Resolution 2017-01

Regarding the Maryland State Board of Elections

WHEREAS, in 2014, the Maryland State Board of Elections (SBE) selected and certified the Election Systems & Software (ES&S) ExpressVote ballot marking device (BMD) as the new accessible voting system to be used throughout Maryland starting in 2016; and

WHEREAS, Maryland Election Law Article §9-102(f)(1), Annotated Code of Maryland, states that a voting system selected and certified by the Maryland 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;" and

WHEREAS, the ExpressVote produces a paper ballot that is different in size and content from the ballot that is hand-marked by voters who do not need an accessible system; and

WHEREAS, the opinion issued by the Maryland Attorney General on December 18, 2013, states 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; and

WHEREAS, shortly before the 2016 primary election, SBE revealed that contests with more than seven candidates would require voters using the touchscreen feature of the ExpressVote to navigate through multiple screens; and

WHEREAS, threatened legal action by 2016 primary election candidates whose names appeared on the second or third screens, and who complained that navigating to these screens was difficult, caused SBE to severely limit the use of the ExpressVote by deploying only one BMD to each early voting center and polling place, and placing a minimum of two ballots marked by the BMD for each early voting center or polling place during the 2016 primary and general elections; and

WHEREAS, a survey by the National Federation of the Blind of voters who used either the touchscreen or audio feature the ExpressVote to mark their ballot during the 2016 primary election found that only a very small number of these voters had difficulty navigating the multiple screens of a contest with more than seven candidates; and

WHEREAS, while ES&S has obtained certification from the US Election Assistance Commission for software changes to increase the number of candidates displayed on the ExpressVote screen, certification of the change to improve navigation between multiple screens in a contest is still pending, and neither of the changes will be installed on Maryland's ExpressVote BMDs for elections in 2018; and

WHEREAS, seven Maryland county boards of elections gave written and oral testimony at an SBE meeting on August 24, 2017, stating their need to have the flexibility to provide additional BMDs at the more heavily used polling places and at polling places with a large senior population; and

WHEREAS, the National Federation of the Blind of Maryland and Disability Rights Maryland gave oral testimony at an SBE meeting on September 29, 2017, and written testimony in a letter dated October 13, 2017, stating that the low incidence of difficulty in navigating the ballot experienced by voters using the touchscreen feature of the ExpressVote during the 2016 elections, the experience gained by voters and poll judges in using the ExpressVote in 2016, and the constitutional right of voters with disabilities to cast a secret ballot requires SBE to increase the use of the ExpressVote BMD for the 2018 elections; and

WHEREAS, because Maryland's 2018 elections will include contests with more than seven candidates that will require multiple screens on the ExpressVote, the Maryland SBE approved at its meeting on October 26, 2017, to again severely limit the use of the ExpressVote by deploying only one BMD per early voting center or polling place, and setting a minimum of two ballots marked by the BMD in spite of being urged by seven county boards of elections, the National Federation of the Blind of Maryland, and Disability Rights Maryland to expand the use of the ExpressVote in 2018: Now, Therefore,

BE IT RESOLVED by the National Federation of the Blind of Maryland in Convention assembled this eleventh day of November, 2017 in the city of Towson, Maryland, that this organization condemn and deplore SBE for failing to protect the constitutional right of voters with disabilities to cast a secret ballot by establishing a requirement that only two ballots be marked by the ExpressVote BMD thus failing to comply with the opinion of the Maryland Attorney General to establish polling-place procedures to ensure that a significant number of non-disabled voters will use the BMD; and

BE IT FURTHER RESOLVED that this organization condemn and deplore SBE's willingness to subvert the constitutional rights of voters to the unfounded fears of political candidates by limiting the number of ExpressVote BMDs to one per early voting center or polling place and ignoring the requests of local boards of elections, the National Federation of the Blind of Maryland, and Disability Rights Maryland to deploy more BMDs; and

BE IT FURTHER RESOLVED that this organization demands that SBE protect the constitutional rights of voters with disabilities by raising the minimum number of voters who mark their ballot using the ExpressVote, and by allowing local boards of elections to deploy more than one BMD to an early voting center or polling place as they see fit.