

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

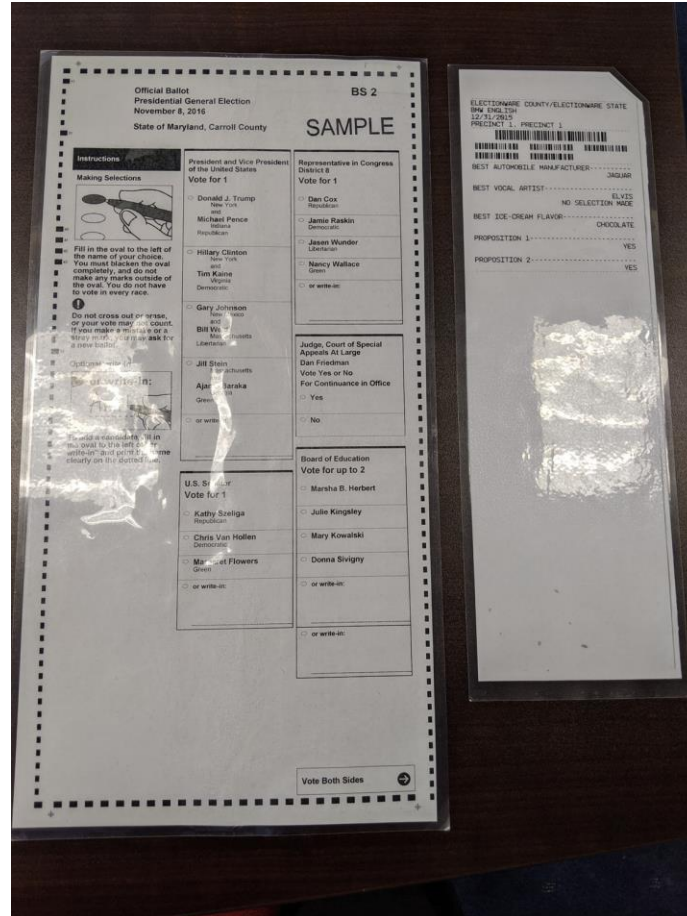


Issue

- 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”




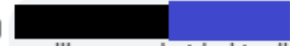
Preventing a Segregated Ballot

- 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