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Maryland Voters Sue to Protect Secret Ballots

National Federation of the Blind and its Maryland Affiliate Also Parties to Litigation

Baltimore (August 1, 2019): The National Federation of the Blind, its Maryland affiliate, and three blind registered Maryland voters – Marie Cobb, Ruth Sager, and Joel Zimba – are suing the Maryland State Board of Elections. The suit alleges that the Board of Elections is violating Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 by maintaining a segregated system of voting that denies blind voters their right to a secret ballot and equal voting experience.

From 2004 to 2016, all Maryland voters used the same electronic touch-screen voting machines to cast ballots. These machines included nonvisual features, such as audio output and a tactile keypad, that allowed blind voters to cast their ballots independently and with complete privacy. Maryland's election code has since been amended to require paper records of votes. This requirement can be fulfilled by electronic ballot-marking devices (BMD). These machines use a touchscreen, as well as a nonvisual interface, to allow voters with or without disabilities to mark their ballots electronically. The BMD helps prevent common voter mistakes by alerting voters if they have selected too many options for a contest (over-voting) or too few (under-voting). It also requires voters to view (or listen to) all available selections in a contest before moving to the next contest. Once voters confirm their selections, the BMD prints a paper ballot they can then feed into the scanner that tabulates votes. This scanner is also used to tabulate the votes on hand-marked paper ballots. The BMD does not cast or directly record any votes.

The Maryland legislation that mandated paper ballots also required that any voting system certified by the Board of Elections "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, Maryland's attorney general opined that this provision required the board either to use one accessible ballot marking system for all voters, to ensure that hand-marked and BMD-marked ballots were indistinguishable, or to require a significant number of voters without disabilities to use the BMDs. But since 2016, Board of Elections policy has steered virtually all non-disabled voters to hand-mark paper ballots. This creates a segregated voting system because the ballots printed by the BMD are a different size and shape from the hand-marked ballots, and rather than being full ballots themselves, simply indicate the voter's selections. Despite the law against segregated ballots and the Attorney General's opinion requiring voters to be randomly assigned to use the BMDs to mitigate the problem, the Board of Elections has only required that two voters per polling place use the BMD.

Even this minimal attempt to randomize the voters who use the BMD has failed in at least three consecutive elections since 2016. In 2018 alone, according to the lawsuit, “only one ballot was cast using a BMD at 22 precincts in Maryland. Moreover, in this same election—the only election for which this data is available—the Board reported that 66 precincts failed to require any voter to use the BMD.” If a blind voter is the only voter in her precinct to use the BMD, her ballot is readily identifiable and no longer secret. Plaintiffs have little confidence that the Board’s recent move to increase the minimum number of BMD voters per precinct from two to five will solve the problem.

Furthermore, Maryland’s decision to use the voting machines only as an alternative voting system has resulted in poor to nonexistent training of poll workers in setting up and using the machines. So, when Ms. Cobb showed up at her polling place in Catonsville for the 2016 general election, she was told by a poll worker that the worker did not know how to set up or use the machine. Determined to vote privately and independently as she had in the past, Ms. Cobb set up the machine herself with the help of her thirteen-year-old granddaughter. At the start of that process, Ms. Cobb and her granddaughter discovered that the machine was not even plugged in, with the plug still wrapped up and secured to the back of the machine, indicating that it had not been used at all before Ms. Cobb arrived. Ms. Cobb had the same experience in the 2018 election, and Ruth Sager had a similar one. Likewise, Mr. Zimba was the only person to use the BMD at his polling location in the 2018 election. Since poll workers there know him by name, he has little to no confidence that his ballot is secret at all.

The lawsuit seeks a court order requiring the Board of Elections to offer BMDs to all voters by default unless they specifically request to hand mark a paper ballot.

“The Maryland Board of Elections has implemented a separate, and by definition unequal, voting system for the blind,” said Mark Riccobono, President of the National Federation of the Blind. “Predictably, and by the board’s own admission, this system has dramatically and repeatedly failed. We are therefore asking the court to order the board to stop tinkering with its separate and unequal solution and instead implement a policy that protects the rights of all voters and the secrecy of our ballots.”

“For three years, we have been making reasonable requests to the Maryland State Board of Elections, at hearings and in multiple letters, to treat blind voters equally and to follow state and federal law,” said Ronza Othman, a civil rights attorney and president of the National Federation of the Blind of Maryland. “When we could not get the board to listen, we appealed to the state legislature, but the board fought us there too. Enough is enough. We are taking the board to court to protect the right of all Maryland voters, including the blind, to cast our ballots privately and independently.”

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About the National Federation of the Blind

The National Federation of the Blind (NFB), headquartered in Baltimore, is the oldest and largest nationwide organization of blind Americans. Founded in 1940, the NFB consists of affiliates, chapters, and divisions in the fifty states, Washington DC, and Puerto Rico. The NFB defends the rights of blind people of all ages and provides information and support to families with blind

children, older Americans who are losing vision, and more. We believe in the hopes and dreams of blind people and work together to transform them into reality. Learn more about our many programs and initiatives at www.nfb.org.

CONTACT:

Chris Danielsen

Director of Public Relations

National Federation of the Blind

(410) 659-9314, extension 2330

(410) 262-1281 (Cell)

cdanielsen@nfb.org