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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.