 polling locations in 9 counties had only 1 BMD used
- Voters have reported being denied or discouraged from using BMD
- Rare use of BMDs results in election judges:
 - Forgetting to inform voters about BMDs and offering it as an option
 - Unfamiliar with setting up BMDs
 - Unable to fix issues with BMDs

Baltimore City Voter Who Tried to Use BMD

  that's actually why I used it. And the polling people tried to discourage me. "There's a long wait for the machine" and all. They should have had more than 1 machine at Westside Skill center for early voting! The lady kept asking me why I wanted to use it. That's none of her business. If I had a disability I shouldn't have to tell her in order to vote. Lastly, elderly people like my Grandmother prefer to use it too. At least let people choose.

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2018 Recounts

- Concerns regarding ballot secrecy for people with disabilities were amplified by the hand recounts that occurred during the 2018 primary
- Hand recounts directly expose the different ballots cast by people with disabilities
- Baltimore County recount:
 - 1 polling location where only one BMD was used; 9 locations where no BMDs were used
 - Overall 22 polling locations had 4 or less BMD ballots cast -- **people with disabilities cast more ballots at locations with little to no ballot secrecy than the number of votes that decided the race**
 - One of the issues debated in this race was access to housing by people with disabilities and a mailer was sent out on behalf of John Olszewski expressing his support of the disability community

National Federation of the Blind Lawsuit

- In 2019, NFB filed a federal lawsuit against SBE for violations of the Americans with Disabilities Act and the Rehabilitation Act of 1973
- Lawsuit is attempting to guarantee individuals with disabilities access to a secret ballot
- The state has decided to fight this lawsuit instead of making changes needed to protect the rights of individuals with disabilities

Maryland's 7th Congressional Primary

- In response to NFB lawsuit, SBE made minor policy changes to its BMD policy including:
 - **Increasing the minimum number of voters** to use a BMD at a voting location from 2 to 5
 - **Requiring the BMD to be offered to every voter** by the ballot judge via a neutral statement that presents the BMD and hand marked ballots as equivalent voting methods
- SBE claims: increasing the number of voters using a BMD at a voting location and policy changes would improve ballot secrecy
- Polling locations failed to meet the 5 vote threshold
- Many individuals reported similar problems as past elections:
 - BMDs not set up
 - Judges unable to answer BMD questions
 - Voters were not presented neutral statement about BMDs

2020 Election Day: Precincts with <5 BMD Votes

Number of BMD Votes	Number of Precincts in MD
0	32
1	32
2	35
3	26
4	35
Less than 5	160

What SB 271 would do

- Require that all voters mark their ballot using a system that is accessible to people with disabilities
- Prohibit ballots cast by people with a disability from being “set apart or distinguishable, in size or form,” from ballots cast by people without disabilities



How SB 271 Helps

- Guarantees people with disabilities a secret ballot
- Removes the training difficulties faced by SBE when trying to implement protocols to obscure the ballots of people with disabilities
- Side steps debate over how many ballots need to be cast on BMDs to provide ballot secrecy
- Ensures that members of a protected class are not using a separate voting system than the general public
- Prevents all voters from inadvertently undervoting, overvoting or otherwise accidentally spoiling; BDMs allow voters to identify and make corrections before the ballot is finalized
- Ends embarrassing lawsuit that may drag on for years

What SB 271 Doesn't Do

- As long as it is accessible, SB 271 is silent on what type of BMD should be used
 - Some voters have concerns about Maryland's current BMD but SBE is not required to keep it
- SB 271 does not move us back to less secure direct-recording electronic voting
- SB 271 does not make our elections more vulnerable - BMDs are not networked and they create a paper trail

National Issue

- Jurisdictions throughout the country are navigating the process of updating their voting systems, while also ensuring accessibility
- A recent NPR piece discussed balancing the competing interest related to selecting a voting system

“We are the only people who are being asked to take one for the team and risk our own ability to vote so that non-disabled people can feel more secure about their ballots.”

- Michelle Bishop Voting Rights Specialist at the National Disability Rights Network when discussing the move to all paper ballots on NPR

SB_271_BMD_February2021.pdf

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Position: FAV

Testimony on SB 271, February 18, 2021
Jonathan Lazar, Ph.D., LL.M.
Professor of Information Studies, University of Maryland

Testimony to the Senate Education Health and Environment Committee

I am here today to state my support for SB 271, because SB 271 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, 2018, and 2020 elections, Maryland used a two-tier approach for in-person voting. Voters primarily used the optical scan paper ballots, however, voters with print-related disabilities, unable to use the optical scan paper 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 paper 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 (SBE) 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 with disabilities could not be identified as such during the process of casting,

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>

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. For instance, for the 2020 general election, for Election Day in-person voting, the number of precincts which had less than 5 ballots cast using ExpressVote was an estimated 160 precincts across Maryland.
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). Preliminary data analysis from the 2020 general election shows that for Election Day in-person voting, there were 32 precincts that had only one ballot cast using ExpressVote. 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 used the ExpressVote ballot marking device in 2018, 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 from 2018 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 and ballot segregation problems that exist in Maryland did not exist in most other jurisdictions nationwide in 2018 when this data was collected, 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 in 2018, poll workers were 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 the ExpressVote BMD.

5. Why I support SB 271

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. SB 271 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 SB 271 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 incoming director of the Trace Research and Development 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 2020 ACM SIGACCESS Award for Outstanding Contributions to Computing and Accessibility, the 2017 University System of Maryland Board of Regents Award for Excellence in Research, and the 2016 ACM SIGCHI Social Impact Award, given annually to an individual who has promoted the application of human-computer interaction research to pressing societal needs.*

Dr. Lazar can be reached by e-mail at jlazar@umd.edu.

Jackson sb271 testimony.pdf

Uploaded by: Maneki, Sharon

Position: FAV

Subject: Favorable Support for SB0271/HB0423
To: The Senate Education, Health, and Environmental Committee
From: Edwin Jackson
Contact: Edwin Jackson
14100 Woodens Lane
Reisterstown, MD 21136

Date: February 18, 2021

Good Afternoon, my name is Edwin Jackson. I appreciate the opportunity to speak with you today.

I am here today in support of SB271, advocating for accountability to preserve a secret and secure Ballot for several reasons, and from a slightly different perspective than those speaking before me.

Secret means not discernible to or by the public.

I share the very same concerns and experiences of my cohorts, who express that the ballot used for visually impaired voters is dramatically different from those used by everyone else, and therefore, discernible by the number of visually impaired who voted. Prior to my blindness there were safeguards to guarantee the security and secrecy of the ballot. That is not the case today.

Given the tenor of events recently appearing on the public stage, during this last Presidential election regarding the sanctity and security of our votes, threats were made by those extremists, who seek to change, alter, or decertify those votes; which revealed a vulnerability and fragility of the process. Also, these threats and actions by those representatives who expect to benefit from our vote represent a potential and serious breach of personal and moral security.

As a Vietnam and Desert Storm Veteran, I take citizenship seriously, my allegiance to this country, the oath I swore to uphold will not allow me to support any effort that does not preserve the sanctity, secrecy and security of the ballot. A ballot unprotected for one is a ballot unprotected for all. We must do everything possible to secure and preserve the democratic process and secure the ballot and the vote from all external as well as internal alliances that seek to compromise the integrity of the process. Please vote in favor of SB271.

Zimba SB271 Testimony.pdf

Uploaded by: Maneki, Sharon

Position: FAV

Subject: Favorable Support for SB0271/HB0423
To: The Senate Education, Health, and Environmental Committee
From: Joel Zimba
Contact: Joel Zimba
2824 Saint Paul Street, APT 1
Baltimore, MD 21218
Date: February 18, 2021

My name is Joel Zimba, and I am asking you to vote in favor of SB0271, a bill to restore the secret ballot to disabled voters, such as myself. I am tired of facing discrimination everytime I go to vote.

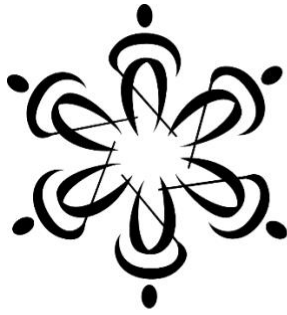
I usually vote at Margaret Brent Elementary School, 100 East 26th Street in Charles Village in Baltimore City. On February 4, 2020, I voted in the Special Congressional District 7 primary at my polling place. I arrived at 4:15 PM. I am blind. I thus cannot handmark a paper ballot. I need to use an accessible voting machine to mark my ballot privately and independently. I use the machine audio interface and tactile controls to view 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 to me. 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 figured out how to correctly configure the BMD for me. It is obvious to me that very few voters used the BMD, therefore, my ballot could be associated with me and thus would not be secret. I had a similar experience in the 2018 primary when I was the only person who voted using the BMD. You must end this discrimination.

Please vote in favor of SB0271. I deserve the right to a secret ballot and to cast my vote independently and privately as you have.

Ronza Othman - NFB - SB271 Testimony.pdf

Uploaded by: Othman, Ronza

Position: FAV



**NATIONAL FEDERATION
OF THE BLIND**
MARYLAND

Live the life you want.

Subject: Favorable Support for SB0271/HB0423
To: The Senate Education, Health, and Environmental Affairs 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
Columbia, MD 21045
Phone: 410-715-9596
Email: nfbmdsm@gmail.com

Date: February 18, 2021

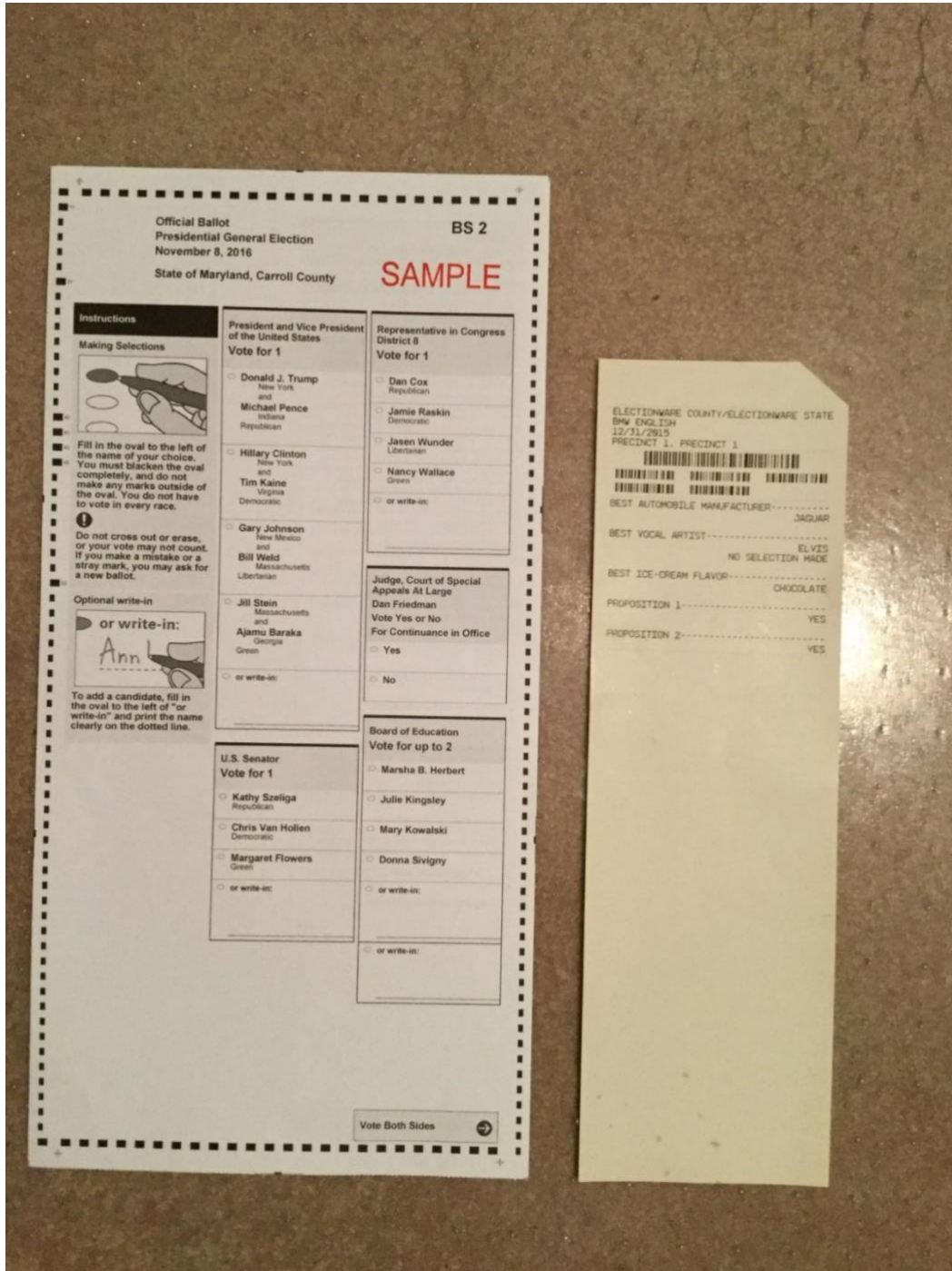
THE PROBLEM

For most of its history, all voters in Maryland used the same voting system. This situation changed in the 2016 and 2018 elections because the Maryland State Board of Elections (SBE) created two systems of voting: the ExpressVote electronic ballot marking device (BMD), and the paper-based system in which ballots are marked by hand. The SBE has selected the voter-verifiable paper-based solution leased from Election Systems and Software (ES&S) as its BMD. Unfortunately, in 2016 and 2018, SBE limited the use of this BMD by deploying only one device to each polling place. The SBE has further limited the use of these BMDs by requiring only two voters per polling place to use the BMD. In the 2020 elections, due to COVID-19, SBE encouraged voters to cast their ballots by mail. Those voters who chose to vote in person were informed that they could cast their ballot either by using the BMD or by using a paper ballot. Many blind and disabled voters are forced to use the ES&S BMDs to cast their ballots because they cannot use the hand marked ballots.

The problem for blind and disabled voters is that the BMDs produce paper ballots that are smaller in size and differ in content from the hand marked ballots. Thus, in the 2016 and 2018 elections, ballots cast by blind and disabled voters were segregated and too easily identifiable in

the overall collection of ballots. Therefore, ballots cast by blind and disabled voters were no longer secret. Maryland no longer had equality in voting. In the 2020 general election, for in person voting, voters with disabilities continued to face discrimination due to segregation. The problem of loss of voter secrecy still remains because SBE policies are arbitrary and inconsistent.

ILLUSTRATION OF BOTH SAMPLE BALLOTS, SIDE BY SIDE



PROPOSED ACTION

The Senate Education, Health, and Environmental Affairs Committee should vote in favor of SB0271. This legislation will require the SBE to create one voting system for all in-person voters in Maryland. The preamble of this legislation should state that there shall be no discrimination on the basis of disability in the voting process. The practice of using segregated ballots must be eliminated.

BACKGROUND

At the end of the 20th century, Maryland began to modernize its voting system. Gradually, Maryland introduced voters to a touch screen electronic system with all jurisdictions using the same system beginning in the 2004 elections. Voters with disabilities were most pleased because the nonvisual access of this new voting system allowed us to vote secretly and in private for the first time. However, this touch screen system did not produce paper ballot records which would be essential for the purposes of recounts and verification. The SBE was then forced to adopt a new voting system that was capable of producing paper ballot records. This new voting system was first used in the 2016 election.

The state of Maryland was unwilling to spend the money that was needed to purchase enough BMDs for all voters to use in the 2016 elections. This shortage led SBE to deploy only one BMD in each polling place, which forced most voters to mark their ballots by hand. This decision was the beginning of the loss of the secret ballot for blind and disabled voters.

In the 2016 primary election, candidates whose names appeared on the second or third screens of the BMD threatened legal action, complaining that navigating to these screens was too difficult. To appease these candidates, SBE further limited the use of the BMDs by requiring only two voters per polling place to use them. This policy forced even more voters to mark their ballots by hand and increased the loss of the secret ballot for blind and disabled voters. In the summer of 2019, SBE attempted to appease blind and disabled voters by changing the number of voters that would be encouraged to use the BMD from two to five. This new policy also allowed polling places to receive two machines, if desired, instead of one. Jurisdictions could also apply to SBE in writing and request up to four machines. These policy changes will not eliminate segregation or the loss of the secret ballot.

Maryland Election Law Article §9-102(f)(1), Annotated Code of Maryland, states that a voting system selected and certified by the 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."

On December 18, 2013, the Attorney General of Maryland issued an opinion stating that if SBE chooses to certify an accessible ballot marking device that produces a ballot that is different in size and/or content from the hand-marked ballots, SBE "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." Requiring

only five voters to use the BMD does not meet the definition of randomized polling procedures. We emphasize again that this five-voter minimum requirement denies blind and disabled voters the right to a truly secret ballot.

CRITICAL ERRORS BY THE SBE

The experience of the 2016 primary and general elections demonstrated that all voters had little difficulty in navigating the multiple screens on the BMD. Although the concerns of the candidates were baseless, SBE still refused to change its two-voter policy for the 2018 elections. SBE also chose to disregard the concerns of disabled voters about their loss of the secret ballot.

The National Federation of the Blind of Maryland (NFBMD) maintains that balancing the rights of voters against the complaints of candidates does not justify a system that:

- (1) creates physical segregation of voters with disabilities;
- (2) causes the segregation of their ballots according to physical appearance and content;
- (3) jeopardizes the privacy of their votes.

This was the reason language prohibiting a segregated ballot was included in Maryland Election Law Article §9-102(f)(1), Annotated Code of Maryland.

We emphasize again that there were no reports of voters having difficulty with navigation during the 2016 election season. The issue of ballot order bias exists for both hand marked ballots and BMDs. While most studies agree there is a positive impact on candidates listed first, there is not a consensus on size of the impact.

FAILURE TO IMPLEMENT BMD USAGE POLICY

In the 2016 and 2018 elections, disabled voters were deprived of the guarantee of a secret ballot that has always been afforded to non-disabled voters. In the 2020 general election, this problem continued for disabled voters who casted their ballot in person. The SBE data from the 2016 and 2018 elections demonstrates that the already inadequate SBE policy encouraging two voters in every precinct to use the BMD was a failure. Given that numerous polling locations were unable to compel even two individuals to use the BMD, the Board's policy change of five users of the BMD per polling location will likewise fail.

In the 2016 general election, twelve of the twenty-four counties or county equivalents in Maryland had at least one precinct where only one voter used the BMD. The SBE did not provide the data for precincts with zero voters using the BMD. See Appendix A for details.

The loss of the secret ballot by disabled voters was even worse in 2018 than it had been in 2016. Several primary elections were very close, which resulted in the recounts of votes. The BMD ballots were definitely identifiable during these recounts. In the 2018 primary election, nine counties had polling places where only one vote was cast using the BMD. Once again, SBE did not provide the data for precincts with zero voters using the BMD. See Appendix B for details.

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. See Appendix C for details.

In the 2020 general election, nine counties had at least one precinct where only one voter used the BMD machine during the early voting period. See Appendix D1 for details. On election day itself, thirteen counties had at least one precinct where only one voter used the BMD machine. See Appendix D2 for details. Data was not available for the 2020 primary.

CONCLUSION

The SBE violated Maryland Law by creating a segregated ballot for persons with disabilities. It also ignored the opinion of the Attorney General by creating policies that did not permit true randomization of the use of BMDs by both disabled and non-disabled voters. Consequently, voters with disabilities who must use the BMD no longer have a secret ballot. Although we brought these problems to the attention of SBE, the General Assembly, and the Governor, they took no action. Blind and disabled voters will still face segregation and the loss of the secret ballot in future elections. It is time for Maryland to go back to its practice of using one voting system for all of its citizens who choose to vote in-person.

Members of the National Federation of the Blind of Maryland urge the Senate Education, Health, and Environmental Affairs Committee to vote in favor of SB0271/ HB0423 and create one voting system for all in-person voters in Maryland. The Supreme Court ruled that separate is not equal 67 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.

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
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.

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 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

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 #51	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

County	Poll Name	ExpressVote Ballot Cast	Total Ballot Cast
Harford	Riverside Elementary School	0	889
Harford	Level Fire Hall	0	1661
Harford	Aberdeen Vfw 10028	0	534
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

County	Poll Name	ExpressVote Ballot Cast	Total Ballot Cast
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

Appendix D1

2020 GENERAL ELECTION - EARLY VOTING DATA

In the 2020 general election, nine counties had at least one precinct where only one voter used the BMD machine during the early voting period.

County	Precinct	Express Vote Ballot Cast	Total Ballot Cast
Allegany	300	1	71
Baltimore City	1903	1	13
Baltimore County	222	1	8
Baltimore County	927	1	2
Calvert	203	1	557
Calvert	304	1	598
Calvert	305	1	647
Frederick	1202	1	1
Frederick	2404	1	2
Harford	503	1	14
Harford	323	1	165
Harford	306	1	82
Harford	307	1	165
Harford	311	1	108
Harford	312	1	84
Harford	312	1	139
Harford	318	1	99
Harford	319	1	112
Harford	101	1	15
Harford	102	1	39
Harford	104	1	17
Harford	109	1	116
Harford	110	1	58
Harford	113	1	44
Harford	120	1	32
Howard	119	1	16
Prince George's	1414	1	4
Worcester	201	1	24
Worcester	203	1	23
Worcester	403	1	11

Appendix D2

2020 GENERAL ELECTION – ELECTION DAY DATA

In the 2020 general election, thirteen counties had at least one precinct where only one voter used the BMD machine on election.

County	Precinct	ExpressVote Ballot Cast	Total Ballot Cast
Allegany	2202	1	23
Anne Arundel	405	1	107
Baltimore City	809	1	3
Baltimore City	2702	1	21
Baltimore City	2716	1	29
Baltimore City	2751	1	7
Baltimore County	927	1	8
Baltimore County	929	1	5
Baltimore County	1115	1	6
Baltimore County	1127	1	2
Calvert	203	1	690
Dorchester	1101	1	10
Harford	204	1	99
Harford	205	1	85
Harford	207	1	320
Harford	219	1	320
Harford	326	1	504
Montgomery	939	1	5
Prince George's	1815	1	1
Prince George's	2015	1	4
Prince George's	2119	1	1
Saint Mary's	203	1	119
Saint Mary's	306	1	181
Saint Mary's	602	1	366
Saint Mary's	802	1	227
Saint Mary's	812	1	65
Somerset	1002	1	1
Washington	1005	1	2
Worcester	205	1	383
Worcester	303	1	195
Worcester	402	1	144
Worcester	403	1	83

Mat Rice - ARC - SB271 Testimony.pdf

Uploaded by: Rice, Mathew

Position: FAV

February 18, 2021

testimony in support of Senate Bill 271

Written By Mat Rice

SB 271 sponsored by Senator Lam

Position: Support

Assigned to Education Health and Environmental Affairs

Election Law Voting Systems Accessibility for voters with Disabilities

Honourable chairperson members of the committee; The Arc of Maryland Marilyn's largest grassroots advocacy organization for individuals, with intellectual and or Developmental Disabilities and their families supports SB 271 because we know that our right to vote is the cornerstone upon which, our democracy and by extension our society are held together. Senate Bill 271 ensures that people with disabilities have the right to a secret ballot just the same as those without disabilities requiring voters to use the same method on election day and at early polling stations as those with disabilities is a simple ask, and helps ensure that one of the largest voting blocks in the country is not disenfranchised, or influenced. For these reasons we support this legislation and encourage a favorable report from this committee

Should you have any questions please contact

Mat Rice

Director of Public policy

The Arc Maryland

phone: 410-925-5706

email: mrice@thearcmd.org

Maryland Catholic Conference_FAV_SB271.pdf

Uploaded by: Sheahan, Molly

Position: FAV



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

February 18, 2021

Senate Bill 271

Election Law – Voting Systems – Accessibility for Voters With Disabilities

Senate Education, Health and Environmental Affairs Committee

Position: SUPPORT

The Maryland Catholic Conference represents the public policy interests of the three Roman Catholic (arch)dioceses serving Maryland: the Archdiocese of Baltimore, the Archdiocese of Washington, and the Diocese of Wilmington, which together encompass over one million Marylanders.

Senate Bill 271 requires all voters, including voters with disabilities, be issued a standard sized ballot and that all polling systems be fully accessible. This bill ensures that Maryland citizens with disabilities receive the same access and privacy while voting afforded to all other Marylanders.

The Maryland Catholic Conference supports SB271 because it intersects with the Church's obligation to protect the rights of those with disabilities. In the last several elections, disabled Marylanders were issued different ballot forms from the standard and polling places only had to provide a single accessible voting system. This procedure singled out people with disabilities for unequal treatment, made their ballots easily distinguishable from the norm and infringed on their right to a private ballot. Policies should protect the full participation of people with disabilities in the voting process and equal access to fundamental rights.

Pope Francis has urged "protection for the rights of people with disabilities," urging "to make the world more human by removing everything that prevents them from full citizenship, the obstacles of prejudice, and by promoting accessibility to places and a quality of life that take into account all the dimensions of the human being." (*Message for the International Day for Persons with Disabilities 2019*)

For these reasons, the Maryland Catholic Conference urges a favorable report on **SB271**. Thank you for your consideration.

2.18.21 - The Arc CCR - SB271 - Access to Voting -

Uploaded by: Shewbridge, Rylie

Position: FAV



☎ 410.269.1883
✉ info@thearcccr.org
🌐 www.thearcccr.org

February 18, 2021

Chair Paul G. Pinsky
Education, Health, and Environmental Affairs Committee
Maryland State Senate
Miller Senate Office Building, 2 West
Annapolis, MD 21401

Dear Chair Pinsky, Vice-Chair Kagan, and Committee Members:

I am writing to you on behalf of The Arc Central Chesapeake Region in SUPPORT of SB271 – Election Law – Voting Systems – Accessibility for Voters with Disabilities.

The Arc Central Chesapeake Region serves over 2,500 children and adults with intellectual and developmental disabilities and their families in Anne Arundel County and Maryland's Eastern Shore. The Arc Central Chesapeake Region's mission is to promote respect, create opportunities, facilitate services and advocate for equal rights for all people with intellectual and developmental disabilities.

People with disabilities have continued to face inequalities within our voting systems and the ability to successfully cast their vote. SB271 would ensure that people with disabilities have equal access to voting systems and access to the appropriate devices to cast their vote throughout the state. SB271 will also include that these devices and procedures be accessible at both early voting centers and Election Day polling places.

Across the nation, people with disabilities are often dissuaded from participating within our election system due to the lack of access, support, and proper equipment and procedures in place to assist them in casting their vote. SB271 would ensure that people with disabilities have equal access to all aspects of life, including the right to civic engagement.

We ask for your support this session by voting in favor of SB271 and voting in favor of equal access for people with disabilities across Maryland.

Sincerely,

A handwritten signature in blue ink that reads 'Jonathon Rondeau'.

Jonathon Rondeau
President & CEO

Achieve With Us.®

SB 271 Ballot Marking Devices Support.pdf

Uploaded by: Walmsley, Keith

Position: FAV



Maryland Developmental Disabilities Council

EMPOWERMENT • OPPORTUNITY • INCLUSION

Education, Health, and Environmental Affairs Committee
SB 271: Election Law - Voting Systems - Accessibility for Voters With Disabilities
February 18, 2021
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 SB 271 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

SB0271_Represent Maryland_Favorable With Amendment

Uploaded by: Demnowicz, Cristi

Position: FWA



BILL: SB0271

BILL TITLE: Election Law - Voting Systems - Accessibility for Voters With Disabilities

BILL SPONSOR: Senator Lam

COMMITTEE: EHEA

POSITION: Favorable with amendments

HEARING DATE: February 18, 2021

TESTIMONY ON SB0271

Represent Maryland believes that voting is a right and that our government should do everything it can to make it equitably accessible to all. In theory, we support this bill. However, without more specific information in the bill, we believe it could lead to future problems in our elections.

Through research, we've found there are several types of "ballot marking devices." Some mark a traditional paper ballot, while others create a paper chit from a touch screen. Maryland currently has a paper ballot law, and voters understand that to be a piece of paper or cardstock that they mark, which is then fed into an optical scanner for recording. With the full paper ballots that Maryland currently uses, election irregularities are infrequent and can be sorted out quickly.

We believe, as written, there is room to change the understanding of what a paper ballot is, from the common understanding of a full size paper ballot to something that compiles a voter's votes onto a printed chit from input on a touchscreen. These systems are less secure and have led to accusations of vote swapping in other states. They rely on a level of external programming that our current system doesn't need, which opens them up to many potential problems.

Represent Maryland supports making the actual physical process of voting more accessible to all. However, we believe this law needs more specific information about what ballot marking device will be used. We want to ensure that the end result isn't one that undoes the security that our paper ballot law created. None of us are experts in technology or accessibility, but a number of members have suggested something like a large bingo dabber that is easy to hold and marks ballots clearly, which are then scanned.

We ask the sub-committee to amend this bill to have more specific information about the type of ballot marking device Maryland would use, if the bill is passed.

Sincerely,
Cristi Demnowicz, Chair
Represent Maryland
Maryland Voter-LD07

Represent Maryland is a grassroots anti-corruption group of citizen advocates that #FightForDemocracy in Maryland. Our democracy solutions include: Public Election Funds, Independent Redistricting, Special Elections, Ranked Choice Voting, Increased Ethics and Transparency, and Increased Voter Participation. Learn more about our work at www.RepresentMaryland.org

Authorized by Represent Maryland PAC, T. Miller Treasurer

SB 271 - Election Law - Voting Systems - Accessibi

Uploaded by: Antoine, Joanne

Position: UNF

February 18, 2021

Testimony on SB 271
Election Law - Voting Systems - Accessibility for Voters with Disabilities
Education, Health, and Environmental Affairs

Position: Unfavorable

Common Cause Maryland opposes SB 271, which would require that every early voter in Maryland use ballot marking devices.

We do not disagree with SB 271'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 SB 271 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.

SB 271 laudably tries to alleviate this situation, but we are concerned that it goes too far. We instead urge the committee to focus on encouraging more voters to use ballot marking devices until pending litigation is resolved. While the recommendations below do not address privacy, they do address many of the other issues raised at previous hearing:

- Ensure all available ballot marking devices are up and working from open to close on each day of voting at each polling location.
- Designate a poll worker at each polling location where a ballot marking devices is available to assist with use of the system.
 - This poll worker should also be responsible for asking a specified number of voters per day at each location to use a ballot marking device
- Provide signage at specific polling locations making clear that a ballot marking device is available for use by any eligible voter.
- If necessary, Common Cause Maryland is willing to assist with poll worker recruitment.

Because SB 271 would require all Marylanders to use ballot marking devices, we urge the committee to give an unfavorable report.

SB0271-EHE_MACo_OPP.pdf

Uploaded by: Kinnally, Kevin

Position: UNF



Senate Bill 271

Election Law - Voting Systems - Accessibility for Voters With Disabilities

MACo Position: **OPPOSE**

Date: February 18, 2021

To: Education, Health, and Environmental
Affairs Committee

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **OPPOSES** SB 271. 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.

SB 271 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, and the case is still pending.

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 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 schools, public health, 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 SB 271.