

WHEN THE RIGHT TO VOTE GOES WRONG:

Maryland Citizens Tell the Story of Election Day 2004

"It occurred to me later," Ruth said, "that the incomplete tallies were not flagged, so how would anyone know that there were cards that could not be read in the pouches and which cards they were. I don't know if the Board of Elections ever did upload these votes," she added.

-- Pollwatcher Ruth Zlotowitz relating her observations at a vote tabulation center in Howard County, on November 2, 2004.

TrueVoteMD
November 2004

TrueVoteMD is a non-partisan grassroots initiative that grew out of concerns raised by the introduction of paperless electronic touch-screen voting in Maryland. Its members represent a broad spectrum of the community, including candidates for political office, elected officials, election judges, pollwatchers, and citizens from all walks of life who are dedicated to preserving the integrity of our elections and ensuring confidence in the voting process. TrueVoteMD is a project of the Campaign for Fresh Air and Clean Politics, a Maryland non-profit (501(c)3 pending).

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EXECUTIVE SUMMARY

TrueVoteMD fielded more than 403 trained pollwatchers at 108 precincts in 14 counties and Baltimore City on November 2. It registered 383 reports involving some 531 incidents of problems encountered by voters. These problems ranged in severity from moderate inconvenience to outright voter disenfranchisement. The significance of these complaints increases dramatically, however, when one considers that Maryland had a total of 1,787 precincts this year, and TrueVoteMD was only able to cover a fraction of these—some 6%. With such a high prevalence of observed difficulties, one can reasonably assume that thousands of voters across the State faced technical or organizational barriers that may well have deprived them of the opportunity to cast all or part of their ballots. The fact that computer hard drives operate invisibly, severely reducing observable voting events, further underscores the urgent need for a fresh and serious review of Maryland’s voting technology and voting procedures, and the adoption of solutions that can guarantee Maryland citizens the ability to fully exercise their voting rights.

The most serious flaw in the election process—one that affected 100% of Maryland voters—was not reported: not a single voter could verify the accuracy of his or her recorded vote because the machines did not produce a voter-verified paper ballot.

Most incidents that were reported to TrueVoteMD fell into the following categories:

- Lost votes due to incomplete ballots that were missing candidates or entire races
- Lost votes due to machines crashing or freezing before the voter cast a ballot
- Lost votes due to “smart card” and encoder failures
- Lost votes due to delayed poll openings because of machine boot-up failures
- Lost votes due to voter abandonment because of unacceptably long waits
- Lost votes resulting from touch screen failures that included vote switching, review screen malfunctions, unintended selections and submission of ballots before voters had made selections, hypersensitivity to touch that caused voters to complain that “it was out of control and I have no idea who my votes were cast for,” screens going blank
- Lost votes from unreadable voting machine hard drives (PCMCIA cards)
- Lack of privacy because machines were oriented so that the screens were visible by those waiting on line to vote
- Discrepancies between electronic vote tallies and manual vote tallies
- No offer of provisional ballot or wrongful denial of provisional ballot
- Disenfranchised voters due to failures in the Motor Vehicle Administration registration process.
- Inadequate staffing and insufficient training of election judges

See the Appendix for three data tables:

TABLE 1 : Breakdown of Machine and Non-Machine Problems Reported
by Voters and Pollwatchers

TABLE 2 : Breakdown of Problems by County

TABLE 3 : Precincts and Pollwatchers by County

In light of the above, TrueVoteMD offers the following recommendations, which are preliminary in that they do not incorporate the direct public involvement that is instrumental to establishing a system that works:

- **Voter-Verified Paper Audit Trail** Require a voter-verified paper audit trail that is accessible to visually-impaired and blind voters for certification of any paperless electronic voting machines
- **Quality Control** Implement a quality control system that collects polling place data to document and resolve performance problems with the voting process, technology, and procedures
- **Public Hearings** Conduct public hearings so that voters can voice their concerns and present a fuller picture to the legislature of how the manner in which elections are administered affects their ability to exercise their voting rights
- **Task Force** Convene a technically competent task force comprising members of the public, academia, and government
- **Routine Election Verification** Integrate verification and auditing of elections as a routine practice
- **Technician Identification** Provide formal, readily identifiable credentials to all technicians who have authorized access to election software and hardware.
- **Back-up Paper Ballots** Back-up paper ballots should be available at every polling place and judges instructed to use them in the event of equipment failure. No one should be denied a vote because the state fails to provide reliable voting equipment.
- **Investigate Incomplete Ballots** Investigate the technical origins, prevalence and consequences of incomplete ballots and develop preventive and corrective measures
- **Training** Improve election worker training, particularly in the areas of technical functions of the electronic voting machines, provisional ballot requirements, and disability access
- **Adequate Voting Machines** Review machine allocations so that each polling place has an adequate number of machines
- **Improve Motor Voter program** Investigate and resolve registration failures in the MVA “motor voter” program
- **Personnel** Increase the number of election personnel at each precinct
- **Safeguard transparency and increase public participation in the electoral process**

INTRODUCTION

TrueVoteMD, an early advocate of voter-verified paper audit trails for electronic voting, was formed by a group of citizens who were troubled by nationally-publicized reports exposing the security vulnerabilities of Maryland’s paperless Diebold voting systems. Concerns over the potential for both undetectable fraud and inadvertent disenfranchisement posed by computerized voting had been percolating across the nation since the electoral debacle of 2000. A number of academic studies and investigative reports had been published decrying the use of electronic machines absent security and privacy safeguards. But now the reality had hit home in Maryland: paperless electronic voting was slated for statewide implementation (with the exception of Baltimore City) in 2004. In fact, the State of Maryland’s original RFP for electronic voting machines had included a paper record requirement. But, inexplicably, the Diebold AccuVote-TS system ultimately accepted and purchased by the State did not incorporate this feature.

TrueVoteMD members became increasingly alarmed as plans for paperless e-voting in Maryland continued apace, despite horror stories from around the country about elections culminating in irrevocable uncertainty

due to equipment malfunctions and errors as well as security gaps, including machine crashes, lost votes, and even failure to record votes. Their fears were confirmed when, during Maryland's March 2, 2004 primary election, voters called in to a TrueVoteMd Election Day Hotline reporting boot-up failures, incomplete ballots, crashes resulting in possible lost votes, and delays in reporting results.

Subsequent bipartisan efforts to get a paper trail bill passed in time for the November election stalled at the close of the 2004 legislative session. Legal challenges to paperless electronic voting mounted by eight Maryland citizens—including two Democratic and one Republican elected officials, and a Green candidate for Baltimore City Council—hit a judicial roadblock. Meanwhile, the Maryland Association of Election Officials released its authoritative *Lessons Learned* report in May 2004, revealing the fact that hardworking county election officials themselves were anxious about the lack of any voting system back-up. Moreover they felt “disenfranchised” by Diebold technicians, who refused to provide identification or documentation of their work upon request and were dismissive of the authority of local officials in their duties to oversee election integrity. The report disclosed numerous incidents of equipment failure and lack of accountability that occurred during Maryland's pilot of electronic voting in four counties in 2002.

TrueVoteMD had spearheaded efforts to educate the public on the dangers posed by paperless electronic voting to transparent, accurate elections in Maryland. But as Election Day approached, it became clear that the State of Maryland was intent on implementing a voting system known to be insecure and error prone. The Board of Elections remained in a state of denial. Rather than instituting quality controls to document and resolve problems, the Board tried to allay voter fears by flatly refuting all factual evidence of systems and machine defects—even that put forth by local officials who had been running elections for decades.

So, citizens needed to step into the breach. In order to continue the public dialogue and engage the political will of officials to restore voter confidence and resolve systemic flaws in the administration of elections—of which paperless voting stood out as the most egregious—it was necessary to gather reliable, first-hand documentary evidence. Some 70 non-profit organizations had formed a national Election Protection Coalition that was gearing up to monitor the 2004 election in high profile states. TrueVoteMD was a member of this coalition. Although Maryland was not considered a “swing” state in the 2004 presidential election, it was one of only four states in the U.S. rolling out electronic voting statewide, and one of only three that failed to provide a paper audit trail.¹ The integrity of the State's election was important to Maryland citizens of all political stripes who wanted some assurance that their voting rights would not be jeopardized by technology or procedure. If Maryland's election process were going to be fixed, it would be up to TrueVoteMD citizen pollwatchers to document its problems. Adding fuel to TrueVoteMD's momentum was the fact that California was suing Diebold, the maker of Maryland's electronic voting machines, for knowingly selling the state faulty equipment, and Rep. Robert Wexler of Florida was suing 15 counties in that state because their electronic voting machines lacked manual recount capability.²

POLLWATCHING METHODOLOGY

¹ Delaware, Georgia and Nevada also went entirely electronic this year. Nevada was the only state of the four that incorporated a paper printout for voter verification and recount capability.

² Diebold has since agreed to settle the lawsuit for \$2.6 million.

During the late summer and early fall of 2004, TrueVoteMD volunteers developed the strategy, structure and substance of an Election Day pollwatching exercise throughout the state. Members organized into subcommittees that drew on individuals' technical expertise in the areas of law, computer security and voting technology, data collection, public policy and training. They expanded TrueVoteMD's already extensive network with groups in other states and nationally to share knowledge and experiences. They passed on their growing expertise by conducting film showings and lectures to educate the public on the problems associated with electronic voting. They developed data collection instruments, enlarged their communication outreach, and produced information, education and training materials.

In September, TrueVoteMD began sending out a statewide call for non-partisan citizen pollwatchers. As more and more individuals signed up, TrueVoteMD scheduled some two dozen training sessions to familiarize the volunteers with election regulations and the tasks they were expected to perform on Election Day. Some sessions were held in conjunction with other groups establishing or supporting election monitoring around the country, such as the Election Protection Coalition, the ACLU, and the National Lawyers Guild. The training curriculum included components on:

- Maryland laws and regulations governing pollwatcher behavior, rights and responsibilities
- Typical problems voters have encountered with electronic voting in Maryland and the nation, with a special focus on Diebold security and accuracy vulnerabilities
- Procedures for opening and closing the polls, conducting the election, and reporting results
- Technical guidelines on observing electronic voting machines
- Completing and submitting incident report forms

The main tasks for "outside pollwatchers" were to educate voters and take incident reports. "Inside pollwatchers" were responsible for observing and documenting any problems experienced by voters, machines, technicians and/or the voting process.

Because TrueVoteMD relied on volunteers and had limited financial resources, it was not possible to position pollwatchers at every precinct in every county. But, in any event, voters themselves were not distributed evenly throughout the state. Voter registration in Maryland now topped 3 million, but over 55% of the total was concentrated in Montgomery County, Prince George's County, Baltimore County and Baltimore city combined. TrueVoteMD decided to focus on these four geographical areas. This strategy had the added advantage of maximizing the potential volunteer pool and making the organization of training sessions more manageable. Once it had defined its primary area of operation, TrueVoteMD sought to augment its reach so as to achieve a more representative cross-section of the state. To this end, it settled on 14 priority counties plus Baltimore city. TrueVoteMD identified the precincts with the largest voting populations in each of these areas, and designated these as priority pollwatching sites. Volunteers were asked to choose their precinct preferences from the priority list, although TrueVoteMD made an effort to ensure five pollwatchers per location: one inside and two outside at all times, with alternates providing shift rotations and breaks.

TrueVoteMD was unique among non-partisan groups monitoring electronic voting in the 2004 election because it was committed to positioning observers *inside* polling places where they would be able to document voters frustrated by equipment malfunctions, logistical failures, procedural anomalies, and training deficits among election personnel. The State Board of Elections initially attempted to bar

TrueVoteMD pollwatchers from entering polling places and refused to credential TrueVoteMD volunteers for this purpose. Having a presence inside the polling place, however, was critical to TrueVoteMD's ability to identify systemic concerns involving both electronic voting machines and the burden of organizational impediments on the orderly conduct of the election. Therefore, TrueVoteMD took the unusual step of approaching the political parties and candidates who had a direct interest in the outcome of the election with a request to credential our pollwatchers. It made this request of all parties and candidates across political lines because it was important for TrueVoteMD to maintain its commitment to impartiality. The Green Party and the Populist Party responded unequivocally. In addition, Democratic congressional candidate Ken Bosley and candidate for Baltimore City Council Joe Collins, Jr. also offered credentials—fully acknowledging that TrueVoteMD's non-partisan pollwatchers were there to serve democracy, not a partisan electoral campaign. TrueVoteMD accepted credentials under their banners, with no strings attached and for the sole purpose of gaining access to the polls.

TrueVoteMD's outside pollwatchers were assigned to educate citizens about potential problems with electronic machines, assist voters who were at risk of disenfranchisement, and register complaints. They were outfitted with buttons reading "POLLWATCHER Defending Democracy, TrueVoteMD.org" and stood beside attention-grabbing posters offering assistance to troubled voters. They were also equipped with educational flyers on electronic voting, and incident reports that had been designed in conformity with those being produced at the national level in order to make data sharing possible.

TrueVoteMD set up an Election Day hotline and headquarters that operated from 6:00 AM until midnight on Election Day. Volunteers at headquarters took hundreds of calls, entering the information received from pollwatchers and voters into the database, referring calls on legal matters to volunteer attorneys, and responding to voter queries. When legal issues were involved, pollwatchers were empowered to seek the advice of lawyers based at the TrueVoteMD headquarters or the national Election Protection hotline. The primary purpose of TrueVoteMD pollwatchers was to document the voting process, not facilitate voting, which was the duty of the county boards of election. However, it turned out that many citizens would have been wrongfully prevented from voting by overburdened, misinformed or inadequately trained election staff if TrueVoteMD pollwatchers had not been present and prepared to intervene.

ELECTION DAY RESULTS

Context

At the outset, it should be noted that most election judges welcomed the TrueVoteMD pollwatchers and accommodated their requests, in accordance with statutory entitlements, to view machine counts, note serial numbers, ask questions of election workers, and observe the poll opening and closing procedures. Election workers often treated TrueVoteMD pollwatchers as colleagues because they understood that, like themselves, the pollwatchers were just average citizens willing to contribute their time to improving our democracy. In a handful of cases, however, TrueVoteMD legal volunteers had to mediate pollwatcher encounters with hostile election judges who arbitrarily deprived them of meaningful access to the polling place. These conflicts were usually resolved to the mutual satisfaction of both sides, and only rarely resulted in a permanent bar of the pollwatcher from the building. Where inside pollwatchers were unable to regain entry to the polling place, they nevertheless remained on site to handle outside pollwatcher duties.

Voters also appeared to appreciate the participation of TrueVoteMD pollwatchers. There were innumerable instances of reliance by voters on the information, guidance, and encouragement of pollwatchers, without whom they would have been unable to exercise their voting rights. On many occasions, just lending an ear seemed to give disgruntled citizens the stamina to endure long waits and confusion. TrueVoteMD did not receive a single report of voter opposition to the presence of its pollwatchers either inside or outside the precinct. On the contrary TrueVoteMD received many expressions of gratitude and support for a paper trail.

The number of Maryland residents registered to vote this year swelled to 3,105,370. Voter turnout hit 71% which, given the number of new registrations, meant that some 200,000 more Maryland voters cast ballots in November 2004 than did in the 2000 general election. The magnitude of voter turnout coupled with the introduction of new technology presented a particularly daunting challenge for election workers, which overall they met admirably. For the most part, Maryland's cadre of election workers deserves high praise and gratitude for executing their critical role in the election process with professionalism, intelligence, consideration, and patience. This is all the more impressive given that they were often obliged to function under stressful conditions exacerbated by insufficient staffing to cope with the expectedly high voter turnout, limited voter experience with touch screen machines, inadequate or poorly designed administrative systems, log-jams created by machine breakdowns, slow response time for technical support, and training deficiencies.

TrueVoteMD State Pollwatching Effort

TrueVoteMD fielded more than 403 trained pollwatchers at 108 precincts in 14 counties and Baltimore City on November 2. It registered 383 reports involving some 531 incidents of problems encountered by voters. These problems ranged in severity from moderate inconvenience to outright voter disenfranchisement. The significance of these complaints increases dramatically, however, when one considers that Maryland had a total of 1,787 precincts this year, and TrueVoteMD was only able to cover a fraction of these—some 6%. With such a high prevalence of observed difficulties, one can reasonably assume that thousands of voters across the State faced technical or organizational barriers that may well have deprived them of the opportunity to cast all or part of their ballots. The fact that computer hard drives operate invisibly, severely reducing observable voting events, further underscores the urgent need for a fresh and serious review of Maryland's voting technology and voting procedures, and the adoption of solutions that can guarantee Maryland citizens the ability to fully exercise their voting rights.

Ironically, the most serious shortfall in Maryland's election process—and the one that affected 100% of all voters—went unreported: Maryland voters were, without exception, unable to verify the accuracy of their recorded votes because the Diebold AccuVote machines did not produce a voter-verified paper ballot. As a result, it is impossible to determine whether the ballots submitted by Maryland voters were actually cast or counted as intended.

Most of the incidents that were reported to TrueVoteMD fell into the following categories:

Lost votes due to incomplete ballots that were missing candidates or entire races:

Voter Everette Jarvis at Eastern Middle School in Montgomery County wanted to choose his representative for Congress in district 4, but the race did not come up on his ballot. Voter Robert Seiler at St. Luke's Lutheran Church in Allegany County could not vote for U.S. Senator because the candidate he wanted was missing from his ballot. He left without casting his vote and prayed that his candidate would win anyway. Voter Garret Davidson, also in Allegany County, was advised by an election judge to make sure that the city council race appeared on his ballot because it had been missing from another. Voter Jane Hill at Pyle Middle School in Montgomery County noticed that only three presidential candidates were on her ballot; when she scrolled back to review her selections at the end, she found all the candidates there.

Lost votes due to machines crashing or freezing before the voter cast a ballot:

Voter Lavellette White at Francis Scott Key Middle School in Montgomery County tried to vote for the school board, but when she made her selection the screen went dark and the machine spit out her ballot card. The election judge told her there was nothing he could do. Voter Michael Heyman at Maryvale Elementary School in Montgomery County reported that the machine froze when he attempted to review his ballot prior to submission. The election judge told him that it was a persistent problem with that particular machine. The judge removed a sticker from the machine and inserted a key to reboot. At first the machine would not eject the smart card, but finally it did and voting continued.

Lost votes due to "smart card" and encoder failures:

Pollwatcher Evan Scott, who was stationed at the William R. Talley Recreation Center in Frederick County, reported that machine No. 3 refused to eject one voter's smart card after the ballot was submitted. Election judges had to fiddle with the machine to remove the card. The problem recurred during the course of the day, and developed on a second machine as well. Pollwatcher Anna Doroshaw at Eastern Middle School in Montgomery County noted that all three smart card encoders became inoperable at one point in the day, preventing anyone from voting for a period of time and ultimately creating a backlog of voters and long lines.

Lost votes due to delayed poll openings because of machine boot-up failures:

Pollwatcher Susie Strasser at John F. Kennedy High School in Montgomery County reported that one machine failed to boot up when the polls opened at 7:00 AM, and by 8:15, two machines were out of service. A technician without an ID arrived with one replacement machine at 8:45 AM, but when he left there were still two machines not working. A third machine crashed at 10:30 AM and despite attempts by another technician to repair it, now three machines were inoperable. Voters stood in line to cast their ballots for one and a half to two hours all morning due to insufficient staff and downed machines.

Lost votes due to voter abandonment because of unacceptably long waits:

Voter Jacqueline Miller at Frederick Douglas H.S. in Prince George's County is disabled and only goes out to shop and vote. She waited on line for one and a half hours but did not have the physical stamina to remain long enough to cast her ballot. She left without voting—for the first time in her adult life. Voter Jean Howard at Perrywood Elementary School in Prince George's County waited in line for one hour and had to leave without voting because she needed to pick up her children from daycare.

Lost votes resulting from touch screen irregularities that included vote switching, review screen malfunctions, screens skipping forward and casting ballots before voters had made selections,

hypersensitivity to touch that caused voters to complain that “it was out of control and I have no idea who my votes were cast for.”:

Voter Cynthia Umrani tried to cast her ballot at Perrywood Kettering Elementary School in Prince George’s County. While voting, she inadvertently made the wrong selection, and was told by an election judge to hit the review button to correct it. When she did so, the machine powered down and spit out her voter access card. She was told by the election judges that, although there was no way to verify that her vote had actually been counted, she could not vote again. In her words, she was told, "Sorry, we can't help you. Have a nice day!" Voter Ethel Kerscher at Leisure World Clubhouse in Montgomery County was directed by an election judge to use another machine after she noticed that her vote had been switched from one candidate to another. She submitted her ballot on the second machine, but left the polling place shaken and upset. Voter David Solomon at the Good Hope Community Center in Montgomery County tried twice to vote for his preferred candidate, but each time the “X” appeared next to another candidate’s name. After getting the assistance of an election judge, he tried a third time and believes he was successful—but is not certain. Voter Robin Wayne Hood at Havre de Grace H.S. in Harford County tried to change his erroneous selection for president and, while doing so, accidentally submitted his ballot—worse still, before he had made selections for the other races. “A machine should not be allowed to do my voting for me,” he protested.

Lost votes from unreadable voting machine hard drives (PCMCIA cards):

Do the Votes Not Counted Count?: Ruth Zlotowitz, Howard County

For most of her 36-year career in the Social Security Administration, Ruth Zlotowitz was precluded by the Hatch Act from partisan political activity. So when she retired some 16 months ago, Ruth set about looking for ways to become more politically involved. She began volunteering for the Democratic party in the run up to the primaries, and eventually learned about efforts to ensure the integrity of the voting process in Maryland when she heard a TrueVoteMD volunteer speak at her local Democratic club.

Her interest whetted, Ruth began to do her own research on the internet. The more she discovered about voting anomalies throughout the country, the more convinced she became that the potential for fraudulent manipulation of the system was real. It was in the spirit of doing her part to protect voting as a cornerstone of democracy that Ruth signed up to be a TrueVoteMD pollwatcher in Howard County, and to act as a Democratic Party observer at one of the regional vote tabulation centers, from which TrueVoteMD pollwatchers were being excluded.

Ruth described her observations of the vote tally as follows: After the precincts closed, St. John’s Lane Elementary School in Ellicott City became a regional tabulation center for nine precincts in Howard County. Nine sealed pouches were delivered to the center, each containing all the PCMCIA memory cards from the voting machines in that precinct. One at a time, the pouches were opened and their PCMCIA cards uploaded into a computer “accumulator.” The computer monitor displayed the number of votes on each card as it was entered, and after all the cards from a precinct had been totaled, a printout was produced for that precinct. The printout, along with the precinct’s PCMCIA cards, were put back in a pouch and sealed for delivery to the Board of Elections. The aggregate total for all nine precincts, however, was transmitted to the Board of Elections electronically via modem.

During the tabulation process, the accumulator was unable to read six of the PCMCIA cards coming from three separate precincts. On each occasion, the volunteer technician performing the tabulation referred to a manual, but was unsuccessful in resolving the problem. Ultimately, she telephoned the Board of Elections for guidance. The technician was instructed simply to provide the incomplete tallies. At the same time, she was assured that the cards would be read later by the central computer at the Board of Elections. “It

occurred to me later,” Ruth said, “that the incomplete tallies were not flagged, so how would anyone know that there were cards that could not be read in the pouches and which cards they were. I don’t know if the Board of Elections ever did upload these votes,” she added.

Lack of privacy because machines were oriented so that the screens were visible by those waiting to vote:

Voters Mary and Larry Russo in Howard County were intimidated by the lack of privacy at their polling place. Machine screens were facing into the room so that those waiting on line, as well as those walking by to vote or leaving the room, had a full view of the voters’ selections. Don Johnson, also in Howard County, had the same complaint. When he pointed this out to the election judge he was told that they had been instructed to lay the machines out this way. Lori Kantziper in Baltimore County also complained about election judges walking back and forth behind the machines where they could view the screens.

Discrepancies between electronic vote tallies and manual vote tallies:

Pollwatcher Jane Hayes witnessed the closing procedure at Glenelg High School in Howard County, which required election workers to reconcile voter counts from the machines, voter authority cards, and the precinct register. The machine count showed 3 more votes cast than the number of voter authority cards counted. The number of voter authority cards counted exceeded the number of voters checked off in the precinct register by 2. The election judge simply changed the register tally to reflect the card tally, but that still left the machines with three more voting sessions on them than the number of voters who had received ballots.

Failure to offer or wrongful denial of provisional ballots:

Voter Neitha Harris was turned away at her Prince George’s County precinct because “they did not find me in their system.” She was denied a provisional ballot. Voter Ann Mulligan was denied a provisional ballot in Prince George’s County even though she voted in the primary election; another election judge wanted to give her a provisional ballot, but the chief election judge refused to budge so Ann did not get to vote. Earle Lawrence complained that he was sent to three different polling places in Prince George’s County and each time got the wrong information. When he tried to vote at the polling place that corresponded with his address, he was refused a provisional ballot because he did not appear on the precinct list. Pollwatcher Tiffany Coe at the William Paca Elementary School in Baltimore City reported that many people were being turned away without being advised of their right to a provisional ballot.

The Right to a Provisional Ballot: Liberty Rucker, Prince George’s County

Liberty Rucker and her husband joined the Election Protection Coalition and trained to be poll monitors in Ohio on Nov. 2. The couple wanted to witness the voting process first hand in the event that irregularities similar to those of 2000 occurred, especially in light of the high voter turnout expected. At the last minute, however, they decided it was impractical for both of them to leave town, so Liberty signed up with TrueVoteMD. “I felt that if Ohio was important, it was equally important for me to make the same commitment to my own community to see whether the system worked smoothly,” said the 33-year-old violin teacher.

Liberty, along with several other TrueVoteMD volunteers, spent nine and a half hours pollwatching at the Perrywood Elementary School in Greenbelt, a precinct composed mostly of African-American, low-income voters. The pollwatchers set up a table outside to distribute educational material and receive complaints from anyone who had problems voting. What Liberty was not prepared for, however, was the need to play an active role in preventing citizens from being disenfranchised.

As she described it, a number of voters waited on line for hours, only to reemerge from the polling place without having cast a ballot: election workers turned them away because their names did not appear on the register. No one offered these voters provisional ballots, as required by federal law. “People looked so disappointed, like their spirits had fallen out,” she said.

So Liberty called the national hotline for guidance and was directed to an attorney at the NAACP, who provided her with the legal arguments she needed to advise rejected voters about their right to a provisional ballot. For some, like Darren Jahmani, who got an apology from the election judge when he went back a second time to demand a provisional ballot, the advice worked. Others tried and failed, like Jewel Robinson, who along with her husband had voted at that same precinct in the 2002 primary. Now, although they still lived at the same address, only her husband’s name appeared on the precinct register; she was instructed to go to a different precinct. When Jewel returned to ask for a provisional ballot, she was told—at 8:40 in the morning—that she could only have one after 7:00 PM. At that point she just gave up because she was already late for work.

Some people were unwilling to risk confrontation and preferred to leave without voting at all. Liberty logged some 25 complaints of failure to offer a provisional ballot or wrongful denial of a provisional ballot, many of which she managed to rectify.

Liberty was so shocked by her experience on Election Day that she is now contemplating a change of careers—and even pursuing a graduate degree in public policy. “Seeing that democracy does not work in this country is like having your whole reality shattered,” she said.

Disenfranchised voters due to failures in the Motor Vehicle Administration registration process:

Voter Wayne Rouse discovered upon checking in at his Prince George’s County precinct that his motor voter registration had not been forwarded to the county and his name did not appear on the list. When he asked for a provisional ballot his request was denied. Darla Holder also thought she had registered to vote when she filled out the appropriate section on her driver’s license form, but Prince George’s County had no record of this. She, too, was denied a provisional ballot and did not get to vote. Mark Lowman registered at the MVA two months before the election but his name was not on the voter rolls.

Inadequate staffing and insufficient training of election judges:

Pollwatcher Jane Bard, at Woodmoor Elementary School in Baltimore County, noted that voters inadvertently pocketed voter access cards when they left the precinct. Election judges tried to remind voters to return their cards, but it was impossible for the short-handed staff to provide enough supervision to prevent the cards from disappearing. By late morning there were so few access cards that there was a backlog of voters who had checked in but were waiting for a card to be able to vote. Voter Jared Kindestin described the atmosphere at the Silver Spring Library in Montgomery County as “total chaos.” He was unable to vote after a 90-minute wait on line.

Alison Scott is well-acquainted with the marginalization faced by people living in poverty: as a Ph.D student at the Johns Hopkins School of Public Health she conducts research on HIV infection among poor urban communities in the Bronx, Chicago, and Miami. But when she describes the nine hours of chaos she witnessed in a low-income, African-American voting precinct in Baltimore City on Election Day, she returns to the word “distressing” over and over again.

Alison’s lingering unease over the outcome of the 2000 presidential race drove her desire for greater involvement in the electoral process this year. When a call for TrueVoteMD pollwatchers turned up in an email from one of the listservs to which she subscribes, Alison joined immediately and attended one of the training sessions. For her polling site, she chose a precinct close to home with socio-economic characteristics similar to the communities in which she habitually works.

Alison chronicled a litany of voting problems at her polling place. They included the polls opening nearly one hour late; voters having to complete provisional ballots because their names had inexplicably disappeared from their precinct registers, although they had voted many times before; a machine that crashed shortly after the polls opened—and an election judge surmising that its votes would be lost; and an election judge who asked Alison for advice on how to certify people on the spot to be election workers.

“It’s ironic that during the past few years we have been holding ourselves up as the gold standard of democracy in the world,” observed Allison. “The truth is, we’re not doing a very good job of running a democracy here at home.”

Pollwatchers and voters alike cited a variety of additional anomalies that made the voting experience problematic for them. Many specifically objected to casting a vote on a machine without a paper receipt. In a remarkable show of support for voter-verified paper audit trails, two blind voters were trained and served as TrueVoteMD pollwatchers, handing out educational flyers at a Montgomery County precinct. Others noted that undocumented repairs on the voting machines were being made by unidentified technicians—one voter who asked for an explanation of the machine breakdown was told by the election judge that he had no idea and did not have time to enquire. An ex-felon who claimed to have completed her sentence eight years ago tried in vain to get her right to vote reestablished, and left the precinct dejected.

Election judges seemed to have particular trouble assisting disabled voters. One elderly man with failing vision was never offered the chance to vote with an audio ballot on an accessible machine. A deaf voter was frustrated by the absence of pens or pencils, which prevented election workers from communicating with him effectively.

Accessibility for the Visually Impaired: Laura Havard, Montgomery County

Laura was very excited about using Maryland’s new touch-screen machines because it meant that, for the first time in her life, she would get to vote just like everyone else—in secret. Laura is legally blind. Prior to the introduction of electronic voting—which has an audio feature to permit independent voting for the visually impaired—she had required the assistance of another individual to pull the lever or punch the chad.

In fact, Laura had been involved in developmental testing of accessible voting machines five years earlier through the National Federation of the Blind. More recently, she had tried one of the demonstration models at a county car show where a booth had been set up to encourage new voter registrations. So it was with eager anticipation that the 29-year-old social worker entered the Montgomery County precinct with her husband, who soon disappeared off to cast his own ballot. Laura informed the election judge at the check in and again when she was handed her “smart card” that she wanted an accessible machine. When the judge

entered her electronic ballot into the machine, however, there was no sound. Worse still, the machine refused to eject the card.

After much discussion and confusion among the election judges, who appeared to be ill-acquainted with the procedures to enable accessible voting, it was discovered that they had not encoded the card for audio use. The machine—by law each precinct must be equipped with one machine with an audio function—had to be unplugged to eject the bad card, and a properly coded card was inserted.

According to Laura, the election judges were apologetic, but were more concerned about her getting to vote than the manner in which this was accomplished. “At one point, an election worker mentioned that she had seen my husband with me and thought he could help,” she said. “How dare she assume that he was there to help me, or that I wanted help,” she continued indignantly. “I made it clear to them that I was going to vote by myself and I was not going away until they fixed the problem.”

Because of inadequate staff training, it took about 40 minutes for Laura to vote on Nov. 2, although in the end she was able to do so by herself.

Voters whose names were stricken from the precinct register were sometimes so indignant that they refused provisional ballots even when these were offered. There were late openings and early closings, and voters frustrated by waiting on a long check-in line serving one segment of the alphabet, while election workers at tables serving other parts of the alphabet sat idle. Voters also cited intimidation resulting from uncertainty over rules and procedures, and the lack of privacy. In the days leading up to the election, TrueVoteMD received calls from anxious voters complaining that the outside of their absentee ballot return envelopes were printed with their party affiliation—rendering their votes vulnerable to the passions of anyone from a postal worker to an election worker. In addition, numerous voters called for guidance because their voter notification cards had not arrived in the mail by Election Day.

FINDINGS

For Maryland voters, the first statewide experience of electronic voting was a mixed bag. There were indeed those who appreciated the straightforward simplicity of touch-screen voting—when the equipment worked properly. Others just liked the idea of using “advanced” technology. But even those who expressed a preference for electronic over mechanical voting frequently noted that the new system’s lack of transparency, which made the act of voting something of a leap of faith, left them uneasy. The number of mishaps suffered by friends and family could not be discounted. Moreover, procedural irregularities and poor organization that resulted in voter disenfranchisement was ‘intolerable in a democracy’ for some. Among electronic voting detractors, the experience was variously described as a travesty, a nightmare, and a humiliation.

Voters and pollwatchers reported some 531 incidents to TrueVoteMD. Some 201 of these were incidents involving machine malfunctions of various types. The other 330 involved human and organizational failures, including lack of privacy, denials of provisional ballots or the right to vote at all, long lines, and insufficient help from election workers.

For a quantitative breakdown of incidents, note the Tables attached at the end of this report:

TABLE 1 : Machine and Non-Machine Problems Reported by Voters and Pollwatchers

TABLE 2 : Breakdown of Problems by County

TABLE 3 : Precincts and Pollwatchers by County

The sheer quantity of complaints received by TrueVoteMD, especially in light of the small fraction of precincts covered by our pollwatchers, should be cause for concern among officials responsible for election oversight. And, TrueVoteMD pollwatchers were able to document only superficially observable problems with the voting process. This left undocumented the well-publicized gaps in voter security present in electronic voting. For a summary of the security risks, please see the letter to the State Board of Elections from the TrueVoteMD technical committee, 10/17/04, at <http://www.truevotemd.org/about.asp#letters>. TrueVoteMD pollwatchers were similarly unable to document the machines' lack of meaningful recount capability. TrueVoteMD Technical and Legal committees also wrote a joint letter to all candidates on the Maryland ballot informing them that paperless machines cannot perform recounts in compliance with statutory requirements in Maryland and other states.

A brief discussion of our recommendations follows. To begin, because 0% of Maryland voters were able to verify that their votes were accurately recorded and there is virtual consensus in the computer security community that this step is urgently need, we recommend a **mandatory voter-verified paper audit trail**. Common sense and public sentiment demand it.

Second, because TrueVoteMD's documentation was only a fraction of the 1787 polling places statewide, the evidence demands that a more systematic documentation effort be undertaken to determine the full extent of the problems and to ensure the 'quality' and accuracy of election results. For example, how many voters were denied the opportunity to vote for a particular candidate or a particular race on November 2 because of incomplete ballots, machine crashes, and other technical malfunctions? How about Primary Day 2004? Professional **systematic 'quality control'** measures are required. Well-publicized public hearings also should be held to get a fuller picture of Maryland voters' real life experiences with this new system. Finally, other states such as Illinois have had success with establishing a state task force that includes members of the voting public in equal numbers with academics and government representatives. Such a task force should be established in Maryland as well.

There is also an emerging consensus in the national dialogue about election integrity and electronic voting machines: **verification and auditing of election results** should become a routine and mandatory practice in election administration. When the confidence of Maryland voters is given its due, and it is understood how critical that confidence is to a living, working democratic election, verification practices can be seen as necessary rather than a special procedure in cases of suspected fraud. Further, it has also been the practice in the United States that election judges from various political parties be present in the marking and counting of ballots. Routine verification and auditing are essential now that voting is a digital process hidden from view.

Following up on concerns identified by the Maryland Association of Election officials, technicians should be under the direct supervision of local election officials in the polling place. Technicians with authorized access to election software and hardware should be formally credentialed (perhaps by the county boards) and outfitted with **highly visible identification** to facilitate easy oversight for busy election workers. Ideally, technicians should be county employees who are ultimately accountable to Maryland citizens.

In early 2004, Maryland State Delegates reasonably asked what would happen if there were major power outages on an election day and were promised that **back-up paper ballots** would be available in every polling place. No one should be denied a vote because the state fails to provide reliable voting equipment. Every polling place should have an adequate supply and judges should be instructed to use them in the event of any kind of equipment failure to ensure that ZERO votes are lost.

Incomplete Electronic Ballots have been reported in many states and every time Diebold machines have been used in Maryland. In the 2004 March Primary, Senator Barbara Mikulski was reported to have been missing from some ballots in three counties. In the November General Election, voters reported candidate Cummings, Ruppertsberger, Wynn, Van Hollen as well as Mikulski as missing from their ballots. Given the potential of this problem to undermine the legitimacy of an election and the damage it does to voter confidence in the accuracy of the system, this problem should be taken seriously and investigated until its resolution.

There were 330 incidents reported indicating problems unrelated to voting machines. Nationally, significant voter disenfranchisement occurred due to confusion about **provisional ballot** regulations. It must be acknowledged that this was also true for Maryland. **More personnel and improved training** on the workings of the voting machines, the purpose of provisional ballots, and on disability access will help enfranchise more Maryland voters in future elections. The challenge is to determine how many hours of training are practical and can volunteer election workers be expected to undergo, given that the two-hour election trainings were insufficient. Electronic voting has many costs that are unacknowledged.

A large percentage of new voters in our state fulfilled registration requirements at the Motor Vehicle Administration. Tragically, TrueVoteMd received dozens of calls from distraught voters who were disenfranchised by a failure in the **Motor Voter program**. Immediate action needs to be taken to redeem this otherwise popular and user-friendly registration opportunity.

Transparency and Democracy

Verifiable and transparent elections create trust and are especially important during elections like this year, when our nation is widely recognized to be politically polarized. Although Maryland was not a swing state, this reality requires us to think again about the importance of transparency in safeguarding the legitimacy of the election process and its results.

Perhaps unintentionally, the introduction of digital voting technology has delivered a hard blow to the transparency of the democratic process. Overnight, this technology has rendered obsolete the longstanding American tradition of multi-partisan observation of the marking and counting of ballots—fundamental civic acts which are no longer visible to the human eye. Is blind faith appropriate in the voting booth? For thousands of Maryland voters, TrueVoteMD pollwatchers among them, the question is beyond whether or not there is a need for a paper trail. It is whether or not we are committed to a functional democracy. The technology we use must satisfy the requirements of democratic self-governance, which is premised on transparency, and the equal access and informed consent of all citizens.

RECOMMENDATIONS

In the spirit of identifying problems and formulating solutions, TrueVoteMD offers the following recommendations:

- **Voter-Verified Paper Audit Trail** Require a voter-verified paper audit trail that is accessible to visually-impaired and blind voters for certification of any paperless electronic voting machines
- **Quality Control** Implement a quality control system that collects polling place data to document and resolve performance problems with the voting process, technology, and procedures
- **Public Hearings** Conduct public hearings so that voters can voice their concerns and present a fuller picture to the legislature of how the manner in which elections are administered affects their ability to exercise their voting rights
- **Task Force** Convene a technically competent task force comprising members of the public, academia, and government
- **Routine Election Verification** Integrate verification and auditing of elections as a routine practice
- **Technician Identification** Provide formal, readily identifiable credentials to all technicians who have authorized access to election software and hardware.
- **Back-up Paper Ballots** Back-up paper ballots should be available at every polling place and judges instructed to use them in the event of equipment failure. No one should be denied a vote because the state fails to provide reliable voting equipment.
- **Investigate Incomplete Ballots** Investigate the technical origins, prevalence and consequences of incomplete ballots and develop preventive and corrective measures
- **Training** Improve election worker training, particularly in the areas of technical functions of the electronic voting machines, provisional ballot requirements, and disability access
- **Adequate Voting Machines** Review machine allocations so that each polling place has an adequate number of machines
- **Improve Motor Voter program** Investigate and resolve registration failures in the MVA “motor voter” program
- **Personnel** Increase the number of election personnel at each precinct
- **Safeguard transparency and increase public participation in the electoral process**

-END-

TABLE 1 : Machine and Non-Machine Problems Reported by Voters and Pollwatchers

Machine Problems	
Battery/Electrical Problem	3
Blind/Visually Impaired Ballot Problem	3
Incomplete Ballot	8
Incorrect Ballot	8
Lack of Assistance with Machine	18
Second Language Ballot Problem	1
Late Opening due to Machine Problem	4
Machine Crash	42
Replacement Machine	11
Review Screen Incorrect	2
Screen Malfunction	30
Technician Accessing Machine	8
Vote Switching	17
Voter Access Card/Encoder Problem	37
Write-in Vote Problem	9
Total Machine Problems	201
Non-Machine Problems	
Absentee Ballot Problem	5
Denied Vote -- Ex-Felon Status	1
Denied Vote -- No I.D.	10
Denied Vote -- Registration Problem	65
Denied Vote -- Wrong Polling Place	24
Early Closing of Polling Place	5
In Line Before Closing, Denied Vote	1
Inaccessible Polling Place	6
Lack of Assistance for Other Problem	19
Lack of non-English Language Assistance	1
Late Opening -- Non-Machine Problem	11
Long Line	52
Provisional Ballot Problem	17
Unable to Read Ballot	2
Voter Intimidation	19
Other	92
Total Non-Machine Problems	330

TABLE 2 : Breakdown of Problems by County

County	Total Problems	Total Machine Problems	Incomplete / Incorrect Ballot	Touch Screen Problem	Machine Crash and/or Replacement	Voter Access Card / Encoder Problem	Total Non-Machine Problems	Denied - Not Registered	Late Opening - Other	Long Line	Voter Intimidation
Allegany	9	6	1		2	2	3			1	1
Anne Arundel	10	4		2	2		6				
Baltimore City*	55	13			5		42	12	3	7	1
Baltimore County	66	28	3	9		11	38	5	3		3
Frederick	38	15			1	7	23				3
Garrett	1						1				
Harford	4	2		1	1		2	1			
Howard	28	8		2	2	3	20	5			
Montgomery	202	90	10	30	32	9	112	17	3	32	5
Prince George's	108	28	2	11	7	2	80	25	2	12	6
St. Mary's	8	5				1	3				
Talbot	2	2		1	1						
Total	531	201	16	58	53	37	330	65	11	52	19

*Baltimore City used a different type of voting machines than the rest of Maryland, so not all categories apply.

TABLE 3 : Precincts and Pollwatchers by County

County	Precincts	Pollwatchers
Allegany	2	4
Anne Arundel	6	22
Baltimore City	14	63
Baltimore County	11	45
Carroll	1	5
Frederick	4	17
Harford	2	2
Howard	6	31
Montgomery	46	164
Prince George's	11	43
St. Mary's	3	5
Talbot	1	2
Washington	1	1
Total	108	403