

**Subject: Restoring the Secret Ballot to Disabled Voters to Assure Equality in Voting**

**To: Members of the Maryland General Assembly**

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

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**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, SBE has 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. 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.

**PROPOSED ACTION**

The Maryland General Assembly should enact legislation requiring the SBE to create one voting system for all 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 will be encouraged to use the BMD from two to five. This new policy also allows polling places to receive two machines, if desired, instead of one. Jurisdictions can 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. The SBE data from these 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.

**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, blind and disabled voters will still face segregation and the loss of the secret ballot in the 2020 elections. It is time for Maryland to go back to its practice of using one voting system for all of its citizens.

Members of the National Federation of the Blind of Maryland urge the Maryland General Assembly to enact legislation that creates one voting system for all voters in Maryland. The Supreme Court ruled that separate is not equal, 65 years ago. It is time for Maryland to recognize this truth by eliminating discrimination against voters with disabilities. If the ballots of any other protected class of citizen were identifiable, the General Assembly would surely insist that SBE revise its policies. Blind and disabled voters deserve the right to equality in voting and a secret ballot, too.

**Appendix A**

**2016 GENERAL ELECTION DATA**

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

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

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** | **pollName** | **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 |
| 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 |
| 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 |

1. This 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. [↑](#footnote-ref-1)
2. This chart does not include the precincts where no ballots were cast using the ExpressVote BMD. [↑](#footnote-ref-2)
3. This chart does not include the precincts where no ballots were cast using the ExpressVote BMD. [↑](#footnote-ref-3)