



**Montgomery County
Board of Elections**

Post Office Box 4333
Rockville, Maryland 20849-4333

May 17, 2023

via email donna.duncan@maryland.gov only
Chairman William G. Voelp
Board Member Severn E. S. Miller, Esquire
Board Member T. Sky Woodward, Esquire
Board Member Michael G. Summers

via email linda.lamone@maryland.gov only
Linda H. Lamone, Esquire
State Administrator of Elections

via email nikki.charlson@maryland.gov only
Nikki Charlson
Deputy State Administrator
State Board of Elections
P. O. Box 6486
151 West Street, Suite 200
Annapolis, Maryland 21401-0486

RE: Ballot Marking Device

Dear Chairman Voelp, Board Members, Ms. Lamone & Ms. Charlson:

Thank you for Ms. Lamone's March 17, 2023 response to the
Montgomery County Board of Elections' letter of February 28, 2023

recommending improvements for the 2024 Presidential Election.

The Montgomery County Board of Elections is disappointed that the State Board of Elections does not plan to make the necessary improvements to the ballot marking devices' known deficiency regarding the number of candidates that may appear on a single page. As some of you know, this issue was brought to the MSBE's attention before the 2016 election. As early as May 11, 2017, the Montgomery County Board of Elections expressed its concerns in writing regarding functionality issues regarding the ballot marking devices and urged that the issues be addressed. Attached hereto is a copy of Former Montgomery County Board of Elections President Jim Shalleck's May 11, 2017 letter. Since then, our Board members have over the years appeared before the State Board of Elections urging that the necessary improvements be made to the ballot marking devices to add additional candidates to each page.

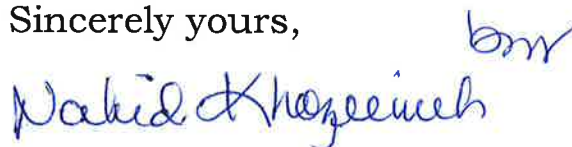
The limitation on the number of candidates that appear on a page has been a known problem for years and it is difficult for us to explain to concerned citizens why the State Board of Elections has not resolved it yet. It may be too late to address it for the 2024 Presidential Election. However, if it is not, the Montgomery County Board of Elections strongly suggests that the State Board of Elections take every necessary step to address the issue.

As we pointed out in our February 28, 2023 letter, the ballot marking device has become extremely popular. In the Primary Election, one candidate for County Council appeared by herself on the second page of the BMD ballot in an eight-person race, with no indication of the office she was seeking, and felt that she was at a disadvantage. Numerous elected officials and other community leaders appeared at our Board's July 11, 2022 meeting to express concern about this issue and urge that it be fixed. The issue received

significant publicity and it did not instill confidence in our voting system. The failure to address a known deficiency regarding the ballot marking device over such a protracted period of time is respectfully a disservice to Maryland's voters and candidates. By contrast, addressing the BMD issue could make the BMDs even more popular, making early voting easier to administer and saving huge amounts of paper used for paper ballots that are required to be available at every early voting location. The Montgomery County Board of Elections urges the State Board of Elections to take the necessary steps to address this issue before the 2024 Presidential Election.

Thank you for your time and consideration.

Sincerely yours,



Nahid Khozeimeh
President, on behalf of the members
of the Montgomery County Board of
Elections

NK:bjap

Attachment

James F. Shalleck
President
Nahid Khozeimeh
Vice President
Mary Ann Keffe
Secretary
Alexander C. Vincent
Member
David Naimon
Member
Graciela Rivera-Oven
Substitute Member
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Montgomery County
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May 11, 2017

Governor Lawrence J. Hogan, Jr.
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Delegate Anne R. Kaiser
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David J. McManus, Jr., Chairman
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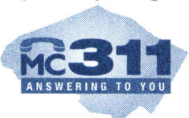
RE: Use of the Ballot Marking Device During Early Voting

Dear Honorable Larry Hogan, Senator Conway, Delegate Kaiser & Chairman McManus:

The local boards of elections were recently notified by the State Board of Elections' staff that local boards will not be allowed to use the Ballot Marking Devices ("BMDs") as

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the primary mechanism for early voting, as was planned, for the 2018 election cycle. Instead, the BMDs only will be used as Americans with Disabilities Act ("ADA") access units.¹ It has been conveyed to the local boards that there remain unresolved issues with the ability to navigate from one page to another on the BMD and the State Board of Elections has decided not to spend funds on the necessary upgrades to allow broader use of the BMDs. The Montgomery County Board of Elections ("MCBOE") respectfully requests that the State take whatever steps are necessary so that the BMDs can be used during early voting for the 2018 Primary and General election cycle.

It is very frustrating that the State Board of Elections has not taken the proper steps to ensure that the BMDs would be ready for use for the 2018 election cycle. As you may recall, as early as January, 2016, the State Board of Elections during its monthly meeting advised that the BMDs would not be available for use in the 2016 election cycle because the system could only list seven (7) candidates on a page and navigation between pages was a problem. Election Systems and Software (ES&S - the State Board's contractor), at that meeting, indicated that these issues could be fixed but that there was no time to do so before the April, 2016 Primary election. The State Board staff made it clear then that the BMDs would be available for use during the 2018 election cycle.

The State Board of Elections staff just last month advised us that revised software could allow for fourteen (14) candidates per page, but the issue of voters being able to navigate from one page would not be fixed. Therefore, the State Board has elected not to make either of the requisite improvements - adding an additional column for candidate names or the navigation feature so that BMDs could be used for the 2018 early voting election cycle. Therefore, this will be the second election cycle where BMDs are not being broadly utilized during early voting and local boards are required to maintain an inordinate amount of paper ballots at each early voting site. While we managed to make the use of paper ballots work for the 2016 election, the 2018 election cycle is much more challenging because of the large number of offices that will be on the ballot and the resulting number of ballot styles to be used.

It is in our view of extreme concern that the State Board of Elections' staff has not resolved the issues with the use of BMDs, especially since this has been known for more than a year. The BMDs are of critical importance during early voting for larger jurisdictions, because of their large number of different ballot styles. On the BMDs, local boards can load every ballot style for the entire jurisdiction. During early voting, the

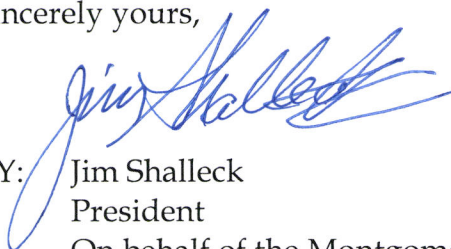
¹ MCBOE will have approximately two (2) BMDs in each early voting site as ADA access units.

correct ballot style simply appears on the screen of the BMD and the voter can vote it. In Montgomery County, MCBOE staff estimates that there will be between sixty-five (65) and seventy-five (75) ballot styles. If MCBOE cannot use BMDs, each of our eleven (11) early voting centers will have to house a sufficient number of each of the sixty-five (65) to seventy-five (75) ballot styles. This is an incredible (and unnecessary) undertaking – including the cost of paper and printing, the cost to ship that amount of paper to the 11 sites, the cost to hire additional election judges to manage such a process, and the organizational challenge of making sure the correct number of ballots of the right ballot style are available at each early voting location. In addition, all election judges will need to keep track of the correct ballot styles to ensure that the voter is handed the correct ballot. Inevitably, human error is bound to occur and voters are inadvertently given the wrong ballot style. This is entirely preventable by the use of BMDs during early voting.

MCBOE recognizes that prioritizing funding is a difficult undertaking. However, MCBOE respectfully submits that ensuring that our voters have confidence in our election results is critical. Therefore, MCBOE requests that the State take whatever steps that are necessary so that the requisite upgrades can be made to the BMDs. If the State is ever going to fully use the BMDs, the upgrades that the MCBOE is requesting be made now will need to be made at some point and there is no need to delay making the required improvements.

Thank you for your time and consideration. MCBOE stands prepared to provide any additional information you may desire on this topic.

Sincerely yours,



BY: Jim Shalleck
President
On behalf of the Montgomery County
Board of Elections

STATE BOARD OF ELECTIONS

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Justin Williams, Vice Chairman
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Linda H. Lamone
Administrator

Nikki Charlson
Deputy Administrator

March 17, 2023

Via Email Only

Nahid Khozeimeh, President
Montgomery County Board of Elections
P.O. Box 4333
Rockville MD 20849-4333

Dear Ms. Khozeimeh,

Thank you for your letter dated February 28, 2023, in which you share the Montgomery County Board of Elections' recommendations for the 2024 election cycle and recognize the work of this office. I extend the same gratitude to the members and staff of the Montgomery County Board of Elections.

1. *"Please use black or blue ink"*: Before the 2024 elections, we will review the instructions on the ballot and if there is sufficient space, add this instruction.
2. *Expand the functionality of the ballot marking device*: Adding more candidates to each screen of the ballot marking device requires an upgrade to the voting system software. At this time, the vendor does not have a software suite that addresses the concerns we identified during our 2021 testing of the vendor's proposed software upgrade, and considering the timeline for software development and federal certification, the vendor will not have a solution in time for the 2024 elections. The request for proposals for the new voting system solution will include a requirement to explain how candidate names are displayed on the ballot marking device.
3. *Contract term for vendor producing mail-in ballot packets*: The contract with the vendor producing and mailing ballot packets already requires the vendor to mail or ship ballot packets "no later than 48 hours after receiving the [data] export." See 2.3.8.7b of the Request for Proposals (RFP D38B1600011). The vendor met this requirement during the 2022 elections.

The process to receive a mail-in ballot packet has several steps. They are:

1. A voter submits a **REQUEST** for a mail-in ballot:
 - a. If the request is submitted via our website, the request is loaded into MDVOTERS and is available for local board processing the day after the voter submitted the online request.
 - b. If the request is a paper or in-person request, the process is defined by the local board.
2. **PROCESSING** of voter requests for a mail-in ballot in MDVOTERS is done by the local boards. The processing time depends on the processing backlog at the local board.
3. Once the local board processes the requests in MDVOTERS, local boards elect a **DELIVERY** method: either 1) local boards provide the ballot themselves (e.g., walk-in

request), or 2) they assign it to be sent by the vendor. If the ballot is assigned to the vendor:

- a. Twice a week, SBE exports data for voters whose requests for mail-in ballots were processed since the prior export and provides the vendor with this export.
- b. The vendor analyzes the data for errors and then produces and mails ballot packets within 48 hours of receiving the export.
- c. The USPS delivers the ballot packet. We tracked the average delivery time during the mailing window for the 2022 elections, and the USPS delivered most ballot packets in less than four days of the ballot packets entering the mail stream.

As you noted, there are various reasons why voters who requested an mail-in ballot decided to vote in person and had to vote a provisional ballot due to their previous request for a mail-in ballot. We are reviewing the same data and looking for ways to reduce the number of provisional ballots cast by voters who also requested a mail-in ballot. Your letter suggests that you have data to support the conclusion that a "large percentage of those voters had not received their ballot within a reasonable time and/or did not have confidence that their ballot had been timely received" by the Montgomery County Board of Elections, and we would appreciate receiving the data on which this conclusion is based.

For future elections, it would be helpful for us to receive information about the voters reporting delayed ballots as the reports are received. This enables us to track the ballot through the production process and USPS tracking system and if necessary, notify the USPS of the need to track specific ballot packets.

4. *"Reject" versus "Accept in Part" for provisional ballots cast in primary election:* The requirement to reject this ballot is based on Election Law Article, §11-303(d)(2)(i), which states that the local board shall reject a provisional ballot if the "local board determines that the individual who cast the provisional ballot is not qualified to vote *that provisional ballot.*" (emphasis added). The statute refers to ballots, not contests. A voter who votes a ballot for a party with which the voter is not affiliated is not qualified to vote *that* ballot. As a result, that ballot must be rejected and no contests on it counted.

Regulation 33.16.05.3C(4) of the Code of Maryland Regulations implements this rationale by requiring a local board to accept a provisional ballot application only if the party affiliation the voter indicated on the provisional ballot application matches the voter's party affiliation of record. When a voter decides to vote a primary election ballot that is different from that voter's party affiliation of record, the voter's provisional ballot must be rejected.

The practice of duplicating and counting a provisional ballot "in part" comes directly from a specific exception provided by the Election Law Article. It covers the situation where a voter's address does not fall within the precinct where the voter is voting (so the voter casts a provisional ballot). Under § 11-303(e)(2), a local board in that situation must count "only the votes cast by the voter... applicable to the precinct in which the voter resides." Because the Election Law Article provides partial counting for this specific circumstance, counting some, but not all, contests on a provisional ballot is permitted. The Election Law Article does not similarly permit partial counting of a provisional ballot cast because of a voter's party registration. Therefore, partial counting of non-partisan races is not similarly allowed.

Letter to Ms. Khozeimeh

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March 17, 2023

Thank you again for your recommendations, and we look forward to working with the Montgomery County Board of Elections as we prepare for the 2024 elections.

Sincerely,

A handwritten signature in cursive script that reads "Linda H. Lamone".

Linda H. Lamone