

The Voting Rights Cases of 1937? The Adoption of Voting Machine Technology in Baltimore City

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Abstract

The basic right without which all others are meaningless. It gives people-people as individuals-control over their own destinies.
-Lyndon Baines Johnson on the concept of voting¹

Article I, § 1 of the Maryland Constitution states that all elections “shall be by ballot.” What exactly constitutes “by ballot” has evolved over several generations to include everything from the *viva voce* casting of ballots in crowded rooms and seamy city streets to the electronic touch screens and computerized smart cards of the Direct Record Electronic voting machine first implemented in Baltimore City in 1996. What has remained constant through the ages, however, has been the ever present commitment on behalf of State and city officials to utilize the technology and resources available to them to deliver to the citizens of Maryland the most reliable, accessible, and accurate method of voting obtainable at the time.

With the systematic failure of many state voting systems five years ago, many jurisdictions, facilitated by the Help America Vote Act of 2002, launched massive efforts to overhaul their antiquated punch card, paper ballot, and voting machine systems of voting in favor of embracing the various technological innovations of the digital age. This evolution to eradicate the problem of the much maligned “hanging chad” was not embraced by all. The arguments presented by many of those fearful of abandoning their time tested methods of voting, despite the admitted flaws of such systems, closely mirror the arguments advanced by those who wished to decelerate Baltimore City’s efforts in 1937 to equip the city with a radically new piece of voting technology, the lever operated voting machine. This paper traces the events leading up to and surrounding Baltimore City’s adoption of automated voting technology in 1937 and the various legal challenges it faced in the process. Through a thorough treatment of this tumultuous technological evolution of the past, this paper will attempt to shine a new light on the current debates surrounding the adoption of electronic voting technologies, which are touched upon lightly at the paper’s conclusion. At the end of the argument, two conclusions shall become readily apparent: (1) societies have and should continue to utilize the technological advancements available to them to secure the freest, most secure, and most efficient election processes possible; and (2) law suits by those opposed to the rapid utilization of voting technology, even when unsuccessful, can be an effective tool towards ensuring the safety of the vote.

Introduction

The use of voting machines in elections is beneficial to the public, and is more economical than the use of paper ballots, and insures prompt returns of elections, affords secrecy in voting and prevents the spoiling of ballots, and insures an accurate count of the votes cast.²

With those certain words the Maryland General Assembly in a sweeping piece of revolutionary legislation did forever change the landscape of voting in Maryland. Out of this one seemingly benign piece of legislative action, two law suits would emerge. While these lawsuits were launched from several different camps with motives ranging from commercial interest to civic pride, the outcome of each action contributed greatly to the understanding and interpretation of the Maryland Constitution and the election laws of the state. The first case, *Norris v. Mayor and City Council of Baltimore*,³ was brought by a tax payer immediately after the passage of the Voting Machine Act of 1937 in an attempt to enjoin Baltimore City from any further actions toward the purchasing of voting machines. While the Plaintiff was unsuccessful in his attempt to enjoin the City, the resulting Court of Appeals decision paved the way for the future use of new pieces of vote recognition technology. The second law suit, *Jackson v. Norris*,⁴ which was led primarily by the loser of the city's competitive bidding process, was brought immediately after the awarding of the contract for the voting machines, and it sought to invalidate the contract for its failure to comply with the election laws of the state of Maryland. While the motives behind this suit were mixed, the resulting ruling by the Court of Appeals again crystallized another constitutional voting issue under the Maryland Constitution, the requirement of the write-in vote.

A Brief History of Voting in Maryland

Introduction

Much recent academic research has divided American voting history into the following three phases, which, while not exactly corresponding to uniform shifts in the country's historical voting evolution, accurately reflect the country's handling of its ever increasing populace and rapidly expanding technological innovations: the early American *viva voce* and primitive paper balloting system; the adoption of the Australian secret ballot; and the implementation of automated voting systems, namely, the lever operated voting machine.⁵ During each of these distinct phases, the American people, as will be shown, utilized the technological advances of their times to eschew their respective corrupt and inept systems of voting in concerted efforts to improve upon their election processes despite the controversies and stress which naturally follow such transitions.

The Early American Period

With the close of the American Revolution, and the political turmoil which followed, the earliest "American" voters were faced with the difficult process of developing not only their first truly free electoral process but their very first voting systems as well. By the time of the America's Declaration of Independence, the main system of voting throughout the colonies was clearly the *viva voce*, or "voice voting," method of casting votes.⁶ While many of the colonies did in fact experiment with the use of paper ballot voting either as a method of voting in itself or in conjunction with various *viva voce* methods of voting during this period, *viva voce* voting was by far and away the most widely implemented system of voting used throughout colonial and early America.⁷ In accordance with the trends of the time, the Maryland Constitution of 1776 proclaimed, firstly, that

All freemen having a freehold of fifty acres, or property above the value of thirty pounds, and otherwise qualified should have the right of suffrage, in the election of the House of Delegates, and should on the day of election assemble at the court house in their respective counties, and elect viva voce delegates for their respective counties,⁸

and, secondly, that electors shall henceforth elect by “ballot” all future state senators.⁹ This latter form of voting, voting by “ballot,” as will become more important in subsequent years, was used to define a more specific and “secret method of voting as contrasted with the open or viva voce system provided for the election of the delegates.”¹⁰

As populations and technology continued to grow and expand exponentially in early America, the use of *viva voce* voting slowly grew overly impracticable and burdensome.¹¹ As such, states, starting in New England area and progressively expanding southwardly, began to experiment with the use of universal, but still rather primitive, forms of paper balloting more frequently.¹²

These primitive paper balloting systems most likely required eligible voters to fill in blank pieces of paper with their own particular choices for their respective elective offices and to subsequently deposit their written votes into electioneering boxes and, in some cases, into proverbial electioneering hats.¹³ By the late 1800s, these blank paper ballots were gradually replaced by pre-printed ballots, on which the names of pre-selected eligible candidates were pre-printed.¹⁴

This transition from *viva voce* to universal pre-printed paper balloting was realized in Maryland by 1809, when the state constitution was amended to provide that “suffrage [shall be] extended to all free, white, male citizens, and every such citizen [shall be] given the right to ‘vote by ballot’ for the election of public officers.”¹⁵ The tradition of paper voting “by ballot” in Maryland for elective office was continued as a constitutional right of the electorate through the

state constitutions of 1851, 1864, and 1867, “unchanged except for some trifling difference in phraseology.”¹⁶ The key feature of this type of pre-printed, written ballot was the “prevention of fraud, intimidation, or duress by insuring a degree of secrecy that would permit none but the voter to know how he voted.”¹⁷ While this system, based upon the fusion of *viva voce* and pre-printed balloting, served the early American period and Maryland well, “over time its glaring flaws became too obvious not to remedy.”¹⁸ Specifically, the nation’s first major voting regulation, the implementation of the revolutionary Australian secret ballot, would eventually arise under the auspices of cleaning up the mass “purchasing” of votes in the mid-nineteenth century.¹⁹

The Development of the Australian Secret Ballot

The statewide use of paper balloting, while succeeding in remedying much of the fraud, confusion, and inefficiency of the *viva voce* system of voting that was so pervasive in early America, was not the bastion of fair and free elections that its proponents had initially hoped it would be. The mass movement away from the use of blank pieces of paper, whereon voters would indicate their choices for elective office themselves, to the universal use of pre-printed paper balloting coincided with, and was quite possibly fueled by, the prolific rise of organized political parties.²⁰ These newly formed and power hungry political parties exploited the new voting technology by printing limited, party specific ballots and distributing them to voters directly.²¹ These pre-printed ballots failed to provide the voters with a truly secretive election process, and vote buying scandals flourished throughout the mid-nineteenth century.²² In an attempt to curtail this increasingly pervasive corrupt voting practice, the Australian secret ballot was eventually developed in 1856.²³

In direct contrast to the politically crafted pre-printed balloting system, the Australian

secret ballot system provided individual voters with identical ballots which had printed upon them the names of all the candidates running for each elective office.²⁴ Voters utilizing this system could, thus, mark the names of their chosen candidates in complete privacy and without the fear of political or social intimidation.²⁵ The advantages of using such a system were rapidly realized, and, by 1888, the system was adopted in America.²⁶ The Australian secret ballot was first used in scattered local elections, but within the first year of its American adoption, the state of Massachusetts had adopted the nation's earliest universal "Australian Ballot Act."²⁷ From the moment of its inception, the Massachusetts Australian Ballot Act "served as a model for other states that enacted ballot reform legislation, and by 1910 most states had adopted the Australian ballot in some form or another."²⁸ The Australian secret ballot system was introduced in Maryland by 1890²⁹ and, in 1892, the Maryland General Assembly made the statewide use of the secret ballot mandatory.³⁰

The Advent of Automated Voting

In the late nineteenth century, the American landscape was rapidly changing as the industrial revolution swept through the nation and the country experienced exponential population growth. The near universally accepted Australian secret ballot method of voting, with its regulated and uniform ballots, had introduced a systematic method of voting to this industrialized populace, and as the demands for efficiency grew in proportion to the nation's ever-expanding population, the overwhelming need for and subsequent adoption of an automated method of casting and counting votes became "historically inevitable."³¹

After the advent of the Australian secret ballot, the next major step in the evolution of American voting came shortly thereafter with the development of the pull lever voting machine in 1892.³² These machines, while developed primarily to streamline the casting and counting of

Fig. 1.

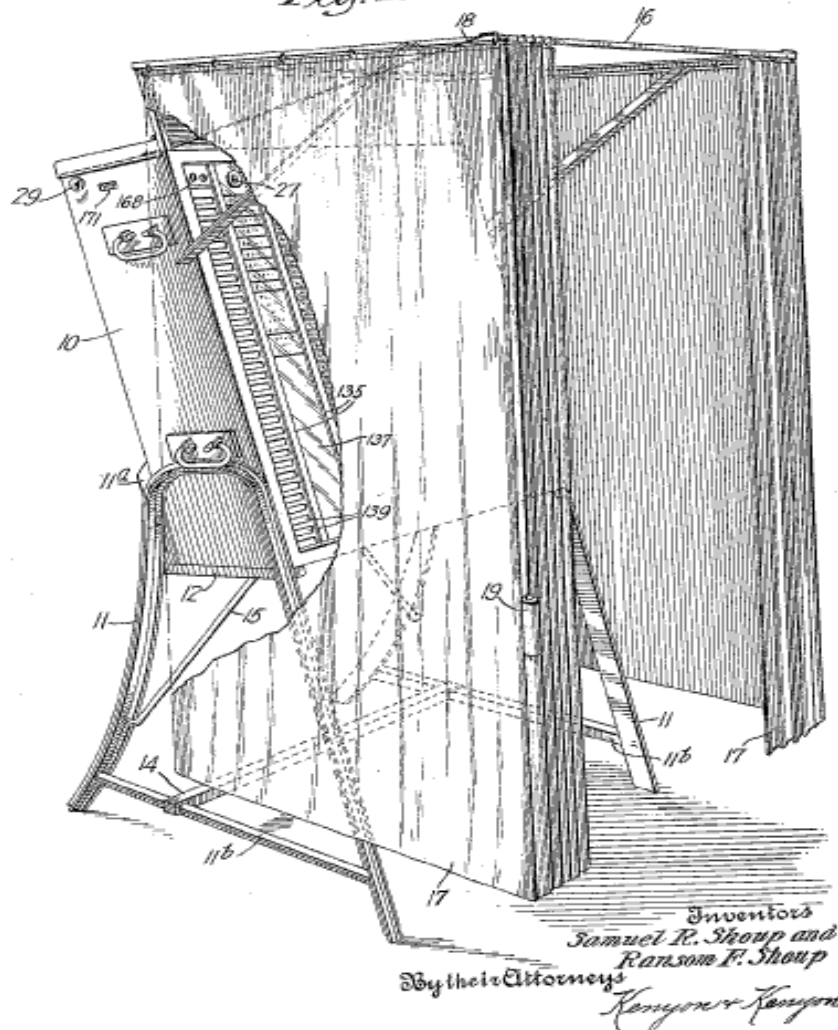


Figure 1. Diagram from the 1936 Patent Application of the Shoup Voting Machine (Source: <http://www.cs.uiowa.edu/~jones/voting/pictures/>).

votes, were additionally “designed to address the possibility of tampering with paper ballots, since there [was] no document to tamper with [in a lever operated voting machine].”³³ In contrast to the preprinted paper ballot method of voting, whereby voters made their own individual marks next to their chosen candidates, with the use of lever operated machine voting, voters simply

operated levers which corresponded to each ballot choice.³⁴ Such systematic and uniform balloting permitted election judges to count vast quantities of votes quickly and accurately.³⁵

With all of the advantages that accompanied the utilization of this newly developed piece of automated technology, it only took a brief six years before the lever operated voting machine was first fully exploited in the 1898 elections of Rochester, New York.³⁶ The voting machine would later make its way into the surrounding areas of upstate New York, namely Syracuse and Buffalo, within the next two years.³⁷ The voting machine slowly grew in popularity with each passing year, and it was estimated that over one-sixth of eligible American voters cast their votes for president in 1928 on an automated voting machine of one sort or another.³⁸

Voting machines were first introduced in Maryland in 1914 when the General Assembly boldly “authorized the election supervisors of Baltimore City, and the election of supervisors of the several counties of Maryland, to use voting machines in primary and general elections under such rules and regulations as such supervisors might deem advisable or necessary.”³⁹ In order to facilitate and expedite the complete transition to fully automated voting throughout the state, the Maryland General Assembly took subsequent action in 1933 and “directed” the Mayor and City Council of Baltimore to use any and all of the voting machines purchased up to that time in all future elections.⁴⁰ The legislators were sending a clear message to the voters and municipal leaders of the state: voting machines were definitely the way of the future.

Acting pursuant to these preliminary pushes from the General Assembly, the Mayor and City Council of Baltimore began purchasing voting machines in 1927,⁴¹ but by 1935, they had succeeded in acquiring only fifty lever operated voting machines to serve the approximately six hundred and eight-five precincts of the city.⁴² With each precinct crafted in such a way as to contain as close to four hundred and fifty eligible voters as was feasibly possible, by 1935,

Baltimore City possessed approximately one voting machine for every six thousand eligible voters, and there were no provisions in place at the time for the future acquisition of additional machines.⁴³ At this early stage of Maryland's technological transition, it could hardly be said that adoption of voting machines was atop the lists of priorities of many leading state policy makers.

Despite their scarcity within the city and state, however, the limited use of these experimental voting machines evoked a general feeling of satisfaction from the majority of the resident voters who happened to use them, and many saw them as an innovative, cost cutting advancement.⁴⁴ As a result, Baltimore voting and government reform groups began championing the increased use of voting machines throughout the city as well as the permanent registration of voters within the state, but these groups were met with the cold shoulder by state lawmakers in the General Assembly who were desperately strapped for cash from battling the throes of the Great Depression.⁴⁵ By 1937, however, these reform groups had won over many prominent politicians, namely, Howard W. Jackson, the Mayor of Baltimore City, and they would eventually find enough sympathetic ears among the legislators in Annapolis and officials in the Governor's office to force the issue of expanding the use of voting machines back into the agenda of the General Assembly.⁴⁶

The Voting Machine Legislation of 1937

Prelude to the Voting Machine Act of 1937

Year after year, government reform groups and citizen committees, led principally by the tireless efforts of J. Martin McDonough, pressed the issue of the statewide use of voting machines in the General Assembly, and by 1937, they had achieved significant gains within a limited geographical scope.⁴⁷ As stated previously, these reformers had already managed to get

the preliminary approval of voting machines passed in 1914 and the use of such previously purchased machines mandatory in primary and general elections in Baltimore City in 1933. In addition to these advances in Baltimore City, these groups achieved similar results in Montgomery County in 1935 with the passage of an act which authorized the acquisition of voting machines for two of the county's election districts upon the approval of Board of County Commissioners.⁴⁸ In the words of T. Scott Offutt, Associate Justice of the Maryland Court of Appeals, "these several statutes were obviously steps in an experiment which was being carried on to test the wisdom and the expediency of substituting voting by machine for the older system formerly uniform throughout the state of voting by paper ballots."⁴⁹ This "experiment" in voting technology would gradually yield results favorable to the aims of the reform groups, and in response, the General Assembly would pass what would eventually become known as the "Voting Machine Act" of 1937, 1937 Md. Laws Ch. 94 (the "Act"), and usher in the era of automated voting in the city of Baltimore.

On February 1, 1937, Maryland Senator Melvin L. Fine, a Republican from the 4th district of Baltimore City, with the assistance of Board of Supervisors of Elections of Baltimore, introduced legislation which would require the acquisition of a sufficient number of voting machines as to ensure their universal use at all of the city's polling places by the first of January 1938.⁵⁰ Perhaps due to his status as Baltimore's only Republican representative in either house of the General Assembly, Senator Fine solicited the aid of city delegates Daniel B. Chambers, Jr. and Leo Charles Geraghty, both Democrats from Baltimore's 5th District, to advocate for the legislation's passage on behalf of himself and the interested voting reformer groups.⁵¹ Their combined efforts paid off as Governor Harry W. Nice signed the Act and another bill aimed at providing the state's first permanent voter registration system into law on March 24th with much

fanfare. Present at the bill signing ceremony with the Governor were: Lansdale G. Sasser, the President of the Senate; Emanuel Gorfine, Speaker of the House of Delegates; J. George Eierman, President of the Board of Supervisors of Elections of Baltimore; and eight members, including J. Martin McDonough, of the various committees responsible for the election reforms.⁵² Governor Nice publicly hailed these voting machine and voter registration acts to be “one of the greatest advances in good government” he had ever experienced in his lifetime.⁵³

Harry Whinna Nice served as governor of Maryland from 1934-1938. Prior to 1934, only two other Republican administrations had ever reached the level of governor in the State of Maryland.⁵⁴ As a youth, Governor Nice attended school in local public schools in Baltimore City and, eventually, the Baltimore City College.⁵⁵ After completing his primary education, Governor Nice studied at the University of Maryland School of Law in 1896, and upon his graduation in 1899, he began his lifelong practice of law in the state.⁵⁶ After several unsuccessful ventures into the world of politics, Governor Nice managed to successfully use the of the advent of the Great Depression and the general aversion of many Marylanders to the democratic New Deal programs of the Roosevelt administration to springboard himself into the office of governor.⁵⁷

Taking office in 1935, Governor Nice was forced to contend with a set of dire economic and social conditions never before seen by any previous administrations.⁵⁸ Because of the damaging effects of massive state-wide unemployment, 120,000 unemployed in the city of Baltimore alone, Governor Nice was forced to call several special sessions of the General Assembly to force the issue of massive tax increases.⁵⁹ The Nice administration was well known for its lack of centralized management and its aimless agendas and programs.⁶⁰ As such, his popularity among Maryland voters was quite low, and he repeatedly assured those around him throughout his administration that he would never seek reelection in 1938.⁶¹

Despite this promise, Governor Nice publicly announced that he would once again throw his hat into the governor's race in order to finish the programs he had initiated.⁶² Perhaps Governor Nice attached his name prominently to the passage of the Act and the voting registration reforms of 1937 as a sort of swan song for his administration. Unfortunately, for Governor Nice, even the publicity surrounding this landmark piece of voting reform could not save his failing administration from a resounding defeat in 1938.⁶³



Figure 2. The Bill Signing Ceremony of the Voting Machine Act of 1937
(Source: THE SUN, BALT., Morning Ed., Mar. 25, 1937, at 6).

The Voting Machine Act: Chapter 94, Acts of 1937

The preamble of the Act states, in rather unequivocal language, that

The use of voting machines in elections is beneficial to the public, and is more economical than the use of paper ballots, and insures prompt returns of elections, affords secrecy in voting and prevents the spoiling of ballots, and insures an accurate count of the votes cast.⁶⁴

To that purpose, the Act, firstly, reiterates the previous 1933 directive of the General Assembly that “the Board of Supervisors of Election for Baltimore City is hereby directed, in all future elections, to use the voting machines heretofore purchased by the Mayor and City Council of Baltimore,” and, secondly, states that

A Board composed of the members for the time being of the Board of Estimates of Baltimore City and the members for the time being of the Board of Supervisors of Election of Baltimore City is hereby, constituted, and, is authorized, empowered and *directed* to purchase a sufficient number of voting machines for use in all polling places throughout the City of Baltimore at all primary, general, special and other elections, held or to be held in said City after the 1st day of January, 1938.⁶⁵

In order to cover the overwhelming cost of these new machines, the Act provides that all costs and expenses imposed on the newly created Voting Machine Board, composed of the current Board of Estimates and Board of Supervisors of Elections of Baltimore City, in the acquisition of these machines “shall, upon the requisition of said Board, be audited by the Comptroller of Baltimore City, who shall pay the same by warrant drawn upon the proper officers of said City.”⁶⁶ Besides this power to issue public debts, the Voting Machine Board was additionally

Authorized and empowered to determine by majority vote such specifications supplementary to the specifications hereinafter set forth as it may deem proper for voting machines acquired, or to be acquired, by it, and to select in its discretion the type and make of such voting machines, and, in its discretion, to employ engineers or other skilled persons to advise and aid said Board in the exercise of the powers and duties hereby conferred upon it.⁶⁷

The last section of the Act included legislative language which would permit even greater flexibility to the Voting Machine regarding its discretionary spending power and voting machine selection process. Specifically, the language of the Act provides

That this Act is hereby declared to be an emergency law ... and necessary as a police measure for the immediate regulation of elections in Baltimore City; and having been passed by “yea” and “nay” vote supported by three-fifths of all of the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.⁶⁸

Thus, the Voting Machine Board was apparently granted substantial power and autonomy with which to carry out the directives of the General Assembly. When this new board proceeded to act pursuant to their proscribed duties however, several legal and ethical challenges would be raised against it. The resolution of such challenges would, in time, actively work to reshape the election laws and constitution of Maryland.

The Voting Machine Ordinance of 1937: Ordinance No. 694

Acting in apparent accordance with the Act, Mayor Jackson convened the first ever meeting of the Voting Machine Board on April 5th to discuss the procurement of the required voting machines.⁶⁹ Present at this meeting were all of the members of the Voting Machine Board, the Baltimore City Board of Estimates (Mayor Jackson, George Sellmayer, President of the Baltimore City Council, R. Walter Graham, Comptroller of Baltimore City, R. E. Lee Marshall, City Solicitor for Baltimore City, and Bernard L. Crozier, City Engineer of Baltimore City) and the Board of Supervisors of Elections for Baltimore City (J. George Eierman, Walter A. McClean, and Daniel Chambers).⁷⁰ At this meeting, George Sellmayer introduced a draft of, what would eventually become, Ordinance 694 (the “Ordinance”).⁷¹ The Voting Machine Board read the draft of the ordinance aloud, but they postponed their formal vote for a week.⁷²



Figure 3. Mayor Howard Wilkinson Jackson

(Source: <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/012400/012487/html/12487images.html>).

Howard Wilkinson Jackson, an anti New Deal Democrat, served as Mayor of Baltimore City for a total of sixteen years (1923-27, 1931-1943), which was longer than any other mayor in Maryland's history prior to his administration.⁷³ Mayor Jackson was born in Baltimore County on August 4, 1877.⁷⁴ He attended primary school in Baltimore City, completed his undergraduate studies at Burnett's Business College, and was awarded his law degree from the Baltimore Law School.⁷⁵ After working a variety of odd jobs for the F. W. McAllister Optical Company, he was elected to his first public office, Councilman on the Baltimore City Council, in 1907.⁷⁶ He

remained on the City Council for two years at which time he took over the office of Registrar of Wills, a position he held for the next fourteen years.⁷⁷ While immersing himself in the world of Baltimore politics, Mayor Jackson still found time to manage a lumber company, a hotel, an ice cream company, several commercial banks, and a successful insurance company, which he also founded.⁷⁸

Throughout Mayor Jackson's four terms as mayor, his office was consistently known for its tireless efforts in the fields of civic and internal improvement and its concern for the poor.⁷⁹ Although he was elected mayor in 1931 and 1935 by margins larger than any prior administration in Baltimore's history,⁸⁰ Mayor Jackson, as with Governor Nice, had his eyes on the upcoming governor's race in 1938.⁸¹ Mayor Jackson strove throughout his political career to win the governorship of Maryland, and it is quite possible that he publicly attached his administration to the passage of the popular Act in 1937 with the hopes of attaining some much needed political capital for his upcoming statewide race.⁸²

On April 13th, the Voting Machine Board, under the direction of Mayor Jackson, reconvened as planned and signed into law Ordinance No. 694 which provided for

The creation of a municipal debt to provide for an emergency arising from the necessity for the immediate regulation of elections in Baltimore City, as a police measure, through the purchase of a sufficient number of voting machines for the conduct of all elections to be held in said city after January 1, 1938; describing the terms of the security, or securities, to be issued by the City therefor; and declaring the existence of an emergency.⁸³

Specifically, the ordinance authorized Mayor Jackson and the City Council "to issue negotiable or non-negotiable obligations, including certificates of indebtedness ... to an amount not exceeding One Million, Two Hundred and Fifty Thousand Dollars," in order to equip the city with the required number of voting machines by January 1938.⁸⁴ Although the Maryland

Constitution generally conditions the creation of debts proposed by the Mayor and City Council of Baltimore City on General Assembly legislation and the subsequent submission to and approval of the voters of city,⁸⁵ the “finding” by the General Assembly and Voting Machine Board of an “emergency” situation requiring *immediate* police measures and regulations and the deficiency in the City’s treasury which followed were believed to be sufficient to bypass any such constitutionally required processes.⁸⁶ Some of the residents of Baltimore would require, however, more than an unsupported cry of “emergency” before awarding their seals of approval to such a huge act of government spending in the name of progress.

The First Legal Challenge: *Norris v. Mayor and City Council of Baltimore*

Prelude to the Complaint

Immediately after the passage of Ordinance No. 694 on Tuesday, April 13, 1937, Baltimore City resident William S. Norris, by and through his very capable attorney, Charles G. Page, rang in round one of the voting machine cases of 1937 with the filing of his first taxpayer’s suit against Mayor Jackson and the City Council of Baltimore in Baltimore City Circuit Court No. 2.⁸⁷ The judge originally assigned to Circuit Court No. 2 in April 1937 was Edwin T. Dickerson, and under normal circumstances, he would have been the presiding judge in this case.⁸⁸ Perhaps because of the gravity and immediacy of the suit at hand, however, the case was instead heard by the Chief Judge of the Supreme Bench of Baltimore City, Samuel King Dennis. While Judge Dickerson would not even be appointed to the Supreme Bench of Baltimore City until September 24, 1938, Judge Dennis, a vestige of the previous Ritchie administration, had been serving as Chief Judge for the last seven years and had already established a distinguished record on and off the bench.⁸⁹



Figure 4. Judge Samuel King Dennis, Jr.
(Source: <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/012800/012847/html/12847images.html>).

Judge Samuel King Dennis, Jr. was born into a distinguished legal and political Maryland family on September 28, 1874.⁹⁰ In his youth, Judge Dennis attended schools in New Jersey.⁹¹ At the age of twenty-nine, Judge Dennis graduated at the top of his class from the University of Maryland School of Law,⁹² and he was admitted to the Maryland Bar on June 30, 1904.⁹³ While Judge Dennis was still attending law school, he accepted the position of secretary for

Congressman John Walter Smith.⁹⁴ Judge Dennis himself was elected to the General Assembly as a Democrat in the House of Delegates.⁹⁵ After forming a law firm with his cousin, Judge Dennis was appointed to U.S. Attorney for Maryland by the Wilson administration.⁹⁶ In 1928, after another brief return to private practice, Judge Dennis, at the age of 54, was appointed Chief Judge of Supreme Bench of Baltimore City.⁹⁷ Judge Dennis, apart from being the first judge on the Supreme Bench to don a robe, launched several major initiatives during his sixteen years as Chief Judge and his brief stint as President of the Maryland State Bar Association from 1933-1934 which quickly solidified his reputation as a reformer.⁹⁸ Judge Dennis actively fought to have women admitted to the Maryland Bar,⁹⁹ was instrumental to the reorganization of the Supreme Bench of Baltimore, and personally led the movement to improve the sanitarium system of Maryland.¹⁰⁰

The Complaint Is Filed

The suit, which attacked the validity of the proposed bond issuance of \$1,250,000 to equip the city with voting machines under, both, the Act and the Ordinance, was lodged on behalf of Norris, as president of the Taxpayers' Protective League,¹⁰¹ and any and all other taxpayers who wished to become parties to the proceeding and contribute to the expenses of the suit.¹⁰²

Although little is known about William S. Norris beyond his status in and involvement with the Taxpayers' Protective League and his obvious interest in Baltimore City politics, his attorney, Charles G. Page, managed to leave behind a bit of a paper trail verifying his existence outside the realm of this series of litigation. Nothing is known about Page's primary schooling, but what is known is that he attended Princeton University where he earned his Bachelor's degree in 1922.¹⁰³ Immediately after the completion of his undergraduate work, Page decided to

pursue a career in law and enrolled at the prestigious Harvard Law School.¹⁰⁴ In 1925, Page graduated with his L.L.B. and gained admission into the Maryland Bar on December 7th of the same year.¹⁰⁵ After practicing law for the next five years, Page took up lecturing at the University of Maryland School of Law as a part time faculty member.¹⁰⁶ From 1930-1936, Page remained on the faculty as a well respected and popular lecturer on suretyship and mortgage.¹⁰⁷ Page's article *Latent Equities in Maryland* had the honorable distinction of being the first article ever published in the Maryland Law Review.¹⁰⁸ After the completion of the Spring term in 1936, however, Page returned to the full time solo practice of law in Maryland.¹⁰⁹ Despite his penchant for legal and historical research, Page, for some unknown reason, never again published any articles in a nationally recognized law journal.¹¹⁰

In his complaint, Norris prayed for injunctive relief upon the theory that, firstly, the Act itself was void and illegal because (a) it was not a valid Emergency Law within the meaning of Art. XVI, § 2 of the Maryland Constitution, (b) the mandatory use of voting machines at elections violated Art. I, § 1 of the Maryland Constitution, which requires that "all elections shall be by ballot," and (c) it was a special law in violation of Art. III, § 33, which proscribes the passage of special law "for any case for which provision has been made by an existing general law."¹¹¹ Secondly, Norris assailed the actions of Mayor Jackson and the City Council directly in claiming that the Ordinance was void and illegal because (a) no actual emergency existed as is required under Art XVI, § 7 of the Maryland Constitution, and (b) the Ordinance, on its face, did not require the full discharge of the debt within 40 years as is required by Art. 25-B of the Charter of Baltimore City.¹¹² In response to questions posed by the members of the press to Mr. Norris' regarding his "friendly" and "spirited" law suit, Page stated simply "that there is no

emergency and that ‘no sudden change of events has occurred which makes necessary revising election equipment.’”¹¹³

Immediately after the filing of the complaint, there were rumblings from within the office of R.E. Lee Marshall, the Baltimore City Solicitor and active member of the Voting Machine Board, which indicated that the Mayor would make an early appearance in the case, well before the May 15th deadline to ensure that the validity of the legislation would have a “speedy test.”¹¹⁴ If it was quick action Mayor Jackson wanted, quick action is what he received. On Wednesday, April 14th, just one day after the filing of Norris’ complaint, Mayor Jackson made his official appearance in the case when City Solicitor Marshall filed a general demurrer with the Circuit Court along with a request for a hearing on the matter.¹¹⁵

Robert E. Lee Marshall was the City Solicitor for Baltimore City from 1931-1938. It could be said that City Solicitor Marshall was preordained at the time of his birth on August 11, 1873, to dominate the legal landscape of early twentieth century Maryland.¹¹⁶ Marshall was born in Warrenton, Virginia to a rather prominent of parents.¹¹⁷ Marshall’s mother, Rebecca Marshall, was a direct descendant of the great legal and political Snowden family of early colonial Maryland.¹¹⁸ Marshall’s father, Charles Marshall, besides being a very prominent nineteenth century Maryland attorney, was the great nephew of the late Supreme Court Chief Justice John Marshall, a leading officer in Robert E. Lee’s personal staff during the Civil War, and a giant in the political, social, and legal communities of Maryland and Virginia.¹¹⁹

City Solicitor Marshall was the third youngest of five children, and although Marshall spent most of his boyhood in Virginia, he split his early education between private schools in Baltimore and in Virginia for several years.¹²⁰ After finishing his primary education, Marshall proceeded to obtain his Bachelor’s from the University of Virginia, his father’s *alma mater*, in

1894 and his law degree from the University of Maryland School of Law in 1907.¹²¹ During the interim period between UVA and law school, Marshall managed to marry the granddaughter of former Baltimore mayor and judge George William Brown and serve with distinction as a first lieutenant in Maryland's 5th regiment during the Spanish American War.¹²²

After returning home from the war and being admitted to the Maryland Bar, Marshall practiced law in his father's Maryland, Virginia firm, Charles Marshall & Sons.¹²³ After the death of his father, Marshall formed the Maryland law firm of Marshall, Brune, & Thomas and focused his energies on maritime and corporate law.¹²⁴ Marshall's legal practice would again be disrupted by war in 1917 when he was appointed to the emergency Maryland Fuel Commission.¹²⁵ Marshall was a staunch, well connected democrat and a very experienced trial lawyer.¹²⁶ As such, it is quite easy to see how he ended up as City Solicitor in Mayor Jackson's office.

While a hearing on the motion for demurrer was tentatively scheduled for Thursday, April 22d, the docket in the case did not remain idle. On Monday, April 19th, at the invitation of Norris, Eleanor E. Smith as a fellow taxpayer, by and through her attorney, Stewart Brown, petitioned the court to be admitted as an intervening co-plaintiff, and it was so ordered without issue.¹²⁷ Nothing more is known about the intervening plaintiff Eleanor E. Smith beyond the fact that she was a Baltimore City tax payer. Likewise, the legacy of her attorney, Stewart Brown, has been shrouded by the passage of time. What is known is that Brown was admitted to the Maryland Bar just three years before assisting in this case.¹²⁸ Some time after this first case was settled, Brown appears to have given up his solo practice in favor of accepting an associate in-house counsel position with United States Fidelity & Guaranty Co. located at the intersection of Redwood and Calvert Streets in Baltimore City.¹²⁹ In 1953, Brown was admitted into

International Association of Insurance Counsel, and in 1954, he was made its official editor for the Maryland region.¹³⁰ He appears to have given up this position with International Association of Insurance Counsel by 1957,¹³¹ and given the fact that he had been practicing law for some twenty-two years, it is possible that he retired.

The Demurrer Is Argued Before the Court

On the other side of the aisle, Marshall continued to prepare for the defense of his motion by soliciting supplemental memoranda from Allan Sauerwein, a senior partner at the venerable Baltimore law firm Tydings, Sauerwein, Levy & Archer, on the constitutional issues raised by Norris in his complaint.¹³² Allan Sauerwein appears to have represented the Shoup Corporation, the losing bidder in the voting machine bidding process, but he never made any appearances in court regarding its interests in the litigation.¹³³ Given this existing attorney-client relationship, Sauerwein's involvement in this early controversy seems to make sense. Every step of the litigation process was expedited to ensure a prompt settlement of the issues in time to secure a sufficient number of voting machines to equip the entire city by the next election, November 1938. Judge Dennis himself stated that "it is a matter of great regret that the necessity of having the points raised finally decided by appeal to the Court of Appeals at once denies this Court a fair opportunity to prepare a better reasoned and more praiseworthy opinion."¹³⁴ Such being the case, the hearing on Marshall's demurrer was promptly held on April 22d as scheduled.

At the hearing, Page and Brown, were called upon to support the four major contentions of their argument against the Act and the Ordinance: no actual emergency exists in the city of Baltimore; voting by voting machine is not voting by ballot; the Act constitutes a constitutionally forbidden "special" law; and the Ordinance is void for want of a valid provision discharging the debt within forty years and a satisfactory vote of the citizens of Baltimore.¹³⁵

With regard to Norris' and Smith's first contention, their main contention, that there was in fact no emergency for the immediate preservation of the public health or safety in Baltimore, Page and Brown craftily argued that primary, general, and special elections have been carried for the last ten years under the old paper balloting system

In an orderly and peaceful manner [and] that no sudden change of events has occurred in the City which has rendered the said election machinery and law in its said form any less suitable for elections to be held therein than it has been in the years past to the present date.¹³⁶

Furthermore, they contended that the voters, the supervisors of election, election judges, and clerks are all thoroughly accustomed to the old method of voting by printed ballot, and that Baltimore City was already "equipped with the means and appliances such as booth, ballot boxes, etc. as are necessary under the said law."¹³⁷ Thus, they argued, no real argument could be made that an "emergency" existed regarding the current state of elections within the city despite the legislative "finding" of the Act and the Ordinance to the contrary.

Marshall, on behalf of the Mayor and City Council of Baltimore, responded by arguing that under the Maryland Constitution, no talismanic language is required to be followed by the General Assembly in declaring a law to be an emergency law, and "all that is required is that the law contain a section "declaring such law an emergency law and necessary for the immediate preservation of the public health or safety."¹³⁸ Additionally, Marshall averred that the Maryland Court of Appeals has systematically held "such legislative declarations conclusively establish the existence of an emergency, and preclude any inquiry by the Courts as to the question whether or not in the opinion of the Courts the emergency exists."¹³⁹ Thus, Marshall rested his argument on the grounds that both the Act and the Ordinance declared their emergency statuses as constitutionally required and such declarations were barred from court review.

Page and Brown then asserted as an ancillary argument that even if the court accepted as valid the mere declaration of an emergency by the legislature, the legislative history of the Act makes it clear that the constitutional provision permitting emergency borrowing by the city without the prior submission to the voters is restricted to the exercise of police powers aimed at the necessity of maintaining the police force to ensure that order is maintained, i.e. under “very unusual circumstances.”¹⁴⁰ Additionally, they argued that under two recently decided Supreme Court decisions, *Borden’s Co. v. Baldwin*¹⁴¹ and *Chastleton Corp. v. Sinclair*,¹⁴² this Court was granted the authority to review the legislative findings of the General Assembly because the classification of the emergency was a mandatory finding under the Maryland Constitution.¹⁴³ In light of these two Supreme Court cases, Page and Brown argued that the legislative declaration created only a rebuttable presumption and was, thus, not entitled to complete immunity from judicial attack.¹⁴⁴ In the words of Brown, the constitutionally granted right of a taxpayer and voter in Baltimore City

To vote on all loans, except emergency loans, is in reality a valuable property right since it is he who will have to repay what the City borrows. Neither the legislature nor the City Council should be permitted to destroy that right by declaring the existence of an emergency if there is no rational basis to support the declaration.¹⁴⁵

As a ominous warning to the Court, they concluded their case on the emergency issue by adding that “if it is now declared that the legislative and or councilmanic declaration of an emergency must be held to be absolutely final by the Courts, it is not too much to say that rarely, if ever, will the voters be given an opportunity to vote on loans in the future.”¹⁴⁶

In response to these declarations of mistrust and fear on behalf of the, self stylized, advocates of Baltimore City taxpayers, Marshall simply responded that the “emergency” borrowing contemplated by the Act could occur whenever a police power was exercised, and he

reiterated his position that the emergency declaration of Legislature is final and is simply not reviewable by the Courts.¹⁴⁷

In ruling on the issue before the Court, Judge Dennis essentially reiterated the doctrine espoused by Marshall that “the question whether an emergency in fact exists is for the Legislature, and its determination in that regard is final and not reviewable by the Courts.”¹⁴⁸ While precluding judicial review of this specific feature of the legislature as a fact finding body, Judge Dennis, citing *Tighe v. Osborne*,¹⁴⁹ reaffirmed the judiciary’s inherent power to determine whether the legislation based upon the fact finding is within the police power of the jurisdiction to begin with.¹⁵⁰ Unfortunately for Norris, however, Judge Dennis concluded that “protecting the method of voting is the ‘essence of police power,’”¹⁵¹ and, thus, the power to regulate “elections by declaring an emergency under the police powers is constitutionally granted to legislature, and not reviewable.”¹⁵² Thus, despite the warnings of Page and Brown that doing so would greatly increase the potential for government abuse throughout the state, Judge Dennis sided with the Mayor and City Council of Baltimore and the General Assembly in their finding of an emergency requiring the immediate preservation of the public health or safety within Baltimore City.

With regard to Norris’ second contention that voting by voting machine is not voting “by ballot” as is required under Article I, § 1 of the Maryland Constitution, Page utilized his gifts for legal and historical research with an energy that Judge Dennis himself announced he “would not attempt to equal”¹⁵³ to persuade the court against the modern trend of liberalizing the phrase “by ballot” to include voting by machine.¹⁵⁴ While acknowledging the fact that the word “ballot” has evolved many times over time and that multiple jurisdictions throughout the nation have recently read the term to include machine voting, Page argued that the Court was required to “look, not at

the derivative of the word nor at its present use, but its use when it first appeared in our law and its use in 1867 when the present draft of the Constitution was prepared.”¹⁵⁵ Page contended that only after the court examined the original meaning of the word could it look into whether or not such liberalization was contemplated by the framers.¹⁵⁶ It was Page’s contention that throughout the Constitution created in 1867, the word ‘ballot’ has been used in the Constitution in a manner which eliminates any doubt that it is intended to indicate a paper on which the voter’s choice is written or printed.”¹⁵⁷ Thus, in his mind, the term had a very literal, plain meaning. Page then argued that those jurisdictions which had previously liberalized the terms of their constitutions to include voting by machine had dealt primarily with ambiguous voting provisions, and that such “liberality in construction is ... limited to cases where there is an honest equivocation in the phrase to be construed.”¹⁵⁸ Therefore, Page concluded that given the plain, clear meaning of “ballot” in the Maryland Constitution, the Court was barred from expanding the term to include voting machines.

Marshall countered Page’s conservative originalist reading of the Maryland Constitution by citing cases from Ohio, Maine, Massachusetts, Illinois, Michigan, Utah, Minnesota, Montana, Florida, and Indiana which all stand for the uniform proposition that the identical constitutional phrase, “by ballot,” should be read to require “a *system* of secret voting, and not a form or instrumentality to be used by the voter in registering his vote.”¹⁵⁹ In concluding his argument in favor of expanding Article I, § 1 of the Maryland Constitution to include the use of voting machines, Marshall emphasized the fact that for the last twenty years, the Maryland General Assembly has acted on the assumption that voting machines were legal in drafting and passing various pieces of legislation, including the Act, and, until the present time, they have never been questioned by the courts.¹⁶⁰ Marshall argued that while this is certainly not binding on the courts

in anyway, such a display of legal history and reliance should be given great weight in this proceeding.¹⁶¹

Ultimately, Judge Dennis could not withstand the overwhelming, uniform trend throughout the states to allow for the use of voting machines under constitutions containing “vote by ballot” provisions.¹⁶² While he applauded Page’s diligent research into the original intent of the 1867 Constitution, Judge Dennis warned that “research into the origin of institutions, when pressed back to the initial stage from which all development issues, gropes in the twilight of a strange and rudimentary condition, and is sometimes lost in myth.”¹⁶³ Under this line of reasoning, Judge Dennis rejected the strict, limited interpretation of “ballot,” stating that “it would seem clear, *independent of precedent*, that the ‘voting by ballot’ provision of the Constitution is as easily and fully gratified by the use of a voting machine as by a paper ballot.”¹⁶⁴ Judge Dennis was not persuaded by Page’s argument that the Constitution of Maryland was somehow unique in light of all the recent developments around the nation regarding the advent of the voting machine.¹⁶⁵

With regard to Norris’ third contention, Page next argued that sections of the Act which mandated action on behalf of the City, and the City alone, were “special” laws, which are plainly forbidden under Article III, § 33 of the Maryland Constitution in situations where there are already provisions made by existing general laws.¹⁶⁶ Specifically, Page contended that the Act singled out the city by creating exceptions to the already existing body of law constituting the Election Laws of the state, specifically the laws dealing with “general provisions for voting by printed ballot, and counting the ballots so cast, in all primary, general, special and other elections in the state of Maryland.”¹⁶⁷ Marshall countered this argument by stating that the Act represented in no way a special law because the putative “general” laws already existing were merely pieces

of permissive legislation rather than mandatory.¹⁶⁸ Additionally, Marshall contended that because the Act deals with a specific locality and circumstance, elections in Baltimore City, the Act should be classified more properly as a “public local law,” and as a mandatory public local law, it should be valid notwithstanding any existing permissive general law.¹⁶⁹

In response to Marshall’s reclassification of the Act as a public local law, Page argued the classification inapposite because in order to properly classify the Act as a public local law, it must directly alter a power already granted to the City under its Charter.¹⁷⁰ Since no power over election law had apparently ever been granted under the Baltimore City Charter, Page argued that the Act was, in fact, a special law.¹⁷¹ Marshall argued that such a distinction was actually moot in the end game because the Supreme Court had suggested in *Williams v. Baltimore*,¹⁷² “that a special law is not invalid even though a general law is applicable, if it is passed to correct new conditions which have arisen in a particular locality.”¹⁷³ It was Marshall’s argument that the circumstances in Baltimore City regarding the state of elections had changed dramatically as a consequence of the General Assembly’s “experimentation” with voting machines over the last twenty years.¹⁷⁴

Judge Dennis agreed with Marshall that the Act was not a special law but instead a local law, and in the Court’s opinion, under *Crisfield v. C & P Tel. Co.*,¹⁷⁵ a “public local law is valid though opposed to a public general law.”¹⁷⁶ To Judge Dennis, the difference between local laws and special laws was clear: “local laws apply to all persons within the territorial limits prescribed by the Act, whereas a special law applies to particular persons or things of a class.”¹⁷⁷ So long as the Act applied to all of the residents of Baltimore City, Judge Dennis could not find that it fell within the prohibited class of special laws.¹⁷⁸

Page had failed to persuade Judge Dennis of the merits of Norris' previous three arguments, and, thus, if he were to succeed in this hearing and survive to see the trial stage of the litigation, he had to persuade the Court that the Ordinance was void because it failed to provide a provision discharging the debt within the legally required time frame. Page presented an overly technical, nitpicky argument that under 25-B of the Charter of Baltimore City, any ordinance creating debt, other than a temporary indebtedness, for the city shall provide "for the discharge thereof within the period of forty years from the time of contracting the same."¹⁷⁹ Page simply contended that the Constitution of Maryland provided the means to accomplish the creation and retirement of debt by the City and the Ordinance, on its face, failed to comply with these terms in a literal sense.¹⁸⁰ Marshall argued that "the clause must be narrowly construed, and that there has been substantial compliance with the requirement because the loan must be made by the Commissioners of Finance, whose authority is limited to the issue of bonds with term of forty years."¹⁸¹ As such, Marshall contended that the purpose of the "forty year" requirement was fulfilled by the terms of the Ordinance despite the lack of the precise language required by the Maryland Constitution on its face.

As with all the other arguments presented by the parties during this hearing, Judge Dennis again decided in favor of the Mayor and City Council of Baltimore in agreeing with Marshall that the Ordinance leaves the terms of debt retirement to be fixed by the Commissioners of Finance in accordance with the City Charter and that this was sufficient.¹⁸² Because Chapter 5, Acts of 1936 limits the issuance of bonds by the Commissioners of Finance to a forty year term just as 25-B of the City Charter limits the Mayor and City Council of Baltimore, Judge Dennis opined that "it would be unsound and unwise to hold the Ordinance to

be invalid because it fails to rehearse, repeat and re-include existing provisions of law.”¹⁸³ With that final ruling, the Court entered its decision dismissing the case on demurrer.

The following day, Friday, April 23rd, Judge Dennis formally issued his opinion and entered the order to dismiss the case without leave to amend in favor of the Mayor and City Council of Baltimore. In his opinion, Judge Dennis waxed poetic that the current litigation was “one of those rare cases of importance and intricacy, beautifully presented by able, learned counsel on all points involved in their oral arguments, supplemented by candid helpful briefs, which add to the pleasure and satisfaction of a Judge’s days in Court.”¹⁸⁴ He later noted that throughout the entire suit, “the controversy was conceived and presented without any trace of acrimony.”¹⁸⁵ In a private letter addressed to all of the attorneys involved, Judge Dennis again anticipated the immediate appeals to be taken by Page and Brown stating that “now you are at least in shape to press the hearing in the Court of Appeals and find out what the law *really* is.”¹⁸⁶ Judge Dennis concluded his letter to counsel by stating unabashedly that “being an old foggy without mechanical instinct, I shrink from punching buttons as a condition coincident with voting, and somehow hope I will be reversed.”¹⁸⁷

The Appeal Is Taken

The day the order was issued interposing the demurrer dismissing the case, Page and Brown immediately entered their orders for appeal. The appeal was scheduled to be decided in the October Term of the Maryland Court of Appeals and arguments were advanced to April Term due to the immediacy and importance of the issues.¹⁸⁸ The arguments were heard on May 26th before judges Carroll T. Bond, the Chief Justice, Hammond Urner, T. Scott Offutt, Francis Neal Parke, Walter J. Mitchell, and William Mason Shehan.¹⁸⁹

Judge Carroll T. Bond served as the Chief Justice of the Maryland Court of Appeals from 1924 to his death in 1943.¹⁹⁰ Judge Bond was born in Baltimore City on June 13, 1873.¹⁹¹ Despite his Baltimore Roots, Judge Bond attended primary school in New Hampshire and attended Harvard University.¹⁹² Upon receiving his Bachelor's from Harvard in 1894, Judge Bond began his legal studies at the University of Maryland School of Law.¹⁹³ He completed his legal education in just two years and was admitted to the Maryland Bar in 1896.¹⁹⁴ Before beginning his legal career, however, Judge Bond volunteered for service in the Maryland National Guard during the Spanish-American War.¹⁹⁵

At the conclusion of his military career, Judge Bond began a distinguished legal career in private practice which would last for the next fifteen years.¹⁹⁶ At the age of thirty-eight, Judge Bond became a judge on the Supreme Bench of Baltimore City, and he remained there until he was appointed to the Maryland Court of Appeals in 1924.¹⁹⁷ After being appointed Chief Justice later that same year, Judge Bond, in a similar manner to Judge Dennis, would lead the efforts to reorganize and modernize the Maryland Court of Appeals through the so-called "Bond Commission."¹⁹⁸

The opposing sets of counsel submitted appellate briefs and arguments substantially mirroring those presented at the trial court level, and when the smoke cleared, the Mayor and City Council would be one step closer to securing the citywide use of voting machines for the 1938 elections. Chief Justice Bond selected T. Scott Offutt, the second longest serving member of the court, to write the opinion of the court.



Figure 6. Associate Justice T. Scott Offutt
(Source: JAMES F. SCHNEIDER, A CENTURY OF STRIVING FOR JUSTICE 136 (1996)).

T. Scott Offutt served as an Associate Justice on the Court of Appeals from 1920 to his reaching of the mandatory retirement age in 1942.¹⁹⁹ Judge Offutt was born on June 12, 1872 in Montgomery County, Maryland.²⁰⁰ During his youth, he attended private schools in Montgomery County, but, when it came time for college, Judge Offutt attended the University of Virginia at the

same time as City Solicitor Marshall.²⁰¹ At the age of twenty-six, Judge Offutt was admitted to the Maryland Bar, and he began working in his cousin's law firm.²⁰² After getting his feet wet, Judge Offutt started a firm with John I. and Osborne I. Yellott where he would practice until his appointment in March 1920 to Chief Judge of the Third Judicial Circuit and Associate Justice of the Maryland Court of Appeals.²⁰³

Apart from serving as the President of the Maryland State Bar Association from 1923-1924,²⁰⁴ Judge Offutt served as an international ambassador of sorts for the American Bar Association during its tour of the London Inns in 1924.²⁰⁵ Judge Offutt was a tireless advocate for prison, probation, and parole reform.²⁰⁶ Lastly, and most importantly for the Mayor and City Council, Judge Offutt was not averse to liberally construing constitutional provisions to reflect what he saw was the spirit of the law.²⁰⁷

Judge Offutt's opinion touched on all four arguments presented by Page and Brown at the trial level. Firstly, on the question of whether Article I, § 1 of the Maryland Constitution requires voting by paper ballot, Judge Offutt again complemented the researching skills of Page by stating that "much interesting and useful learning has been invoked in aid of the contention that voting by machine in public elections is prohibited as a substitute for voting by ballot by the Constitution of Maryland."²⁰⁸ Unfortunately for Page, however, the Court of Appeals held that such a rigid, originalist position ignored the one rule

Which above all others gives life to the written law and makes its use possible for the government and control of men in carrying on the actual business of life, and that is that while the principles of the constitution are unchangeable, in interpreting the language by which they are expressed, it will be given a meaning *which will permit the application of those principles to changes in the economic, social, and political life of the people, which the framers did not and could not foresee.*²⁰⁹

In the opinion of the Court of Appeals, the word ballot had no fixed meaning, other than the protection of a fair and free election, as opposed to a coercive *viva voce* style of voting.²¹⁰ In the eyes of this Court, the use of voting machines was extremely beneficial to the populace as a whole and did more to safeguard the protections of the voters than did the use of the paper ballot system.²¹¹ Thus, Judge Offutt opined that to deny the word “ballot” from including voting machines would be to encourage the very evil the provision was intended to prevent.²¹²

Secondly, on the question of whether or not the Act constituted a constitutionally forbidden “special” law, Judge Offutt partially agreed with Page that the Act was not a public local law, as claimed by Marshall, because it dealt with an issue which was beyond the City’s power to legislate. Such a classification, Judge Offutt held, was moot to the discussion of whether or not the Act was a “special” law, however, because the special laws forbidden under the provisions of the Maryland Constitution are limited to “what are more commonly called Private Acts, for the relief of particular named parties, or providing for individual cases.”²¹³ Thus, the Court of Appeals held that the Act, as it dealt with the elections processes of a municipality, could not properly be classified as a special law under the Maryland Constitution.

Thirdly, with regard to Page and Brown’s main argument that the emergency findings of the General Assembly and the Mayor and City Council were without merit, Judge Offutt, again, sided with Page on some preliminary points of law only to hold in favor of the Mayor and City Council in the end. While acknowledging that General Assembly declarations of emergency declarations are findings of fact which are not reviewable by the courts, Judge Offutt agreed with Page that such findings by City officials are not to be afforded this unqualified immunity.²¹⁴ Judge Offutt couched this declaration of judicial power by stating a finding by a municipality of the existence of an emergency is “always entitled to great weight and will not be set aside or

annulled unless it clearly and unmistakably appears that is erroneous.”²¹⁵ Here, the Court of Appeals found no evidence to support the erroneous nature of the emergency declaration beyond the statements contained in the pleadings of Norris and Smith and, thus, found no reason to set aside Mayor Jackson’s declaration of emergency.²¹⁶ In response to Page’s argument that the regulation of elections fell outside the emergency policing powers of the City, Judge Offutt stated that “it is, unfortunately, a matter of common knowledge that there are few more fruitful sources of disorder, violence, and fraud than election, unless protected by adequate regulations, rigidly enforced.”²¹⁷ Thus, the Court of Appeals affirmed the ruling of Judge Dennis that the regulation of elections clearly fell under the police powers of the municipality.

With regard to Page’s final argument on appeal, that the Ordinance should be declared void because it fails to provide for the discharge of the debt within forty years, Judge Offutt simply stated that until the Commissioners of Finance actually issue the bonds, the Court of Appeals recognizes a “presumption that the body will faithfully perform its duties under the Constitution.”²¹⁸ With this final declaration, the Maryland Court of Appeals affirmed the decision of Judge Dennis, formally dismissed the case, and effectively swept away what seemed to be the final obstacle in Mayor Jackson’s campaign to equip Baltimore City with voting machines by the elections of 1938. It should be noted, however, that, despite this victory in the realm of progressive voting, the Court of Appeals for Maryland was far from being a bastion of liberal ideology in the 1937. On the same day the Court of Appeals handed down their groundbreaking, forward thinking decision in *Norris v. Mayor and City Council of Baltimore*, the Court “also denied a writ of mandamus through which Joshua B. Williams, father of Margaret Williams a Negro girl, sought to force Baltimore county school authorities to admit his daughter to the Catonsville High School, attended by white pupils of the county.”²¹⁹

Prelude to the Voting Machine Bidding Wars

The Triumphant Voting Machine Board Reconvenes

With their clear and total victory in the Maryland Court of Appeals, the members of the Voting Machine Board could confidently begin taking additional steps toward fulfilling their state mandate of securing enough voting machines to equip the city with voting machines by the 1938 elections. For Mayor Jackson, the idea of shifting to universal automated voting had been a stated agenda item since the beginning of his second term of office in 1931. Mayor Jackson had already fought for and secured the purchase of fifty voting machines early in his first term²²⁰ and had effectively lobbied the General Assembly to pass the Act despite being repeatedly blocked in the last several sessions.²²¹ The response from the public to the ruling by the Court of Appeals seems to have been extremely positive. As reported by the editors of the Baltimore Sun, the public's "experience with a few machines indicates that their general use will give satisfaction, help to reduce election expenses and do away with a large number of election jobs heretofore dispensed as political patronage."²²²

Immediately after the ruling in favor of the Mayor and City Council, Mayor Jackson announced that he would call a meeting of the Voting Machine Board on Tuesday, June 1st to determine the Board's next course of action and to draw up of the official specifications of the voting machines to be purchased.²²³ Although the members of the Voting Machine Board were operating under the assumption that, under the language of the Act, they were not required to enter into the competitive bidding process and were free from the various regulations which are associated with it,²²⁴ Mayor Jackson made it known quite early on that they would, in fact, solicit bids for the acquisition of the voting machines upon the drafting of the specifications.²²⁵

The Rival Bidders Make Themselves Known

Mayor Jackson would not have to search long to find bidders with the capabilities of producing the huge number of voting machines which would be required to totally equip the City as the two major suppliers of voting machines in the country, the Automatic Voting Machine Corporation of Jamestown, New York (“Automatic”) and The Shoup Voting Machine Corporation of Philadelphia, Pennsylvania (“Shoup”), made their interests known to all those who held powers of persuasion over the mayor immediately after the passage of the Act. While the two rivals effectively represented the only two commercial mass manufactures of voting machines in the late 1930s,²²⁶ the machines they produced were quite different from each other. The machine manufactured by Automatic was a manually operated lever voting machine, known as the Automatic Voting Machine, and the machine manufactured by Shoup, the Shoup Machine, was “equipped with several electric devices, but capable of being operated manually in the event there is any failure of electric current.”²²⁷ Automatic had already supplied voting machines to jurisdictions in Connecticut, Pennsylvania, Iowa, New York, Michigan, Washington, Montana, Indiana, California, and Wisconsin,²²⁸ and in addition, the fifty voting machines previously purchased by the City of Baltimore in the early 1930s were all Automatic Voting Machines as well.²²⁹ In contrast, the electric Shoup Machine, despite the additional security features available in its structure and its relative ease of use, had up this point only been used in elections in Rhode Island and Philadelphia.²³⁰

As the obvious underdog in the upcoming bidding wars for the lucrative City contract, Shoup wasted no time in vying for the upper hand in Mayor Jackson’s office. Allan Sauerwein, one of the local counsels retained by Shoup, immediately pressed upon Marshall, a member of the Voting Machine Board and a member of the Mayor’s close inner circle, to be weary of the

activities of Automatic in the upcoming bidding wars and to keep a close eye on J. George Eierman, President of the Board of Supervisors of Elections of Baltimore.²³¹ It was Sauerwein's belief, and possibly the belief among most of the members of the Shoup concern, that Eierman, as one of the principle architects of the Act, had deliberately thwarted proposed legislation that would have required advanced security features and write-in capabilities for all newly purchased voting machines, features which come stock on all Shoup Machines, in a direct attempt to give Automatic an immediate cost cutting advantage in the upcoming bidding.²³² Additionally, Sauerwein accused the Automatic organization of using their strong financial position and "other means" to gain unfair advantages in previous contests between the two companies.²³³ In order to lessen some these inherent inequities and to cure any potential perceptions of impropriety in the public, Sauerwein requested that the Board issue the official ballots to be used by the competing manufacturers as early as possible so as to ensure that the all of the machines are adjusted accordingly.²³⁴

Whether the Voting Machine Board took the advice and concerns of Sauerwein to heart is not clear, but, after the receipt of his letter, the Board did take immediate steps to complete the specifications for the voting machines and to secure the official ballot to be tested by both companies. The Voting Machine Board was faced a real dilemma regarding the completion of Shoup's request for an official ballot in that the election laws of the state of Maryland remained rather unsettled regarding the legality of write-in voting. While write-in voting had been used in the state regularly up until the 1920s, the General Assembly had effectively eliminated any mention of it from the Maryland Code. To settle the dispute, the Board requested an official opinion from the office of the Attorney General on the matter of write-in voting on July 21st.²³⁵ Rather than waiting for the office of the Attorney General to respond, however, the Board

decided, just two days after making their request, to send the official voting machine specifications to Automatic and Shoup along with sample ballots from previous years, i.e. ones that did not contain blank lines for write-in voting.²³⁶ Their haste in this preliminary stage of the bidding would work to essentially invalidate many of their subsequent actions for the remainder of the year.

A Brief History of the Write-in Vote in Maryland

Introduction

As stated, at the time of the Act, and the subsequent passage of the Ordinance, the status of write-in voting in Maryland was somewhat up in the air due to a series of inconsistent legislative actions taken by the General Assembly between 1890-1931. In order to understand the inconsistent nature of these legislative actions and the resulting holding of the Court of Appeals in the second series of voting machine cases, the history and use of the write-in vote in Maryland must be properly delineated. Again, as used in the previous section above, as a matter of convenience, the history of the write-in vote can be broken down into the following phases: the early American *viva voce* and primitive paper balloting system; the adoption of the Australian secret ballot; and the implementation of automated voting.

The Early American Period

Prior to the adoption of the Australian secret ballot, states, whether practicing the *viva voce*, paper balloting, or a combination of the two, seldom regulated the nomination or candidacy processes of their elections, and, thus, early American voters were typically able to cast votes for any “self announced” candidate they chose.²³⁷ In Maryland specifically, “before and at the time of the time of the adoption of the Constitution of 1867, the elective franchise was exercised by

unofficial ballots on which the voters freely wrote the names of *their own selection* for the offices to be filled or marked out name of candidates, if the ballot was printed.”²³⁸ As populations grew and states, for the most, partly liberalized their eligibility requirements, the numbers of voters grew exponentially and the costs and time which had to be devoted to the counting of their write-in ballots became quite burdensome.²³⁹ Regardless of these burdens and the expanded use of uniform balloting, the vast majority of states “protected the tradition of write-in voting.”²⁴⁰

The Development of the Australian Secret Ballot

The same uniformity that reaped such huge benefits in terms of secrecy and efficiency under the preprinted Australian secret ballot posed serious problems to those who wished to cast votes for candidates not included on the preprinted ballot. In response to such concerns “many state legislatures, and most Australian ballot acts, in order to ensure that the voter was able to exercise the franchise as freely as before, provided for a blank line to be printed underneath each list of candidates for an office that appeared on the ballot.”²⁴¹ The Maryland Australian Ballot Act, 1890 Md. Laws Ch. 538, preserved the write-in requirement in such a manner. In pertinent part, it states that the official ballot of Maryland, which was, by this point, the Australian secret ballot, was required to contain “at the end of the list of candidates for each different office as many blank spaces as there are officers to be voted for, in which the voter may insert in writing or otherwise the name of any person not printed on the ballot for whom he may desire to vote as a candidate for such office.”²⁴² This provision in Maryland law was in effect, in one form or another, for the next thirty four years.²⁴³

In 1924, the Maryland General Assembly amended various sections of the state election law and, in what was perhaps an apparent oversight, provided provisions governing the counting



Figure 8. *Left*, Willis R. Jones (Source: MATTHEW PAGE ANDREWS, *TERCENTENARY HISTORY OF MARYLAND*, Vol. II. 697 (1922)), and *Right*, Herbert O'Connor (Source: <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/001400/001482/html/1482image.html>).

of ballots on which the voter had written his own choice for elected office, but they failed to require state ballots to include the blank spaces with which to cast such a vote.²⁴⁴ Under this incomprehensible set of laws and regulations, voters in Maryland from 1924-1931 were technically unable to cast write-in votes through the official state ballot, but the election judges were obligated to count them and accept them as legal votes should they be cast.²⁴⁵ This inconsistent and illogical gap in the state election laws and the resulting confusion from the public remained in Maryland for the next seven years. In 1931, the General Assembly acted and removed the provision requiring the counting of write-in votes, thus, eliminating the legal inconsistency from the election laws.²⁴⁶ This act by the General Assembly, however, had the

unintended consequence of creating an uncertainty in the law as to the constitutional basis for the write-in vote.

Exacerbating this uncertainty were the opinions issued by two state legal authorities, Deputy Attorney General Willis R. Jones²⁴⁷ and Attorney General Herbert O'Connor, which denied the constitutional requirement of the write-in vote despite its universal use prior to 1924. In response to a previous request from the Board of Supervisors of Elections for Baltimore City in 1924, Jones, acting as Deputy Attorney General for the Ritchie administration, opined that “chapter 581 of the Acts of 1924 had been passed to shorten the ballot by the elimination of blank spaces; and that, as section 62 of art. 33 of the Code of 1924 did not authorize the writing of additional names on the ballot by a voter, the provision in section 80 authorizing the count of such votes was nugatory.”²⁴⁸ In response to a similar request in 1936, O'Connor, Attorney General for the Nice administration, opined that “the effect of writing in a name or names on the ballot would be to cause its rejection ... [and] you are therefore, advised that a ballot upon which a voter has written the name of a person for whom he desires to vote, must not be counted.”²⁴⁹ These opinions had serious consequences as they worked to effectively bar certain candidates from the Union party from running for political office in previous elections.²⁵⁰ The repeated requests for opinions from the office of the Attorney General clearly manifested some relative unease among the political officials of Board of Supervisors of Elections for Baltimore City regarding to the existence and propriety of write-in voting within the state.

The Advent of Automated Voting

The advent of voting machines, which were even more dependent on uniform, preprinted ballots, posed another serious threat to the survival of the write-in vote in Maryland and elsewhere in the country. Because the very existence of the voting machine was premised on the

gains in efficiency resulting from the mechanical casting and counting of ballots, a requirement of write-in votes, which must undoubtedly be segregated from other ballots and hand counted, would seem to seriously undermine the entire system. Despite the resource drain accompanying this type of voting, virtually every jurisdiction during their move to automated voting systems preserved the right to cast write-in votes by legislative action or, where necessary, constitutional interpretations by state courts.²⁵¹ On July 24th,²⁵² in response to the July 21st request by the Voting Machine Board, Baltimore's third request for an opinion regarding write-in voting in the last twelve years, Attorney General O'Connor shied away from this national trend in favor of codifying write-ins by opining that

Although the courts of some states have indicated that to prohibit write-ins may violate the constitutional right of a citizen to vote for the person of his choice, our own courts have not in any way suggested its invalidity under our own Constitution; and until they do so, we hold this statute to be constitutional, valid and effective...under present law, therefore, it is our opinion that write-in votes are illegal in this State.²⁵³

Therefore, at the time the Voting Machine Board had begun to solicit bids for its voting machines, they had in their possession three opinions from the Attorney General's office confirming Maryland's aversion to write-in voting under present law and the state's constitution. As this opinion was in accord with the specifications and ballots previously drawn up and sent out by them, the Voting Machine Board saw little cause for concern.

The Opening of the Voting Machine Bidding Wars

The Official Proposal and Specifications Are Unveiled

As stated, on July 23, 1937, the Voting Machine Board announced publicly their "Proposal for Furnishing and Delivering 910 Voting Machines and Doing Other Work" to Shoup

and Automatic as well as any additional bidders who wished to participate.²⁵⁴ Included with this “proposal” were the official voting machine specifications and various contractual forms relating to the bidding process.²⁵⁵ The proposal stated that sealed bids would be accepted at the office of the Comptroller of Baltimore City until noon on Wednesday, August 11, 1937, at which time all bids would be opened and read before the Voting Machine Board.²⁵⁶ Bidders were informed for the first time that they were to provide the city with a total of nine hundred ten voting machines by July 1, 1938. The machines were to be provided in the following manner; two hundred machines on or before March 1, 1938; two hundred more machines on or before April 1, 1938; two hundred machines on or before May 1, 1938; and the remainder, three hundred ten, on or before July 1, 1938.²⁵⁷ While the proposal stated that official sample ballots to be tested were to be provided by the Supervisors of Elections, the document also contained a proviso that

The Contractor shall furnish and deliver all of the said voting machines to be purchased under this contract to the Voting Machine Board *in strict accordance with* and to meet the requirements of all of the terms, conditions, and provisions of Chapter 94 of the Laws of Maryland, Regular Session of 1937, any and *all other laws* and the contract documents.²⁵⁸

This qualification would prove to be quite consequential when the constitutional requirement of write-in voting and the inadequacy of the winning bidder’s voting machine were later argued by Page and the attorneys for Shoup.

Under the regulations outlined in the proposal, the bidders were required to bid upon the following two sizes and styles of voting machines, which were classified as “Type A” machines: (1) a manually operated voting machine containing sufficient spaces for nine different political parties, at least twenty questions or special measures, and forty voting mechanisms for each of the nine political parties (a “forty candidate” machine); and (2) a manually operated voting machine containing sufficient spaces for nine different political parties, at least twenty five

questions or special measures, and fifty voting mechanisms for each of the nine political parties (a “fifty candidate” machine).²⁵⁹ The bidders were also permitted, although not required, to submit bids for “Type B” voting machines which were basically electric versions of the forty or fifty candidate Type A voting machines which could be converted into actual manually operated Type A machines in the event of a power failure.²⁶⁰ Of the two alternatives, Automatic limited its bidding to the manually operated Type A machines while Shoup formally entered bids for both.

The Great Lobbying Campaigns Begin

Immediately after submitting their bids with the office of the Comptroller of Baltimore City, both voting machine companies began an intense, citywide publicity campaign in the hopes of impressing “the merits of their respective machines upon influential groups.”²⁶¹ Shoup and Automatic displayed their respective machines openly in the lobby of City Hall and continuously carried them throughout town to various social and political events including Mayor Jackson’s popular annual “business and professional men’s outing” in Tolchester.²⁶² Both voting machine companies followed Mayor Jackson and the other members of the Voting Machine Board around town like obedient lap dogs, despite the persistent ribbing and teasing from the public,²⁶³ in an attempt “to impress persons close to Mayor Jackson, on the theory that the Mayor’s opinion will carry the deciding weight in the awarding of the contract for the 910 machines which will be purchased.”²⁶⁴

On August 11th, this heated rivalry between Shoup and Automatic reached its climax with the official unsealing tabulating of the bids. The actual unsealing of the solicited bids was met with much pomp and circumstance as representatives for each bidder ceremonially unlocked their machines and handed the keys over to Secretary of the Voting Machine Board.²⁶⁵ Upon the opening of each machine offered by Shoup and Automatic, the present members of the Voting

Machine Board found each machine to be in accordance with the specifications promulgated, and Eierman then proceeded to read the bids.²⁶⁶ The bids provided by Shoup to the Voting Machine Board were as follows: Type A forty candidate-\$1,047 each; Type A fifty candidate-\$1,147 each; Type B forty candidate-\$1,097.00; and Type B fifty candidate-\$1,197.²⁶⁷ The bids submitted by Automatic were, as expected, significantly lower: Type A forty candidate-\$825.95; and Type A fifty candidate-\$920.50.²⁶⁸

Although the bids provided by Automatic were approximately \$220 lower for the forty and fifty candidate machines, Mayor Jackson made it clear that the Voting Machine Board was not obligated to necessarily buy the cheapest machine but was instead empowered to “buy the best machine it could obtain from the money.”²⁶⁹ After an unsuccessful attempt to solicit ideas from all those in attendance on just how to determine which machine was in fact the best, Mayor Jackson requested that Shoup and Automatic should be made to demonstrate the strengths of their respective machines.²⁷⁰ At this request, Willis R. Jones, counsel for Shoup,²⁷¹ pointed out that City Solicitor Marshall was currently away on vacation and that the demonstration should be made before the entire Voting Machine Board.²⁷² Jones hinted that Shoup intended to argue several legal issues before the Voting Machine Board regarding the machine submitted by Automatic and that Marshall’s legal expertise would be of great importance to them.²⁷³ Mayor Jackson asked the representatives of the bidding companies if a two week adjournment would negatively affect either of their abilities to provide the City with the 910 machines by next year, to which both parties answered in the negative.²⁷⁴ In accordance with the suggestion of Jones, the Voting Machine Board agreed to put off any decisions until they reconvened on Tuesday, August 24th.

The Voting Machine Board likely took the concerns of Jones very seriously given his level of experience and his sterling reputation as “an authority on Maryland election laws.”²⁷⁵ Willis R. Jones was born in Bethel, North Carolina on March 9, 1890.²⁷⁶ His father had been an experienced and very well liked political figure in Bethel.²⁷⁷ After graduating from high school in 1907, Jones attended the Sadlers, Bryant & Stratton Business College of Baltimore the following year.²⁷⁸ Jones then attended the University of Maryland School of Law and received his law degree at the young age of twenty-four.²⁷⁹ Upon being admitted to the Maryland Bar, Jones immediately formed the law firm of Briscoe, Jones, & Martin.²⁸⁰ Given his family’s extensive political history in North Carolina, Jones soon sought out an elected office for himself. As a self-styled states’ rights, local government centered progressive leader of the Democratic Party, he was easily elected to represent the 3d legislative district of Baltimore City in the General Assembly as a delegate in 1919.²⁸¹ Jones was appointed to Deputy Attorney General for a substantial portion of Governor Ritchie’s administration, and, as such, he was called upon many times to act as a legal advisor to the State’s Election Boards.²⁸² Apart from being a member of the General Assembly, an experienced trial attorney, a political party leader, a Sunday school teacher, and a distinguished orator, Jones was also an amateur golf champion as he won the cup in his first golf tournament in Clifton Park, Baltimore.²⁸³

During the two week reprieve imposed by the members of the Voting Machine Board, the camps for Shoup and Automatic worked behind the scenes examining the machines put forward by the other and crafting their arguments. The day before the Voting Machine Board was to reconvene and formally test the machines, Allan Sauerwein again set a letter to City Solicitor Marshall, fresh from his vacation, in which he stated that ever since the creation of the Voting Machine Board, there had been a “whispering campaign of considerable magnitude in

circulation,” in which Shoup was being accused of incompetence and corruption.²⁸⁴ Sauerwein informed Marshall that Eierman had argued against waiting for Marshall’s return from vacation to award the contract, and he again warned the Voting Machine Board to be weary of, what he perceived to be, persistent and underhanded actions by Eierman.²⁸⁵

The Rival Bidders Go on the Attack

As previously agreed, the two factions met again on August 24th before the entire Voting Machine Board, and for the entire session, the two camps were at each other’s throats in a constant state of argument.²⁸⁶ Shoup made claims that their machines were superior because they listed the elective offices in perpendicular rows; Automatic said their horizontal structure was better.²⁸⁷ Automatic attacked Shoup by claiming that Shoup’s machines were so short that a tall voter would have to stoop down just to see the choices; Shoup claimed that because Automatic’s levers were eyelevel, they were forced to use tiny, unreadable type.²⁸⁸ Shoup then requested permission to demonstrate how much easier it would be to commit voter fraud on the Automatic machine than on the Shoup machine; to this “nonsense,” Automatic immediately objected.²⁸⁹

Beyond this petty nitpicking, however, Shoup managed to level a legal argument against the Automatic machine substantial enough to require additional consideration on behalf of the Voting Machine Board. Shoup argued that in the event of a primary election, the first and second choice voting on the Automatic machine would be done with one lever and that this was akin to group voting, which is illegal under Maryland election laws.²⁹⁰ Automatic countered that this process simply makes the vote casting easier, and that it was not group voting, just fewer levers to pull.²⁹¹ The Automatic voting machine permitted voters in primary elections to vote for either one candidate only or for their first, second, and, if necessary, third choice candidates with the pull of a single lever.²⁹² Thus, the Automatic voting machines provided a separate lever for

each possible combination of choices for a given elective office. The Shoup voting machine, in contrast, listed all eligible candidates for a given office vertically with a series of horizontal levers indicating first, second, and third choice votes. Thus, with the Shoup voting machine, each choice was registered with the pull of a separate lever.²⁹³

The members of the Voting Machine Board expressed serious concerns over the legality of the two methods of voting, and it was decided that they should again put off any decisions regarding the awarding of the contract until they could give this new allegation serious consideration. To that end, the Voting Machine Board retired to a private executive session, over the objection George Sellmayer, President of the Baltimore City Council, where all voted to reconvene in two days.²⁹⁴ As will be shown later, George Sellmayer would vote against the use of private executive sessions in all matters regarding the voting machine contract, and, after the contract was eventually awarded, he would publicly lambaste Mayor Jackson for usurping control of the Voting Machine Board through the use of such sessions.

When the Voting Machine Board reconvened on August 26th, Shoup again alleged that Automatic's machine failed to meet the requirements under the elections laws of Maryland, and he demanded that the Voting Machine Board seek the opinion of the Attorney General on the matter before making any decisions.²⁹⁵ Representatives of Automatic alleged that Shoup's request "was sent only to delay the matter, and follows the usual procedure of [Shoup] when it cannot meet the prices of [Automatic]."²⁹⁶ They responded further by stating that such an opinion was not necessary because their machine could easily be converted to cast votes in either manner and they would agree to convert the machines for free if the Voting Machine Board so desired.²⁹⁷ To decide the matter, the Voting Machine Board, over another objection of Sellmayer, voted to retire to an executive session.²⁹⁸ On a motion by Marshall, the Voting Machine Board

decided to formally request an opinion from the office of the Attorney General on the matter of whether or not a legal ballot could be set up and voted on either or both of the machines, and they further agreed to adjourn until they officially received such an opinion.²⁹⁹

On September 8, 1937, Mayor Jackson received the opinion of Attorney General O'Connor on the two differing schemes of voting. In his letter to the office of the Attorney General, Mayor Jackson referred to the voting scheme of the Automatic machine as "Plan A" and the scheme of the Shoup and the revised Automatic machines as "Plan B." This has no relation to the "Plan A," manually operated, and "Plan B," electric operated, machines referred to in the proposal and specifications mentioned earlier. The classification of the machines under the proposal and specifications was really of no legal consequence, and, for that reason all subsequent mentions of "Plan A" or "Plan B" in this paper were refer to the types of voting schemes used in the Attorney General O'Connor's opinion. In his letter to Mayor Jackson, O'Connor opined that under "Plan A,"

The voting machine, before it can be validly used in a primary election where first and second choice voting obtains, must be equipped with separate vote indicators for each candidate for first and second choice so arranged as to permit a person to vote for such a candidate for first choice by the manipulation of a single vote indicator and for each candidate for second choice by the manipulation of a separate vote indicator.³⁰⁰

Thus, a legal ballot could not be set up and voted on using the existing voting machines submitted by Automatic under their original sealed bid. With regard to the modifications proposed by Automatic, which would bring their machines in line with the voting scheme of the Shoup machines, O'Connor opined that he would "have no hesitation in advising [the Voting Machine Board] that the Automatic Voting Machine if arranged in "Plan B" may be validly used in a primary election where first and second choice voting obtains."³⁰¹ He cautioned further,

however, that he offered no opinion whatsoever as to whether or not any of the machines submitted under the sealed bids could, after the bidding process, be rearranged and manipulated to conform with his opinion.³⁰²

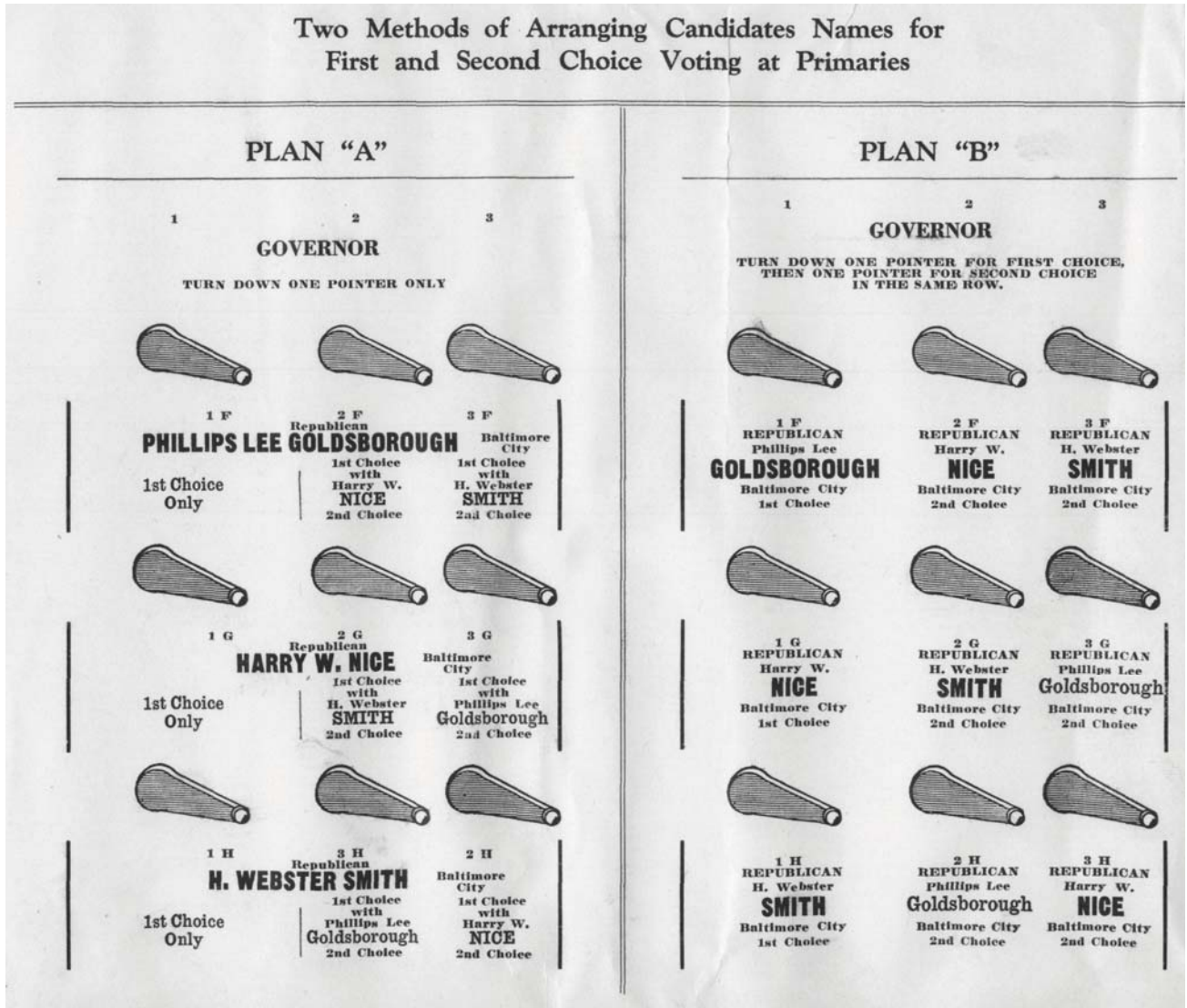


Figure 9. A Graphical Depiction of the "Plan A" and "Plan B" Voting Schemes of the O'Connor Opinion (Source: <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1536.pdf> at 271).

And Then There Was One

With the official opinion in hand, Mayor Jackson reconvened the Voting Machine Board that same day and invited the representatives of Shoup and Automatic to attend. As seems to be par for the course, Mayor Jackson immediately called for a private executive session, and his motion was supported by all of the members of the Voting Machine Board save Sellmayer.³⁰³ As the voting machine representatives waited in the lobby, Mayor Jackson proceeded to have the opinion of the Attorney General read aloud.³⁰⁴ After the reading, Mayor Jackson asked the other members of the Voting Machine Board if they thought it would be advisable to hear further arguments from the attorneys of both voting machine companies.³⁰⁵ As time was of the essence, all of the members, with the exception of Sellmayer, voted to proceed without hearing any further argument from the representatives. With the matter now behind them, the Voting Machine Board, after some deliberation, decided to purchase 910 manually operated forty candidate machines.³⁰⁶ As Automatic submitted the lowest bid for this type of machine and agreed to reconfigure the machines to comply with the latest Attorney General Opinion at no charge to the City, the Voting Machine Board unanimously voted to award the contract to Automatic.³⁰⁷ The contract was announced later that afternoon, and on the morning of September 9th, the palladium of Baltimore City taxpayers, William S. Norris, again brought suit in Baltimore City Circuit Court No. 2 challenging its validity.³⁰⁸ Once again, the suit would be heard by the Chief Justice, Samuel K. Dennis.

The Second Legal Challenge: *Jackson v. Norris*

The Two Camps Prepare For War

Representing Norris in this second round of voting machine litigation was the indefatigable Charles G. Page. As with the first law suit, Norris again pressed the matter before the courts in order to advance the cause of his civic group, the Taxpayers' Protective League.³⁰⁹ While Norris brought suit directly against the members of the Voting Machine Board, Shoup, through the taxpayer Hattie B. Daly, filed its own complaint seeking to enjoin Automatic from acting under the contract in dispute.³¹⁰ Both sets of parties agreed by stipulation that Daly was a taxpayer in the city of Baltimore.³¹¹ As such, she was allowed to go home to nurse her baby and was never heard from again in this case. For this reason, no great detail will be afforded to her past in any subsequent sections. Knowing that Automatic, with its vast financial resources, would seek to employ top legal talent to defend its newly acquired \$752,524.50 contract, Shoup spared no expense to retain the counsel of two heavy hitters of the Maryland Bar, Willis R. Jones and Isaac Lobe Straus.

Isaac Lobe Straus was born in Baltimore City on March 24, 1871.³¹² At the young age of nineteen, Straus received his Bachelor's degree from the Johns Hopkins University.³¹³ After completing his legal education at the University of Maryland School of Law in two years, Straus received his law degree and immediately began working in the law office of Isidor Rayner.³¹⁴ Together, the two of them argued numerous questions of constitutional law before the Maryland Court of Appeals and developed an extensive practice based upon civil and equitable litigation.³¹⁵ Straus' legal talent was recognized early on, and he was appointed to Attorney General of Maryland during the Austin Crothers administration.³¹⁶ Apart from being a highly



Figure 10. *Left*, Isaac Lobe Straus (Source: THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 36 (2000)), and *Right*, Arthur W. Machen, Jr. (Source: THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 28 (2000)).

successful trial attorney and political figure, Straus was an advocate for consumer protection and was personally responsible for many pieces of revolutionary legislation.³¹⁷

Not wanting to be outdone, Automatic retained the counsel of Arthur W. Machen and Wendell D. Allen of Baltimore's prestigious law firm Armstrong, Machen, & Allen.

Arthur W. Machen, Jr. was born into a prominent Baltimore legal family in 1877.³¹⁸ His father, Arthur W. Machen, Sr. had started one of the most successful law firms in Baltimore, Hersey, Machen, Donaldson, and Williams, and was active throughout Maryland and Washington, D.C area for decades.³¹⁹ Machen attended local Baltimore schools during his childhood and went on to the Johns Hopkins University for his undergraduate studies.³²⁰ While

attending class at Johns Hopkins, Machen struck up a lifelong friendship with future governor Albert C. Ritchie.³²¹ After receiving his Bachelor's degree from Johns Hopkins in 1896, Machen received his legal education for Harvard Law School, and he was admitted to the Maryland Bar in 1899 upon his graduation.³²²

Machen became the preeminent expert, author, and researcher of modern corporate law and tax law, and he published two landmark treatises on the subject in 1908 and 1909.³²³ Machen's legal prowess would be recognized by Wilson administration, who would subsequently appoint him to the office of Special Assistant Attorney U.S. General from 1914-1915.³²⁴ Machen was an avid anti New Deal Democrat, and, as such, he found many friends in the Ritchie administration. In 1927, Machen was appointed by his old friend Governor Ritchie to chair the Maryland Tax Revision Commission, which recommended the consolidation of the Maryland Tax Code under one article.³²⁵ Late in his brilliant career, Machen would serve as the President of the Maryland Bar Association from 1939-1940.³²⁶

Wendell D. Allen was born Baltimore County on October 21, 1893.³²⁷ Allen's father, Newton D. R. Allen, was a prominent lawyer and Baltimore senator and this likely had a substantial effect of Allen's decision to pursue law and politics.³²⁸ Allen attended public schools in Towson and received his Bachelor's degree from Washington College when he was twenty years old.³²⁹ Following in his father's footsteps, Allen enrolled in the University of Maryland School of Law in 1913.³³⁰ After he graduated in 1916, Allen attended special legal studies at Harvard University prior to his admittance to the Maryland Bar later that year.³³¹ After returning to the Maryland at the conclusion of World War I, where he served valiantly, Allen set up shop in Baltimore where he built up a successful corporate legal practice within the state.³³² On October 1, 1922, Allen was appointed to the office of Assistant Attorney General of Maryland by

then Attorney General Armstrong.³³³ Allen made a name for himself among the local republicans in Maryland for his strong, outspoken beliefs.³³⁴

Although Mayor Jackson and the City Council were represented by the future City Solicitor Charles C. G. Evans and William H. Marshall, their roles in the proceeding were, at best, negligible. Both attorneys made formal appearances at trial, but their answers and briefs substantially incorporated by reference the filings and arguments of the counsels for Automatic.³³⁵ The respected attorney Paul F. Due was brought in to represent the interests of the Voting Machine Board, but as with Evans and W. H. Marshall, his role in the trial itself was quite limited.

Paul F. Due received his law degree from the University of Maryland School of Law in 1923 and was quite an active member of the Baltimore City Bar and the Wednesday Law Club of Baltimore City.³³⁶ Just ten years out of law school, Due formed, what would later become, one of the largest, most successful, and longest running law firms in Maryland, Due, Nickerson, Whiteford and Taylor, now known as Whiteford, Taylor & Preston L.L.P.³³⁷ In 1933, Due and Palmer N. Nickerson started the firm as a two attorney civil litigation and business services firm.³³⁸ Today, their firm has over 130 attorneys in its employ.³³⁹ Due would go on to serve as the First Vice President of the Baltimore City Bar in 1942-1943³⁴⁰ and as its President ten years later.³⁴¹ In 1958, two years after Brown's retirement, Due was admitted into the International Association of Insurance Counsel,³⁴² and in the following year, he served as a ranking member of its Fidelity and Surety Insurance Committee.³⁴³

The Complaints and Answers Are Filed

Norris and Daly, through their attorneys, Page, Jones, and Straus, lodged complaints³⁴⁴ premised primarily on the argument that the voting machines exhibited by Automatic, those

machines which were to be purchased by the Voting Machine Board, failed to comply with the plans and specifications of the original proposal as well as the election laws of Maryland.³⁴⁵ Specifically, the attorneys for Norris and Daly argued that Automatic voting machines employed an illegal mechanism for casting votes, the “Plan A” system,³⁴⁶ were constructed in a manner which would work to confuse the voters and invite fraudulent voting,³⁴⁷ were of such a departure from the original proposal as to make the contract for their purchase null and void,³⁴⁸ and were constructed in such a manner as to bar voters from exercising their constitutionally protected right to cast “personal choice,” write-in, ballots.³⁴⁹ Norris would amend his original complaint to include an additional argument, which he alone would advance in court: that the contract entered into by and between the Voting Machine Board and Automatic was null and void because the proposed purchasing of the Automatic voting machines was not made through or with the approval of the Central Purchasing Bureau and its rules and regulations concerning competitive bidding and quality control.³⁵⁰

The answers supplied by Automatic, the Voting Machine Board, and the Mayor and City Council were pithy but powerful. With regard to arguments against “Plan A,” those of the Attorney General, Norris, and Daly, Automatic pleaded the validity of its voting scheme but also stated that its machines were so flexible that adjusting to another manner of voting would be quite simple.³⁵¹ Should these modifications be demanded, Automatic again reiterated that it stood ready, willing, and able to carry them out at no cost to the City and at very little cost to itself.³⁵² To all of the allegations regarding the quality and alleged structural defects of their machines, Automatic stated that it had, since its creation in 1899, manufactured approximately ninety percent of all the voting machines used in the United States and that its factory was “the most complete, best organized and best conducted factory of its kind in existence.”³⁵³ Furthermore,

Automatic asserted that, even though its plant could produce the required number of voting machines at a cost of \$200,000 less than Shoup, its work was still “highly specialized” and it had in its employ “the most skilled voting machine experts in the united states.”³⁵⁴ Lastly, Automatic concluded its defense by restating the plenary powers of the Voting Machine Board on all matters regarding the quality of the machines and the interests of the public.³⁵⁵

This final statement on behalf of Automatic largely mirrored the brief answer submitted by the Voting Machine Board. In response to the allegations made by Norris and Daly regarding the qualities of the machines to be purchased, the Voting Machine Board asserted that it had authority “to determine the amount or quantity, quality, and acceptability of the work and materials to be paid for under the contract,”³⁵⁶ and they further averred that on all matters such as this, its decision was authoritative and final.³⁵⁷ Lastly, the Voting Machine Board argued that in the event “Plan A” was in fact adjudged to be illegal in Maryland, Automatic was contractually bound to supply machines which conformed to the laws of the state,³⁵⁸ and thus, they were already bound to perform the modification work to which they were now agreeing.³⁵⁹

While the answers of Automatic and the Voting Machine Board focused primarily on the technical arguments raised by Norris and Daly, the answer of the Mayor and City Council, in contrast, concerned itself with the propriety of the bidding process and their final decision. Firstly, the Mayor and City Council defended the machines exhibited by Automatic as having a good design which seriously protected the voters of the City from the fraudulent voting practices of a malevolent few.³⁶⁰ The Mayor and City Council concluded their brief answer defending the bidding process by flatly denying any allegations or suggestions that “all bidders were not given a full opportunity by the Voting Machine Board to appear before it and to be heard.”³⁶¹

The Case Is Heard Before Judge Dennis

With the complaints and all answered filed with the Court, the case proceeded to trial on October 4th, 1937. The trial itself, lasting only two days, was quite brief.³⁶² As engineering experts from both sides quickly escalated the trial into a virtual technical grudge match over the mechanical shortcomings of the other side's respective machines, Judge Dennis put a halt to the case and limited argument to a set of specific issues.³⁶³ Judge Dennis stated for the record that the Voting Machine Board was "clothed with discretion, and the Court has no right to interfere with the exercise of those discretionary powers by this Board."³⁶⁴ Thus, as there had been no findings of "fraud, and there has been no collusion, and no arbitrary conduct,"³⁶⁵ the Court would not revisit the decision made by the Voting Machine Board to purchase the Automatic voting machines unless the Voting Machine Board exercised *ultra vires* powers by purchasing an illegal voting machine. Whether the Voting Machine Board acted "wisely or unwisely" was of no concern.³⁶⁶ With that said, Judge Dennis limited the remaining day of trial to the following three questions: "whether the machine which the Board decided on, if Plan B is adopted, is such a departure from the specifications" as to make it illegal and void; whether Plan A allows the voter to cast a constitutional ballot in the case of a first and second choice vote for statewide offices where the nominations have to be made by convention; and "whether or not under the Constitution and Bill of Rights there must be a write-in privilege or opportunity afforded the voters in general elections."³⁶⁷

With regard to the first question posed by Judge Dennis, Automatic had presented evidence that the costs of complying with a request for the manufacturing of "Plan B" machines would be minimal. The evidence presented to Judge Dennis established that the Automatic machine exhibited during the bidding process could be made to conform with "Plan B" voting by

“connecting a few wafer thin, tiny metal squares and a few strips of flexible metal, the size about of ordinary red tape ribbon ... weighing less than one pound ... [at a] cost under two dollars per machine.”³⁶⁸ It had been the contention of Norris and Daly that the voting machines exhibited at the conclusion of the bidding process in the lobby of City hall were to be identical to those subsequently purchased by the Voting Machine Board.³⁶⁹ Thus, they argued no modifications, however slight, were to be permitted under the original proposal. Lastly, attorneys for Norris and Daly argued, without any evidence to support their contention, that the machines supplied by Automatic could not be modified to comply with “Plan B” even if it was so demanded.³⁷⁰

With regard to the second issue framed by Judge Dennis, both sets of counsel cited the opinion of the Attorney General as dispositive on the matter and agreed that “Plan A” was illegal. Lastly, in what Judge Dennis described as “the most important point of all,” both sets of parties presented their cases on the issue of write-in voting in Maryland.³⁷¹ Emboldened by three Attorney General opinions in their favor, Automatic and the Voting Machine Board felt confident in their argument that write-in voting was illegal in Maryland, and, thus, the voting machines to be purchased were not required to provide such a feature. Additionally, Automatic posited that given their reliance on the opinions of the Attorney General and the Voting Machine Board, they were not required to have anticipated such a feature for the purposes of placing their bids.³⁷² Nevertheless, Automatic stated in court that its machines could, with some substantial alteration, be equipped to register write-in votes at an additional cost of eighty two dollars per machine.³⁷³

In addition to attacking the costs associated with equipping the Automatic voting machines with write-in capabilities, the attorneys for Norris and Daly went on the offensive by citing several provisions of the Maryland Constitution and Bill of Rights to strengthen their

argument for write-in voting.³⁷⁴ Page, in another praiseworthy display of legal research, argued that under Article 7 of the Maryland Declaration of Rights, “every male citizen having the qualifications proscribed by the Constitution, ought to have the right of suffrage,” and under Article I, Section 1 of the Constitution of Maryland, all state “elections shall be by ballot; and every male citizen ... shall be entitled to vote.”³⁷⁵ Furthermore, Page asserted that “Section 224 (F) of the Voting Machine Act provides that voting machines acquired or used under the said Act shall ‘(d) permit each voter to vote, at any election, for any person and for any office for whom and for which he is lawfully entitled to vote.’”³⁷⁶ Thus, concluded Page, “in accordance with the said provisions of the Bill of Rights and the Constitution, and of the Voting Machine Act, a voter in the election of public officers is entitled to vote for persons selected by him whose names do not appear on the official ballot or ballot label.”³⁷⁷ As the Automatic voting machines do not come equipped with the means to register a write-in vote, Page argued that any contract for the purchase of such machines is illegal.³⁷⁸

After two days of testimony and argument, Judge Dennis retired to his chambers to deliberate on the matters further and render his opinion. While the action in the courtroom may have died down, Shoup refused to acknowledge defeat. Immediately following the final day of trial, on October 5th, Shoup’s president, Bernard M. Weiss, sent a telegram to the office of City Solicitor Marshall requesting a new round of bidding should Judge Dennis and the Court of Appeals rule against the Automatic contract.³⁷⁹ In addition, President Weiss gave his assurances to Marshall that if a future round of bidding was initiated by the Voting Machine Board, his company can and would submit a new bid substantially lower than that of Automatic.³⁸⁰

Judge Dennis took just under four days to decide the case and draft his opinion. Before his official opinion was presented publicly, however, both sets of parties were notified by letter

of Judge Dennis' decision.³⁸¹ Exhibiting the dry wit that Judge Dennis exuded throughout the entire trial, he opened his letter with a jab at the overly technical arguments of counsel during the last week. He stated, "I have just completed my opinion in the voting machine case, and regret it is impossible either under our office 'Plan A' or 'Plan B' to furnish each of you with a copy."³⁸² In his letter, Judge Dennis held "that there is nothing wrong with the Board, the contract, or the machine, except that the Constitutional write-in privilege is denied hence the injunction must issue."³⁸³ The result among the public appears to have been mixed. The ruling by Judge Dennis was "considered by attorneys to be far reaching," and a mild panic set in among state policy makers as the decision effectively cast doubt "on the constitutionality of the voting laws of Maryland and ultimately may affect the twenty three counties of the State as well as Baltimore City."³⁸⁴ Leaks from the Mayor's office indicated that all of the attorneys involved anticipated and expedited appeal to the Court of Appeals on the matter in order to ensure the purchase and use of the voting machines for the upcoming Gubernatorial and general elections of 1938.³⁸⁵ On October 11th, all interested persons could discover the rationale behind Judge Dennis' controversial holding as his formal opinion was officially filed.

In his opinion, he stated that "this opinion must necessarily be hurriedly prepared, for chaos will result if the disputed questions are not settled quickly and in time to permit some manufacturer to complete and deliver sufficient voting machines."³⁸⁶ After again reiterating the plenary power of the Voting Machine Board in selecting any legal voting machine of its choosing, Judge Dennis turned his attention to the main arguments presented at trial.

Firstly, because the lawyers, much to the dismay of the Court, devoted such a substantial amount of time to the testimony of structural engineers on the potential for fraudulent operations on the Automatic voting machine, Judge Dennis began his analysis of the case here. Judge

Dennis opined that the mere presence of minor, latent flaws in the structural integrity of the Automatic voting machines was “scarcely persuasive of results to be had in actual operation by disinterested voters uninformed as to the interior mechanics of a voting machine and of an ingenious method of throwing it off performance.”³⁸⁷ As Judge Dennis stated “even jails and bank vaults are not proof against undoing by men sufficiently skilled and determined, though reasonable adequate for normal use.”³⁸⁸

Secondly, Judge Dennis dealt with Page’s argument that the Central Purchasing Bureau oversight was required for the purchase of the voting machines. While praising Page for his “fine learning” and his gallant journey into the realm of municipal expenditure law, Judge Dennis opined, as he had in the first voting machine case, that his argument was too overly technical.³⁸⁹ Judge Dennis stated that, after reading the language of the Act, it was simply “impossible to conclude that the Legislature to any extent whatever intended to subject the Board to the control of, or to divide its responsibility with, the Central Purchasing Bureau.”³⁹⁰

With regard to the implementation of either of the “Plan A” or “Plan B” systems of voting, Judge Dennis parted company with the office of the Attorney General and declared “a machine adapted to either Plan A or Plan B, is an instrument of which the specimen was “representative” and well nigh identical “in all respects,” and in so far as that complaint is concerned free from objections.”³⁹¹ After discussing the hesitation with which he openly disagrees the Attorney General, Judge Dennis stated “what practical difference it makes, what evil is to be avoided by requiring a plan which involves two motions rather than one is most difficult to understand.”³⁹² With regard to the arguments presented by Norris and Daly against modifying the Automatic voting machines to comply with “Plan B,” although moot in the eyes of the Court, Judge Dennis unabashedly mocked the attorneys and stated that the argument that the

Addition of this trifling amount of metal, which can be attached or detached in a few minutes to an apparatus approximately the size of an upright piano, though higher, and which weighs 700 or 800 pounds...is such a material departure from the specifications after the award...as to make the contract illegal is clearly an untenable position.³⁹³

Thus, Norris and Daly were left with their only remaining argument, the constitutionality of the write-in vote.

Judge Dennis stated the facts of the present case as such “the voting machine selected by the Board is so arranged that a voter has the option of voting for the candidates whose names are printed on the voting machine ballot by the election officials else be disenfranchised at that election.³⁹⁴ After again praising Page for his penchant for research,³⁹⁵ Judge Dennis proceeded to quote the provisions of the Maryland Constitution and Bill of Rights cited in Norris’ amended complaint and cases from fourteen different jurisdictions upholding the constitutional requirement of the write-in vote.³⁹⁶ With the powerful ammo supplied by the erudite Page, Judge Dennis opined that “serious as the consequences may be, the Court can find but one course to follow in the light of the Maryland declaration of Rights and the Maryland Constitution, supported and instructed as the Court is by a weight of authority which is overwhelming.”³⁹⁷ Thus, the Court held that the write-in vote privilege was constitutionally guaranteed and the Automatic voting machines were illegal. As such, the Voting Machine Board was barred from purchasing them and the injunction was ordered.

Appeals Are Taken by Both Sides

On October 14th, three days after the filing of Judge Dennis’ opinion, both sets of parties entered formal requests for appeal. Despite the immediacy of the issues, however, the parties would have to wait approximately two months to argue their cases before the Court of Appeals. On November 3d, with the decision from Judge Dennis in their favor, representatives from

Shoup again contacted the Mayor's office to request an additional round of bidding and to dispel rumors circulating around the circles of the Voting Machine Board that its machines were not being used in the elections of its hometown, Philadelphia, Pennsylvania.³⁹⁸ The time for lobbying was coming to an end, however, as the Court of Appeals sitting for the January 1938 term, ordered advanced arguments to be made at a hearing on December 8th.³⁹⁹ Unlike the first voting machine case, however, the entire eight judge panel of the Maryland Court of Appeals, the original six judges from the first voting machine case plus D. Lindley Sloan and Benjamin A. Johnson, was empanelled to adjudicate this dispute. After arguments were heard, the Court of Appeals rendered its decision on the spot.⁴⁰⁰ The formal opinion of the Court was drafted by Associate Justice Francis Neal Parke.



Associate Justice Francis Neal Parke

(Source: JAMES F. SCHNEIDER, A CENTURY OF STRIVING FOR JUSTICE 147 (1996)).

Francis Neal Parke served as an Associate Justice on the Maryland Court of Appeals from 1924 until reaching the mandatory retirement age of 70 in 1941.⁴⁰¹ Judge Parke was born into a powerful western Maryland legal and political family in 1871.⁴⁰² His father had run the Carroll County Register of Wills for over a quarter of a century, and his aunt was married to Judge T. Parkin of Baltimore.⁴⁰³ While many of his brothers were starting highly successful businesses throughout Maryland, Judge Parke decided to attend West Point.⁴⁰⁴ Judge Parke found entry into the prestigious military academy quite easy as he was closely related to the then current superintendent of West Point, General John Grubb Parke, and he had secured recommendations from President Cleveland and local congressman Dr. Frank T. Shaw.⁴⁰⁵ Despite his zest for military life, Judge Parke was forced to leave the academy in 1891, just two years after arriving, due to serious health problems.⁴⁰⁶

With his military career cut drastically short, Judge Parke turned to the field of law, and he began working at the law office of Associate Justice of the Court of Appeals William H. Thomas.⁴⁰⁷ With apparently no formal legal education, Judge Parke became “qualified” to practice law in 1893.⁴⁰⁸ After a brief health related retreat to Florida, Judge Parke formed a law partnership with former judge and prominent B & O Railroad attorney James A. C. Bond, Bond and Parke.⁴⁰⁹ Judge Parke practiced law with Bond until his appointment to the Court of Appeals in 1924.⁴¹⁰ Judge Parke was apparently a rather straight-laced individual as he seems to have taken only one vacation during his entire thirty-one year career as an attorney.⁴¹¹ Before retiring in 1941, Judge Parke would serve on the State Board of Law Examiners⁴¹² and the reform minded Bond Commission.⁴¹³

The Court of Appeals heard arguments of three of the questions raised during the initial trial: whether the voting machines must be purchased through or with the approval of the Central

Purchasing Bureau, and in conformity with the promulgated rules and regulations of that bureau; whether a legal ballot could be cast by the Automatic voting machines equipped with the Plan A system of voting; and, most importantly to this Court as it was to Judge Dennis, the constitutional status of write-in voting in Maryland.

Firstly, with regard to the involvement of the Central Purchasing Bureau, Judge Parke agreed with Judge Dennis that in its quest to procure voting machine for Baltimore City the Voting Machine Board was granted plenary power to determine the quantity, quality, and acceptability of the work and performance of the voting machine manufacturers, and they were given “the authority to inform their judgment by the expert aid and advice of engineers or other skilled persons.”⁴¹⁴ When combined, Judge Parke opined, “these explicit provisions enforce the conclusion that the General Assembly did not intend the full, material, and complete powers of the specially erected board to be rendered meaningless by remitting to the bureau not only the purchase, but also the duty to 'determine and formulate standards,' of the voting machines.”⁴¹⁵ Thus the Court affirmed Judge Dennis’ holding that the contract of the Voting Machine Board was to be made without recourse to the Central Purchasing Bureau.⁴¹⁶

Secondly, with regard to the issues surrounding the two alternative systems of registering first choice and second choice votes in primary elections, Judge Parke again asked the question posed by Judge Dennis at trial: if the voter’s intention is “to vote his first and his second choice, and it can be done by a single movement of the lever, why should he be required to express the same intended vote, by two movements when one will do?”⁴¹⁷ The Court went on to state that the “mere economy of effort in giving effect to an identical intention with the same result introduces no substantial difference between plan A and section 203 [of the original proposal].”⁴¹⁸ Thus, the Court of Appeals affirmed Judge Dennis’ second conclusion that voting machines constructed

under either “Plan A” or “Plan B,” as they both accomplish the same goal, are in substantial compliance with Maryland election laws and the provisions Act.⁴¹⁹

In framing the third and final issue decided by the Court of Appeals, Judge Parke stated that “the right to give expression to the elector's choice for office by means of his ballot, and not to be confined to those candidates whose names are printed on an official ballot, is an important one.”⁴²⁰ While acknowledging that no cases in Maryland had up to that point decided the issue of whether write-in voting was guaranteed under the Constitution of Maryland or not, the Court of Appeals announced unequivocally that, given the decisions of a wide variety of jurisdictions on the matter, the constitutional nature of the question was readily apparent.⁴²¹ After discussing the history of the write-in vote in Maryland, Judge Parke opined that “an election is not free, nor does the elector enjoy a full and fair opportunity to vote, if the right of suffrage is so restricted by statute that he may not cast his ballot for such persons as are his choice for the elective office.”⁴²² Thus, the Court of Appeals, for the first time in Maryland’s history concluded that

It is the constitutional right of an elector to cast his ballot for whom he pleases, and that it is necessary for him to be given the means and the reasonable opportunity to write or insert in the ballot the names of his choice is subject to this limitation that the right is not applicable to primary elections nor to municipal elections other than those of the city of Baltimore.⁴²³

With the establishment of this new constitutional right, the Court was faced with the inescapable conclusion that the contract entered into by and between the Voting Machine Board and Automatic was void.⁴²⁴ Judge Parke advised the Voting Machine Board that after the opinion of the Court was officially entered, the Voting Machine Board was free to “conduct such negotiations and make the contract to buy, with or without competitive bidding, and upon such terms as are authorized and believed by it to be in the public interest.”⁴²⁵ The Court of Appeals, thus, authorized the Voting Machine Board to re-enter into a contractual relationship with

Automatic subject to its inclusion of write-in capabilities. This is exactly what they proceeded to do.

In the Wake

Immediately following the decision of the Court, City Solicitor Marshall and President Eierman, refused to comment publicly until they had ample opportunity to read the opinion, which totaled thirty-nine pages, themselves.⁴²⁶ The immediate outcome of the appeal led by the Taxpayers' Protective League was actually a bitter piece of irony. In a tax payer suit, initiated as an attack on perceived government waste, the tax payers were victorious, but the result was an estimated \$100,000 in additional charges to be paid by the City of Baltimore. Two days after the Court of Appeals affirmed Judge Dennis' order voiding their contract with the Voting Machine Board, both voting machine companies sent word to the mayor's camp that they were still ready, willing, and able to enter into a new contract subject to the additional requirements mandated by the Judge Parke.⁴²⁷ As the City's deadline was fast approaching, the Voting Machine Board quickly drafted an amendment to the original proposal requiring the winning voting machine supplier to equip their machines with write-in technology,⁴²⁸ and Mayor Jackson called for an emergency session to be held on December 13th.⁴²⁹

As the members of the Voting Machine Board began to assemble in the lobby of City Hall in the afternoon of the 13th, the desperate representatives of Shoup wasted no time in pleading with Mayor Jackson to open a second round of bidding.⁴³⁰ Straus, acting on behalf of Shoup, promised the members of the Voting Machine Board that if a second round of bidding was so ordered, Shoup would undoubtedly submit a bid which was substantially lower than that of Automatic.⁴³¹ Straus' pleas failed to win over Mayor Jackson as he stated publicly that he would not even consider entertaining a second round of bidding.⁴³² It was his opinion that such a

request was rather improper and highly “irregular.”⁴³³ With that being said, Mayor Jackson called for a private executive session, over the objection of Sellmayer, to discuss the possibility, however remote, of future bidding wars.⁴³⁴ During the executive session, Marshall argued that to enter into a new round of competitive bidding was to undoubtedly invite future litigation from Shoup.⁴³⁵ The argument was met with agreement by all of the members of the Voting Machine Board with the exception of Sellmayer.⁴³⁶ As such, the Voting Machine Board quickly proceeded to vote down any possibility of holding another meeting for competitive bidding purposes and passed a resolution awarding the new contract to Automatic on the spot.⁴³⁷ Sellmayer made it clear that because the Voting Machine Board had failed to listen to the new pricing information supplied by Shoup, he could not in good conscience vote in favor of the resolution.⁴³⁸ With the resolution in hand, the Voting Machine Board reconvened in the presence of the Shoup and Automatic to announce their decision.

Without hesitation Mayor Jackson entered the lobby of City Hall and publicly announced the passage of the Voting Machine Board’s new resolution awarding the contract for the City’s 910 voting machines to the previous low bidder, Automatic.⁴³⁹ The announcement, not entirely a surprise to anyone in attendance, was met with the immediate laudatory praises of the Automatic camp who praised the Voting Machine Board’s motion authorizing the purchase of the “best voting machine made.”⁴⁴⁰ As was to be expected, Straus and Jones, representing the interests of Shoup, expressed their dismay and notified the Voting Machine Board of their official protest of, what they viewed to be, such an “arbitrary” award.⁴⁴¹ From this point on, the session, which was for all intents and purposes concluded, erupted into a verbal melee between Bernard M. Weiss, the President of Shoup, and Mayor Jackson. Weiss, against the repeated advice of counsel, warned Mayor Jackson that he would surely “hear” from him soon and that it would surely not

be a “pleasing encounter.”⁴⁴² Mayor Jackson wanted to make it known that he believed Weiss had exhibited this type of negative attitude throughout the bidding process.⁴⁴³ To that accusation, Weiss reminded Mayor Jackson of a previous encounter involving him and some of Weiss’ private detectives and he made some rather cryptic remarks concerning Mayor Jackson’s upcoming election campaign for governor.⁴⁴⁴ Upon hearing those words of Weiss, Mayor Jackson immediately ordered the adjournment of the session.⁴⁴⁵

Weiss was not the only one to publicly criticize Mayor Jackson and the members of the Voting Machine Board for their hasty motion to award Automatic such a valuable contract. Sellmayer, the perennial objector, told various members of the Baltimore City press that Mayor Jackson, by usurping such a high degree of control within the Voting Machine Board, had effectively become the unofficial “dictator of the city’s fiscal affairs.”⁴⁴⁶ Sellmayer stated that as the President of the Baltimore City Council, he and other city officials are supposed to do “their duty by the taxpayers instead of just rubber stamping the actions of the mayor.”⁴⁴⁷ The other members of the Voting Machine Board responded by stating they felt the Voting Machine Board had given “full and complete consideration to every possible factor which was properly before it and believes that its award was in the public interest.”⁴⁴⁸ For the next several days, representatives from Shoup continued to send threatening letters to the Mayor Jackson and the Voting Machine Board classifying the impending contract with Automatic as “arbitrary and a betrayal of the public interest.”⁴⁴⁹ Despite the warnings, the Voting Machine Board entered into the contract with Automatic on December 16th.

The Litigious Shoup Sues Again

Four days later, on Monday, December 20th, Shoup, now represented by William S. Flynn, the former governor of Rhode Island, again brought suit against the Voting Machine Board and Automatic “charging the voting machine board with arbitrary procedure.”⁴⁵⁰ The defendants who were given a mere ten days to respond. In the brief trial that followed, Mayor Jackson stated that the immediacy of the issues and the “necessity of avoiding another protracted controversy between two rival voting machine groups” were the main reasons for awarding a new contract to the Automatic Voting Machine Company.⁴⁵¹

After a four day trial, Judge Duke Bond, now the presiding judge in Circuit Court No. 2, dismissed the bill of complaint and upheld the contract with Automatic stating that “after careful consideration of the evidence and the able arguments of learned counsel, the court has reached the conclusion that throughout the negotiation and execution of this contract the voting machine board acted with due care, with the utmost good faith and solely in the public interest.”⁴⁵² After the case was decided, Jones considered filing an appeal, but it appears after three legal challenges, the path to Baltimore City’s use of voting machines was finally free and clear.

Over the next several months, certain members of the Voting Machine Board expressed their concerns over the public’s “timidity and dread” regarding the use of their newly acquired voting machines in the upcoming elections of 1938.⁴⁵³ Despite the dire predictions such as this from a few, on Tuesday, November 8th, the citizens of Baltimore “went to the polls to pull down levers, but they went early, pulled with dispatch and left the usually beleaguered clerks with very little to do but jot down the totals.”⁴⁵⁴ The Baltimore Sun summed it quite simply that following Wednesday in its headline, “Voting Machines Puzzle Electorate No Longer.”⁴⁵⁵

Comparisons to the Voting Technology “Revolution” of Today

The highly contested adoption of voting technology in 1937 draws striking parallels to the current controversies surrounding the movement of states toward the implementation of the Direct Record Electronic (“DRE”) voting machines in their elections.

Current Voting Technology

While a study of lever operated voting machine technology may seem like a stroll through ancient history, these machines made an anachronistic stand in recent elections. In fact, lever operated machines, strikingly similar to those which were purchased by the Voting Machine Board in 1937, were still used by almost a fifth of all voters nationwide in the scandal ridden elections of 2000.⁴⁵⁶ While this may seem highly unsettling to some, Mayor Jackson had hoped that the state of the art voting machines he helped to procure would easily be in use until at least 1987.⁴⁵⁷ Voting Machines, however, represented only one of the five different types of voting mechanisms utilized in the 2000 elections. The types of voting systems employed in the United States in 2000 were: hand counted paper ballots; lever operated voting machines; punch-card ballots; optical-scan ballots; and, the subject of much current controversy, Direct Record Electronic (“DRE”) machines.⁴⁵⁸

By far and away the oldest method of voting still currently being utilized in national elections is the hand-counted paper ballot. Under this antiquated system of casting votes, which is akin the Australian secret ballot adopted in Maryland over a hundred years ago, voters mark names on pre-printed ballots to indicate their choices, and these votes are counted by hand. This highly time intensive system of voting, although restricted to mostly rural areas, was still in use by 1.3% of the voters in the 2000 elections.⁴⁵⁹ Secondly, as stated above, the lever operated voting machine was still in use by approximately a fifth of all voters in the elections of 2000, but

because these mechanical leviathans constantly require upkeep and a steady access to rapidly depleting replacement parts, most jurisdictions are abandoning them in favor of more efficient and cost effective, technologically superior forms of voting technology.⁴⁶⁰ The third, and most popular, system of voting utilized in the elections of 2000 was the infamous, “chad” ridden punch-card ballot. The punch-card ballot, which was used by over one-third of all voters in 2000, requires the voter to punch out perforated squares, “chads,” to indicate his choice, and the ballots are then sent to counting facilities where computers are used to tally the results.⁴⁶¹ While this method of voting was the first to utilize computer technology the counting process, the disastrous results and controversies of the 2000 elections clearly show the shortcomings of the punch-card ballot. The fourth method of voting utilized in 2000 was the optical-scan ballot, which is a combination of the paper ballot and computer technology. Under this system, the voter fills in bubbles or draws connecting lines to indicate his choices for elective offices and these ballots are then counted by computer scanners in a manner akin to the S.A.T.s.⁴⁶² These ballots, although more efficient and cost effective than either the punch card ballot or voting machine vote, have been widely criticized for the high number of over or under votes caused by stray pencil marks and scanning facility failures.⁴⁶³ The last and most technologically advanced mechanism of vote casting and counting currently being utilized in national elections is the DRE machine.⁴⁶⁴

DRE voting systems are the newest and most cutting edge of all the voting systems currently in use today. Most of the technology behind the current generation of DRE machines was developed over thirty years ago, and, in 2000, these machines were already in use by approximately 10% of the national voters.⁴⁶⁵ In place of the antiquated paper ballot of the older voting systems, the DRE machines received a plastic “smart card,” which is programmed at the

individual polling places as the voters arrive.⁴⁶⁶ A voter using the current generation DRE machine indicates his choice of candidate or referendum vote by pressing the corresponding selection of a computerized touch-screen.⁴⁶⁷ At the end of the voting session, the voter is shown a list of his choices and asked to confirm his selections.⁴⁶⁸ The information is then saved on the smart card, which the voter turns in to an election official.⁴⁶⁹

While many of the advocates for the uniform adoption of DRE voting technology emphasize the increased accuracy associated with the elimination of paper ballots and the decreased costs associated with switching to an all electronic voting mechanism, there is strong and vocal minority of voters, voters with disabilities and ethnic minorities, who see the technology as a way to ensure a fair and free election. For many voters with disabilities, all of the current systems of voting require the voter to vote with the help of an assistant.⁴⁷⁰ This, they claim, denies them the right to secret and independent voting.⁴⁷¹ Many of the newer DRE machines are equipped with “audio components for people with visual impairments or illiterate voters, and “sip and puff” devices for voters with manual dexterity limitations.”⁴⁷² Secondly, there have been studies since the 2000 elections which indicate that the uniform use of DRE voting technology as opposed to paper balloting could “significantly advance racial equality ... and may also have considerable advantages from the perspective of ... multilingual access.”⁴⁷³

Most of the opponents of DRE technology attack the systems for their lack of a contemporaneously produced paper record of each vote cast. The fear is that without “a contemporaneous record that the voter can see, malicious codes in the DREs software could result in the voter's intended choice appearing on the screen, while a different selection is recorded in the machine's memory.”⁴⁷⁴ The Help America Vote Act, discussed in greater detail below, mandates that all state voting technology provide a “permanent paper record” by 2006.⁴⁷⁵

This permanent paper record does not, however, have to be produced at the time each vote is cast.⁴⁷⁶ Many of the advocates for the adoption DRE technology, namely election officials and civil rights leaders, “have opposed a contemporaneous paper record requirement, arguing that it is unnecessary, burdensome, and likely to discourage adoption of accessible voting technology.”⁴⁷⁷ In response to the demands for a contemporaneous paper record, these advocates assert that DRE voting machines can and do currently produce a voter verifiable record in the electronic form, which can be saved in a central location for use in the event of an audit.⁴⁷⁸

Although this modern technology has its fair share of detractors, it is rapidly reshaping the voting landscape of the entire nation. As was the case in 1937, Maryland was once again at the forefront of the adoption of a new and controversial technological innovation in the world of voting.

Maryland Adopts DRE Voting Technology

After the debacle that was the 2000 elections, Congress, along with several states, responded by mandating several election law reforms. While national action was stalled in the partisan bogs of Congress, Maryland and Georgia enacted comprehensive, statewide election reform rapidly in 2001. Both states aggressively pursued the replacement of their patchwork voting systems, which included a mixed use of punch-cards, lever operated voting machines, and optical scan machines, with one uniform system of voting technology.⁴⁷⁹ By Chapter 564, Acts of 2001, the Maryland Stated Board of Elections was required to select and certify a new system of voting technology to be used uniformly throughout the state by 2006.⁴⁸⁰ In 2002, Congress appeared to ratify the actions Maryland and Georgia with passage of the Help America Vote Act (the “HAVA”). While the HAVA does not mandate the adoption of any particular form of voting technology, it does set forth some very mandatory guidelines for states to follow while

providing funds for states to replace their older systems of voting.⁴⁸¹ With regard to several of the mandatory guidelines imposed by the HAVA relating to DRE technologies, Congress required that, by 2006, all state voting systems must allow the voters to verify their selections prior to submission, produce, as stated above, a “permanent paper record” for auditing purposes, and allow disabled voters to vote privately and independently.⁴⁸²

In accordance with Maryland election laws, the State Board of Elections was required to select a new uniform voting technology which ensured that all future elections met the following criteria:

All persons served by the election system are treated fairly and equitably; citizen convenience is emphasized in all aspect[s] of the election process; security and integrity are maintained in the casting of ballots, canvassing of votes, and reporting of election results; and the prevention of fraud and corruption is diligently pursued.⁴⁸³

After a rather bitter and protracted bidding process, the State Board of Elections determined that the Diebold Election Systems, Inc. AccuVote-Touch Screen DRE voting machine (the “Diebold machine”) met the standards promulgated by the Maryland General Assembly and the current requirements mandated by the HAVA for use at all for polling places.⁴⁸⁴ As such, the State Board of Elections entered into contracts totaling \$55.6 million with Diebold, Inc., the parent company of Diebold Election Systems, Inc., in 2001 and 2003 for the production of a sufficient number of Diebold machines to equip all polling places throughout the state by 2006.⁴⁸⁵ As was the case in 1937, immediately after the awarding of the contract, those opposed to the rapid utilization of this new voting technology launched their attack.

On July 23, 2003, a consortium of computer science professors led by Aviel D. Rubin of the Johns Hopkins University (the “Rubin Report”) widely publicized the results of their independently conducted security analysis on the source codes of the Diebold machine in which

they claimed the security features of the Diebold machine were far below even the most minimal security standards applicable in other contexts.”⁴⁸⁶ Specifically, the Rubin Report found that there were “several problems including unauthorized privilege escalation, incorrect use of cryptography, vulnerabilities to network threats, and poor software development processes.”⁴⁸⁷ To correct these seemingly damning flaws in the voting technology, the Rubin Report opined that any jurisdiction adopting the Diebold machine or any other DRE type machine should require the manufacturer to produce a “voter-verifiable audit trail,” in which “a computerized voting system might print a paper ballot that can be read and verified *by the voter*.”⁴⁸⁸ Because the “findings” of the Rubin Report seemingly called into question the propriety and perhaps the legality of the \$55.6 million contract entered into by and between the State Board of Elections and Diebold, Inc., Governor Robert L. Ehrlich, Jr., ordered an independent review of the security and use of the Diebold machines to be performed immediately.⁴⁸⁹ An independent information technology firm, Science Applications International Corporation (“SAIC”), was selected to perform the analysis.

SAIC’s report was filed on September 2, 2003.⁴⁹⁰ In its report, SAIC opined that it “made many of the same observations [as the Rubin Report], *when considering only the source code*.”⁴⁹¹ SAIC went further by stating that while it agreed with the Rubin Report regarding several of their technical objections to the security code, it found that “Mr. Rubin did not have a complete understanding of the State of Maryland’s implementation of the AccuVote-TS voting system, and the election process controls or environment.”⁴⁹² SAIC systematically dismantled the assumptions which were the admitted basis for the Rubin Report and came to the conclusion that the “State of Maryland procedural controls and general voting environment reduce or eliminate many of the vulnerabilities identified in the Rubin report.”⁴⁹³ After debunking most of

the Rubin Report, however, SAIC went on to state that in its own security analysis it had “identified several high-risk vulnerabilities in the implementation of the managerial, operational, and technical controls for AccuVote-TS voting system.”⁴⁹⁴ As such, they listed several recommendations and system modifications to be employed by the State Board of Elections to ensure a secure election with the Diebold machines.⁴⁹⁵

In direct response to the SAIC report, the State Board of Elections developed a three stage statewide Action Plan.⁴⁹⁶ Under their plan, all of SAIC’s 218 technical recommendations and procedures for local boards of elections to follow would be implemented by March 31, 2004.⁴⁹⁷ The State Board of Elections was confident that after meeting these recommendations, “the implementation of Diebold’s AccuVote-Touch Screen system will help ensure the reliability of elections by utilizing state of the art technology in a secure environment.”⁴⁹⁸ Before this new technology could be used in the March primaries of 2004, however, the Department of Legislative Services wanted to have yet another independent review of the Diebold machines.

On November 10, 2003, RABA Technologies was selected to perform another security analysis of the Diebold machines in light of the Rubin Report and the SAIC recommendations.⁴⁹⁹ As with the SAIC study, the RABA Report began by dispelling some of the myths of the Rubin Report by claiming that the report has lost much of its credibility given the revelation that one of its authors was also a major competitor of Diebold and “many of the statements made by the authors appear to function more as attention gathering ‘sound bites’ than actual statements of fact.”⁵⁰⁰ RABA opined that the conclusion of the Rubin Report that all machines should include a voter verifiable audit trail was illogical as the individual paper receipts produced could be subject to the very same fraudulent activities as the machines themselves.⁵⁰¹ It was the conclusion of the RABA Report that, rather than supplying the voter with his own verifiable

paper receipt, “complete, centrally located documentation should be available for independent audits.”⁵⁰² In a bit of irony, the RABA Report warned that given the fact that paper ballots are far more susceptible to inaccurate counting than are the electronic votes, there would undoubtedly be a constant discrepancy between the totals cast on the Diebold machines and the totals resulting from the auditing of the paper receipts.⁵⁰³ Thus, the verifiable paper audit would likely be less accurate than the original vote total it was meant to verify.

The Law Suit Follows

With all the accusations and allegations surrounding the implementation of the Diebold machines for use in the elections of 2004, a law suit challenging their validity and legality seemed inevitable. In April 2004, Linda Schade, in an action akin to that of William S. Norris in 1937, brought suit against the Maryland State Board of Elections and Linda H. Lamone, as its chief administrator, in the Circuit Court for Anne Arundel County.⁵⁰⁴ After three days of expert testimony, Schade, the president of TrueVoteMD, attempted to cast doubts about the security of the Diebold machine purchased by the Board of Elections and persuade the Court that, given the findings of the Rubin Report, the machines were purchased in an arbitrary manner.⁵⁰⁵ On September 1, 2004, Judge Joseph P. Manck denied Schade’s request for a preliminary injunction opining that no machine is infallible and all of the experts who testified, even those for the plaintiff, stated that the Diebold machine, despite its flaws, is more secure than replacement paper ballots requested by the plaintiff or the optical scan ballots currently in place.⁵⁰⁶ With regard to the flaws pointed out by the Rubin Report, Judge Manck noted that the Board of Elections had seriously considered all of the recommendations of SAIC and RABA and had implemented most of them.⁵⁰⁷ The issue of electronic voting, Judge Manck opined, “had been thoroughly dissected and studied more in Maryland than any other state.”⁵⁰⁸

The decision of Judge Manck was upheld by the Maryland Court of Appeals just seven weeks before the elections of 2004.⁵⁰⁹ After the 2004 elections were over in MD, 84% of the voters expressed confidence in and praised the Diebold machines and DRE machines in general.⁵¹⁰ Almost the same percentage, however, would like to see some sort of verifiable paper trail though.⁵¹¹ The State Board of Elections received some complaints regarding the implementation of DRE machines, but most of these were attributable to human error rather than any mechanical malfunction.⁵¹² Despite the doomsday scenarios prophesized by the authors of the Rubin Report, nationwide there were accusations of fraud and access problems, just as in the previous elections in 2000, “but *no documented* instances of foul play arising from the use of electronic voting.”⁵¹³ Some technical glitches resulted in lost votes in North Carolina and Georgia, but state officials there claim that these glitches are minor and occur during all state elections.⁵¹⁴ Despite these minor setbacks, most jurisdictions which actually made the switch from paper ballots to DRE machines saw a dramatic decrease in the number of uncounted votes.⁵¹⁵

Even though they were mostly unsuccessful in their quest to delay the implementation of the Diebold machines, the attacks launched by the authors of the Rubin Report and Schade did effectively force the Maryland Board of Elections to take seriously the security threats posed by the adoption of this radically new piece of voting technology and they forced the issue of voter integrity back into the public discourse. On August 15, 2005, the National Science Foundation at the Johns Hopkins University announced a new \$7.5 million grant for the creation of an electronic voting research center called A.C.C.U.R.A.T.E., A Center for Correct Usable Reliable Auditable and Transparent Elections.⁵¹⁶

Conclusions

By examining the similarities between Mayor Jackson's fight for voting machines in 1937 and the adoption of the DRE machine in 2001-2003, two striking conclusions seem to effortlessly make themselves apparent. Firstly, through the utilization of the technological innovations available to them at the time, both the Mayor and City Council of Baltimore in 1937 and the State Board of Elections in 2001-2003 were able to drastically improve not only the efficiency of their voting processes but the fairness and security of them as well. In both instances, these public officials were faced with an inefficient, expensive, and outdated method of voting. Each party, some seventy years apart, saw an answer in the promises of technology. In the case of Mayor Jackson, Baltimore City was rapidly changing as the industrial revolution swept through the nation and the country experienced exponential population growth. A substantially more efficient method of voting was necessary, and Mayor Jackson and the General Assembly turned to voting machines. This technology drastically cut down on the costs of vote counting and ensured a level of security far beyond that of a paper ballot. As stated above, this system is still in use today. Likewise, when faced with an inefficient and proven unworkable voting system in 2000, the State Board of Elections with the help of the General Assembly sought out answers in the form of new voting technology. The DRE machines decided upon, despite their inherent flaws, will undoubtedly grant greater access to disabled and non-English speaking voters, decrease government spending associated with elections, and, now it appears, effectively increase the accuracy of elections. As such, it appears as though societies should continue to utilize the technological advancements available to them to secure the freest, most secure, and most efficient election processes possible.

Secondly, the tireless efforts of Norris, Shoup, and the opponents of the DRE voting machines, although unsuccessful in their various ends, should not be slighted. Throughout the century, it appears as though law suits, whether successful or not, have been extremely useful in curbing arbitrariness and undue haste of, perhaps, overzealous political officials. During the 1937 battle for voting machines, the constant attacks of Norris and Shoup, although unsuccessful, resulted in a liberalization of the constitutional requirement of voting “by ballot,” and, thus, the very future of the use of vote recognition technology, and they forced the constitutional question of the write-in before the high court. Likewise, the constant legal arguments and public haranguing of Rubin and Schade, while unsuccessful in enjoining the State from procuring the DRE machines in 2004, did manage to greatly step up the security of the technologically innovative machines, possibly prevent fraudulent activity during the 2004 elections, and force the issue of election integrity back into the public discourse. Thus, it would also appear that law suits by those opposed to the rapid utilization of voting technology, even when unsuccessful, can be an effective tool towards ensuring the safety of the vote.

¹ WEBSTER’S NEW WORLD DICTIONARY OF QUOTABLE DEFINITIONS 593 (Eugene E. Brussell ed., Prentice Hall 1988) (1970).

² 1937 MD. LAWS CH. 94 § 1.

³ 192 A. 531, 536 (Md. 1937).

⁴ 195 A. 576, 580 (Md. 1937).

⁵ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, 189 (1992) (citing ROBERT J. DINKIN, VOTING IN PROVINCIAL AMERICA: A STUDY OF ELECTIONS IN THE THIRTEEN COLONIES, 1689-1776 (1977)).

⁶ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, 189-190 (1992).

⁷ Id. at 190.

⁸ MD. CONST. of 1776, art. II (1776) (emphasis added).

⁹ *Norris v. Mayor and City Council of Baltimore*, 192 A. 531, 536 (Md. 1937).

¹⁰ Id.

¹¹ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, 190 (1992).

¹² Id. at 191.

¹³ Id. at 190 (citing ROBERT J. DINKIN, VOTING IN PROVINCIAL AMERICA: A STUDY OF ELECTIONS IN THE THIRTEEN COLONIES, 1689-1776 137 (1977)).

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- ¹⁴ Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711, 1718 (2005).
- ¹⁵ *Norris v. Mayor and City Council of Baltimore*, 192 A. 531, 536 (Md. 1937).
- ¹⁶ *Id.*
- ¹⁷ *Id.*
- ¹⁸ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, 191 (1992).
- ¹⁹ Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711, 1718 (2005).
- ²⁰ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, 191-192 (1992).
- ²¹ *Id.*
- ²² Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711, 1718 (2005).
- ²³ *Id.*
- ²⁴ *Id.* at 1719.
- ²⁵ *Id.*
- ²⁶ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, n.40 (1992).
- ²⁷ *Id.* at 192.
- ²⁸ *Id.* at 192.
- ²⁹ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Declare Act and Ordinance Providing for Voting Machines Void, Box 626 File No. 67007 (BCA RG 13-2-67007)*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/msa_sc_5458_51_1545.pdf at 228.
- ³⁰ 1892 MD. LAWS CH. 236.
- ³¹ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, 194 (1992).
- ³² Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711, 1719 (2005).
- ³³ *Id.*
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 185, n. 47 (1992).
- ³⁷ *Id.*
- ³⁸ *Norris v. Mayor and City Council of Baltimore*, 192 A. 531, 536 (Md. 1937).
- ³⁹ *Id.* at 534.
- ⁴⁰ *Id.* at 534.
- ⁴¹ *Long Fight Won*, (editorial), THE SUN, BALT., Morning Ed., May 5, 1937, at 12.
- ⁴² FREDERICK PHILIP STIEFF, (compiler), THE GOVERNMENT OF A GREAT AMERICAN CITY 26 (1935).
- ⁴³ *Id.* at 26-27.
- ⁴⁴ *Long Fight Won*, (editorial), THE SUN, BALT., Morning Ed., May 5, 1937, at 12.
- ⁴⁵ *Id.*
- ⁴⁶ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Declare Act and Ordinance Providing for Voting Machines Void, Box 626 File No. 67007 (BCA RG 13-2-67007)*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/msa_sc_5458_51_1545.pdf at 241.
- ⁴⁷ *Vote Reform Bills Approved by Nice*, THE SUN, BALT., Morning Ed., Mar. 25, 1937, at 6.
- ⁴⁸ 1935 MD. LAWS CH. 532 §§ 224B, 224C, 224D.
- ⁴⁹ *Norris v. Mayor and City Council of Baltimore*, 192 A. 531, 534 (Md. 1937).
- ⁵⁰ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Declare Act and Ordinance Providing for Voting Machines Void, Box 626 File No. 67007 (BCA RG 13-2-67007)*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/msa_sc_5458_51_1545.pdf at 128.

⁵¹ *Vote Reform Bills Approved by Nice*, THE SUN, BALT., Morning Ed., Mar. 25, 1937, at 6.

⁵² Id.

⁵³ Id.

⁵⁴ FRANK F. WHITE, JR., THE GOVERNORS OF MARYLAND 1777-1970 265 (1970).

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id. at 266.

⁵⁸ Id. at 267.

⁵⁹ Id. at 267.

⁶⁰ Id. at 265.

⁶¹ Id. at 268.

⁶² Id. at 268.

⁶³ Id. at 268.

⁶⁴ 1937 MD. LAWS CH. 94 § 1.

⁶⁵ Id. (emphasis added).

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id. at § 4.

⁶⁹ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Declare Act and Ordinance Providing for Voting Machines Void, Box 626 File No. 67007 (BCA RG 13-2-67007)*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/msa_sc_5458_51_1545.pdf at 43.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Archives of Maryland (Biographical Series), *Howard W. Jackson (1877-1960)*, <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/012400/012487/html/12487bio.html> (May 20, 2002).

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ FREDERICK PHILIP STIEFF, (compiler), THE GOVERNMENT OF A GREAT AMERICAN CITY 26 (1935).

⁸¹ Id.

⁸² Id.

⁸³ BALT. CITY, MD Ordinance 694 (Apr. 13, 1937).

⁸⁴ Id. at § 2.

⁸⁵ MD. CONST. art. XI, § 7 (“No debt except as hereinafter provided in this section, shall be created by the Mayor and City Council of Baltimore ... unless the debt or credit is authorized by an ordinance of the Mayor and City Council of Baltimore, submitted to the legal voters of the City of Baltimore”).

⁸⁶ Id. (“The Mayor and City Council may, temporarily, borrow any amount of money to meet any deficiency in the City treasury, and may borrow any amount at any time to provide for any emergency arising from the necessity of maintaining the police, or preserving the health, safety and sanitary condition of the City”) (emphasis added).

⁸⁷ BALTIMORE COURTHOUSE AND LAW MUSEUM FOUNDATION, HISTORIES OF THE BENCH AND BAR OF BALTIMORE CITY 25 (1997) (After the adoption of the 1867 Maryland Constitution, the newly created Circuit Courts of Baltimore, 1 and 2, had exclusive jurisdiction in all equity cases. Here, an injunction was being sought).

⁸⁸ *Vote Machines Act Attacked in Court*, THE SUN, BALT., Morning Ed., Apr. 14, 1937, at 11.

⁸⁹ BALTIMORE COURTHOUSE AND LAW MUSEUM FOUNDATION, HISTORIES OF THE BENCH AND BAR OF BALTIMORE CITY 25 (1997).

⁹⁰ Archives of Maryland (Biographical Series), *Samuel K. Dennis (1874-1953)*, <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/012800/012847/html/12847bio.html> (October 11, 2005).

⁹¹ Id.

⁹² THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 22 (2000).

⁹³ Archives of Maryland (Biographical Series), *Samuel K. Dennis (1874-1953)*, <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/012800/012847/html/12847bio.html> (October 11, 2005).

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 22 (2000).

¹⁰⁰ Archives of Maryland (Biographical Series), *Samuel K. Dennis (1874-1953)*, <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/012800/012847/html/12847bio.html> (October 11, 2005).

¹⁰¹ *Vote Machines Act Attacked in Court*, THE SUN, BALT., Morning Ed., Apr. 14, 1937, at 11.

¹⁰² MSA SC 5503-38-1, *COURT OF APPEALS (Records and Briefs) October Term 1937 No. 9 [MSA S1733-995, 1/66/3/148]*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/sc5458_000051_001551.pdf at 4.

¹⁰³ Charles G. Page, *Latent Equities in Maryland*, 1 MD L. REV. 1 n.1 (1936).

¹⁰⁴ Id.

¹⁰⁵ MSA SC 5503-45-2, *Attorneys of the Supreme Bench of Bal. City 1867-; Admissions to the Bar (Nu-Pe)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000141/000000/000002/restricted/5603-5-9-0014.pdf> at 15.

¹⁰⁶ *News of the Law School*, 1 MD L. REV. 57 (1936).

¹⁰⁷ Id.

¹⁰⁸ Charles G. Page, *Latent Equities in Maryland*, 1 MD L. REV. 1 (1936).

¹⁰⁹ *News of the Law School*, 1 MD L. REV. 57 (1936).

¹¹⁰ A search performed on HeinOnline for the author “Charles G. Page” in every law review and journal contained in its database yielded no additional results for the time period 1920-1960.

¹¹¹ MSA SC 5503-38-1, *COURT OF APPEALS (Records and Briefs) October Term 1937 No. 9 [MSA S1733-995, 1/66/3/148]*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/sc5458_000051_001551.pdf at 7-11.

¹¹² Id.

¹¹³ *Vote Machines Act Attacked in Court*, THE SUN, BALT., Morning Ed., Apr. 14, 1937, at 11.

¹¹⁴ Id.

¹¹⁵ MSA SC 5503-38-1, *COURT OF APPEALS (Records and Briefs) October Term 1937 No. 9 [MSA S1733-995, 1/66/3/148]*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/sc5458_000051_001551.pdf at 15.

¹¹⁶ MATTHEW PAGE ANDREWS, *TERCENTENARY HISTORY OF MARYLAND*, Vol. II. 338 (1922).

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

¹²² Id.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ MSA SC 5503-38-1, *COURT OF APPEALS (Records and Briefs) October Term 1937 No. 9 [MSA S1733-995, 1/66/3/148]*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/sc5458_000051_001551.pdf at 16.

¹²⁸ MSA SC 5503-45-2, *Attorneys of the Supreme Bench of Bal. City 1867-; Admissions to the Bar (Ba-Bo)*,

<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000141/000000/000002/restricted/5603-5-9-0002.pdf> at 20.

¹²⁹ 20 INS. COUNS. J. 127 (1953).

¹³⁰ 21 INS. COUNS. J. 126 (1954).

¹³¹ Brown appears in the membership listings of the International Association of Insurance Counsel for 1955, 22 INS. COUNS. J. 201 (1955), and 1956, 23 INS. COUNS. J. vi (1956), his name is not present in any subsequent journals.

¹³² MSA SC 5503-38-1, *William S. Norris v. City, Bill to Declare Act and Ordinance Providing for Voting Machines Void*, Box 626 File No. 67007 (BCA RG 13-2-67007),

http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/msa_sc_5458_51_1545.pdf at 379.

¹³³ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc.*, Box 640 File No. 68404 (BCA RG 13-2-68404),

<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 112.

¹³⁴ MSA SC 5503-38-1, *COURT OF APPEALS (Records and Briefs) October Term 1937 No. 9 [MSA S1733-995, 1/66/3/148]*,

http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/sc5458_000051_001551.pdf at 15 at 18.

¹³⁵ *Id.* at 66-67 (Brown only personally appeared and argued the issues relating to the legislative “finding” behind the emergency status of the Act and Ordinance).

¹³⁶ *Id.* at 6-7.

¹³⁷ *Id.* at 6-7.

¹³⁸ *Id.* at 97.

¹³⁹ *Id.* at 110.

¹⁴⁰ *Id.* at 56.

¹⁴¹ 293 US 194, 210 (1934).

¹⁴² 264 US 543, 547 (1924).

¹⁴³ *Id.* at 51.

¹⁴⁴ *Id.* at 51.

¹⁴⁵ *Id.* at 79.

¹⁴⁶ *Id.* at 79.

¹⁴⁷ *Id.* at 56.

¹⁴⁸ *Id.* at 21.

¹⁴⁹ 131 A. 801 (1925).

¹⁵⁰ *Id.* at 22.

¹⁵¹ *Id.* at 22.

¹⁵² *Id.* at 22.

¹⁵³ *Id.* at 23.

¹⁵⁴ *Id.* at 40.

¹⁵⁵ *Id.* at 41.

¹⁵⁶ *Id.* at 41.

¹⁵⁷ *Id.* at 45.

¹⁵⁸ *Id.* at 45.

¹⁵⁹ *Id.* at 99 (emphasis in the original).

¹⁶⁰ *Id.* at 104.

¹⁶¹ *Id.* at 104.

¹⁶² *Id.* at 24.

¹⁶³ *Id.* at 23.

¹⁶⁴ *Id.* at 24 (emphasis added).

¹⁶⁵ *Id.* at 23.

¹⁶⁶ *Id.* at 11.

¹⁶⁷ *Id.* at 11.

¹⁶⁸ *Id.* at 105.

¹⁶⁹ *Id.* at 105.

¹⁷⁰ *Id.* at 48.

¹⁷¹ *Id.* at 48.

¹⁷² 289 US 36 (1933)

¹⁷³ Id. at 107.
¹⁷⁴ Id. at 107.
¹⁷⁵ 102 A. 751 (1917).
¹⁷⁶ Id. at 24.
¹⁷⁷ Id. at 24.
¹⁷⁸ Id. at 25.
¹⁷⁹ Id. at 9-10.
¹⁸⁰ Id. at 60.
¹⁸¹ Id. at 60.
¹⁸² Id. at 29.
¹⁸³ Id. at 29.
¹⁸⁴ Id. at 18.
¹⁸⁵ Id. at 18.
¹⁸⁶ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Declare Act and Ordinance Providing for Voting Machines Void, Box 626 File No. 67007 (BCA RG 13-2-67007)*, http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/msa_sc_5458_51_1545.pdf at 290 (emphasis added).
¹⁸⁷ Id.
¹⁸⁸ *Norris v. Mayor and City Council of Baltimore*, 192 A. 531 (Md. 1937).
¹⁸⁹ Id.
¹⁹⁰ Archives of Maryland (Biographical Series), *Carroll T. Bond (1873-1943)*, <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/001600/001630/html/1630bio.html> (August 9, 2005).
¹⁹¹ Id.
¹⁹² Id.
¹⁹³ Id.
¹⁹⁴ Id.
¹⁹⁵ Id.
¹⁹⁶ Archives of Maryland (Biographical Series), *Carroll T. Bond (1873-1943)*, <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/001600/001630/html/1630bio.html> (August 9, 2005).
¹⁹⁷ Id.
¹⁹⁸ Id.
¹⁹⁹ Archives of Maryland (Biographical Series), *T. Scott Offutt (1872-1943)*, <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/014400/014462/html/14462bio.html> (November 4, 2005).
²⁰⁰ Id.
²⁰¹ Id.
²⁰² Id.
²⁰³ Id.
²⁰⁴ Id.
²⁰⁵ 9 A.B.A. J. 645 (1923).
²⁰⁶ John S. Strahorn, Jr., *Probation, Parole, and Legal Rules of Guilt*, 26 AM. INST. CRIM. L. & CRIMINOLOGY 177 (1935-1936).
²⁰⁷ T. Scott Offutt, *The Growth and Trend of the Constitution*, 11 CONST. REV. 210, 211 (1927).
²⁰⁸ *Norris v. Mayor and City Council of Baltimore*, 192 A. 531, 535 (Md. 1937).
²⁰⁹ Id. (emphasis added).
²¹⁰ Id. at 536.
²¹¹ Id. at 535.
²¹² Id. at 535.
²¹³ Id. at 538.
²¹⁴ Id. at 543.
²¹⁵ Id. at 543.
²¹⁶ Id. at 543.
²¹⁷ Id. at 540.
²¹⁸ Id. at 544.

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- ²¹⁹ *Long Fight Won*, THE SUN, BALT., Morning Ed., May 27, 1937, at 12.
- ²²⁰ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 364.
- ²²¹ *Long Fight Won*, THE SUN, BALT., Morning Ed., May 27, 1937, at 12.
- ²²² *Id.*
- ²²³ *To Discuss Buying of Voting Machines*, THE SUN, BALT., Morning Ed., May 27, 1937, at 5.
- ²²⁴ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 61.
- ²²⁵ *To Discuss Buying of Voting Machines*, THE SUN, BALT., Morning Ed., May 27, 1937, at 5.
- ²²⁶ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 107.
- ²²⁷ *To Open Bids Today on Voting Machines*, THE SUN, BALT., Morning Ed., Aug. 11, 1937, at 4.
- ²²⁸ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 218-306.
- ²²⁹ *Id.* at 364.
- ²³⁰ *Id.* at 108-109.
- ²³¹ *Id.* at 114.
- ²³² *Id.* at 114.
- ²³³ *Id.* at 114.
- ²³⁴ *Id.* at 114-115.
- ²³⁵ *Id.* at 122.
- ²³⁶ MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 98.
- ²³⁷ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 190-191 (1992).
- ²³⁸ *Norris v. Mayor and City Council of Baltimore*, 195 A. 576, 584 (Md. 1937) (emphasis added).
- ²³⁹ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 190-191 (1992).
- ²⁴⁰ *Id.* at 190.
- ²⁴¹ *Id.* at 192-193.
- ²⁴² 1890 MD. LAWS CH. 538, § 137.
- ²⁴³ *Norris v. Mayor and City Council of Baltimore*, 195 A. 576, 585 (Md. 1937).
- ²⁴⁴ *Id.*
- ²⁴⁵ *Id.*
- ²⁴⁶ *Id.*
- ²⁴⁷ The opinion delivered by Willis R. Jones on the matter is of note considering his later role as counsel for Hattie B. Daly in the second round of voting machine cases and his arguments for the constitutional requirement of the write-in vote.
- ²⁴⁸ *Norris v. Mayor and City Council of Baltimore*, 195 A. 576, 585 (Md. 1937).
- ²⁴⁹ 21 OPINIONS OF THE ATTY GENERAL 354-356 (1936).
- ²⁵⁰ *Litigation Begun on Voting Machines*, THE SUN, BALT., Morning Ed., Dec. 21, 1937, at 5.
- ²⁵¹ David L. Permut & Joseph P. Verdon, *Protecting the American Tradition of Write-in Voting after Burdick v. Takushi*, 9 J.L. & POL. 192-194 (1992).
- ²⁵² MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 126 (the official date of recording is August 13, 1937, but the Voting Machine Board received the actual opinion from O'Connor on July 24th, and, thus, knowledge of its contents).
- ²⁵³ 22 OPINIONS OF THE ATTY GENERAL 291-293 (1937).

²⁵⁴ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 331.

²⁵⁵ *Id.* at 329-357.

²⁵⁶ *Id.* at 331.

²⁵⁷ *Id.* at 343.

²⁵⁸ *Id.* at 345 (emphasis added).

²⁵⁹ *Id.* at 345.

²⁶⁰ *Id.* at 345.

²⁶¹ *To Open Bids Today on Vote Machines*, THE SUN, BALT., Morning Ed., Aug. 11, 1937, at 22.

²⁶² *Id.* at 22, 4.

²⁶³ “*Non-Political*” *Outing to Tolchester*, THE SUN, BALT., Morning Ed., Aug. 11, 1937, at 22.

²⁶⁴ *To Open Bids Today on Vote Machines*, THE SUN, BALT., Morning Ed., Aug. 11, 1937, at 4.

²⁶⁵ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 205.

²⁶⁶ *Id.* at 205-206.

²⁶⁷ *Id.* at 206.

²⁶⁸ *Id.* at 206.

²⁶⁹ *Id.* at 206.

²⁷⁰ *Id.* at 206.

²⁷¹ Willis R. Jones was the former Deputy Attorney General who published the 1924 write-in opinion discussed *supra* at p. 46.

²⁷² MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 207.

²⁷³ *Id.*

²⁷⁴ *Id.* at 207-208.

²⁷⁵ *To Consider Bids on Vote Machines*, THE SUN, BALT., Morning Ed., Aug. 22, 1937, at 3.

²⁷⁶ MATTHEW PAGE ANDREWS, *TERCENTENARY HISTORY OF MARYLAND*, Vol. II. 696 (1922).

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *To Consider Bids on Vote Machines*, THE SUN, BALT., Morning Ed., Aug. 22, 1937, at 3.

²⁸³ MATTHEW PAGE ANDREWS, *TERCENTENARY HISTORY OF MARYLAND*, Vol. II. 696 (1922).

²⁸⁴ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 213.

²⁸⁵ *Id.*

²⁸⁶ *City Officials Hear Rivals on Vote Machines*, THE SUN, BALT., Morning Ed., Aug. 25, 1937, at 22.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 48.

²⁹³ *Id.*

²⁹⁴ *City Officials Hear Rivals on Vote Machines*, THE SUN, BALT., Morning Ed., Aug. 25, 1937, at 22.

²⁹⁵ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*, <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 201.

²⁹⁶ Id.
²⁹⁷ Id.
²⁹⁸ Id. at 201-202.
²⁹⁹ Id. at 202.
³⁰⁰ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 9.
³⁰¹ Id.
³⁰² Id.
³⁰³ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 194.
³⁰⁴ Id. at 195.
³⁰⁵ Id. at 195.
³⁰⁶ Id. at 197.
³⁰⁷ Id. at 197.
³⁰⁸ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 13.
³⁰⁹ MSA SC 5503-38-1, *BALTIMORE CITY CIRCUIT COURT NO. 2 (Equity Papers A, Miscellaneous) 1937, Box 1970 File No. 22628A [MSA T56-1951, 3/24/10/18]*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1536.pdf> at 17.
³¹⁰ MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 85.
³¹¹ Id. at 137-138.
³¹² Archives of Maryland (Historical List-Attorneys General, 1777-), *Isaac Lobe Straus (1907-1911)*,
<http://www.mdarchives.state.md.us/msa/speccol/sc2600/sc2685/html/attygen.html> (July 13, 2005)
³¹³ The Daily Record, Celebrating a Century of Service 36 (2000).
³¹⁴ Id.
³¹⁵ Id.
³¹⁶ Archives of Maryland (Historical List-Attorneys General, 1777-), *Isaac Lobe Straus (1907-1911)*,
<http://www.mdarchives.state.md.us/msa/speccol/sc2600/sc2685/html/attygen.html> (July 13, 2005)
³¹⁷ THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 36 (2000).
³¹⁸ MATTHEW PAGE ANDREWS, TERCENTENARY HISTORY OF MARYLAND, Vol. III. 162 (1922).
³¹⁹ Id.
³²⁰ Id.
³²¹ THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 28 (2000).
³²² MATTHEW PAGE ANDREWS, TERCENTENARY HISTORY OF MARYLAND, Vol. III. 162 (1922).
³²³ THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 28 (2000).
³²⁴ MATTHEW PAGE ANDREWS, TERCENTENARY HISTORY OF MARYLAND, Vol. III. 163 (1922).
³²⁵ THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 28 (2000).
³²⁶ Id.
³²⁷ MATTHEW PAGE ANDREWS, TERCENTENARY HISTORY OF MARYLAND, Vol. II. 95 (1922).
³²⁸ Id.
³²⁹ Id.
³³⁰ Id.
³³¹ Id.
³³² Id.
³³³ Id.
³³⁴ Id.
³³⁵ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Restrain the City from Letting Contract to the Automatic Voting Machine Co., Box 633 File No. 67728 (BCA RG 13-2-67728)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1546.pdf> at 3.
³³⁶ Paul F. Due and Bird H. Bishop, *Automobile Right of Way in Maryland*, 11 MD. L. REV. 159 (1950).

³³⁷ THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 63 (2000).
³³⁸ Id.
³³⁹ Id.
³⁴⁰ *News of the Law School*, 7 MD. L. REV. 232 (1942-1943).
³⁴¹ THE DAILY RECORD, CELEBRATING A CENTURY OF SERVICE 64 (2000).
³⁴² 25 INS. COUNS. J. 389 (1958).
³⁴³ 26 INS. COUNS. J. 444 (1959).
³⁴⁴ 47-85 (While Norris filed his original complaint on September 9, 1937, the day immediately following the awarding of the voting machine contract to Automatic, Daly would not file her complaint until September 17th).
³⁴⁵ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 13
³⁴⁶ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 16;
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<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 95.
³⁴⁷ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 19;
MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 96.
³⁴⁸ MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 96.
³⁴⁹ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Restrain the City from Letting Contract to the Automatic Voting Machine Co., Box 633 File No. 67728 (BCA RG 13-2-67728)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1546.pdf> at 150;
MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 108. .
³⁵⁰ MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 108.
³⁵¹ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Restrain the City from Letting Contract to the Automatic Voting Machine Co., Box 633 File No. 67728 (BCA RG 13-2-67728)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1546.pdf> at 172-173).
³⁵² Id. at 173.
³⁵³ Id. at 172.
³⁵⁴ Id. at 172.
³⁵⁵ Id. at 159-160.
³⁵⁶ Id. at 159.
³⁵⁷ Id. at 160.
³⁵⁸ Id. at 174.
³⁵⁹ Id. at 157.
³⁶⁰ MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 11.
³⁶¹ Id. at 12.
³⁶² Id. at 130-347.
³⁶³ Id. at 324.
³⁶⁴ Id. at 325.

³⁶⁵ Id. at 325.

³⁶⁶ Id. at 325.

³⁶⁷ Id. at 325-326

³⁶⁸ MSA SC 5503-38-1, *BALTIMORE CITY CIRCUIT COURT NO. 2 (Equity Papers A, Miscellaneous) 1937, Box 1970 File No. 22628A [MSA T56-1951, 3/24/10/18]*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1536.pdf> at 24.

³⁶⁹ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 16-19; MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 96-98.

³⁷⁰ MSA SC 5503-38-1, *Hattie B. Daly v. City, Bill to Declare Contract for Voting Machines Void, Box 622 File No. 67780 (BCA RG 13-2-67780)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1547.pdf> at 193.

³⁷¹ Id. at 325.

³⁷² Id. at 212.

³⁷³ Id. at 210, 212.

³⁷⁴ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Restrain the City from Letting Contract to the Automatic Voting Machine Co., Box 633 File No. 67728 (BCA RG 13-2-67728)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1546.pdf> at 150-151.

³⁷⁵ Id. at 150-151.

³⁷⁶ Id. at 151.

³⁷⁷ Id. at 151.

³⁷⁸ Id. at 151.

³⁷⁹ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 183.

³⁸⁰ Id.

³⁸¹ MSA SC 5503-38-1, *William S. Norris v. City, Bill to Declare Act and Ordinance Providing for Voting Machines Void, Box 626 File No. 67007 (BCA RG 13-2-67007)*,
http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/msa_sc_5458_51_1545.pdf at 225.

³⁸² Id.

³⁸³ Id.

³⁸⁴ *Vote Machine Contract Is Held Illegal*, THE SUN, BALT., Morning Ed., Oct. 10, 1937, at 22.

³⁸⁵ *Vote Machine Case Due for Early Appeal*, THE SUN, BALT., Morning Ed., Oct. 11, 1937, at 16.

³⁸⁶ MSA SC 5503-38-1, *BALTIMORE CITY CIRCUIT COURT NO. 2 (Equity Papers A, Miscellaneous) 1937, Box 1970 File No. 22628A [MSA T56-1951, 3/24/10/18]*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1536.pdf> at 17.

³⁸⁷ Id. at 21.

³⁸⁸ Id. at 21.

³⁸⁹ Id. at 22.

³⁹⁰ Id. at 22.

³⁹¹ Id. at 25.

³⁹² Id. at 24.

³⁹³ Id. at 24.

³⁹⁴ Id. at 25-26.

³⁹⁵ Id. at 28.

³⁹⁶ Id. at 25, 33.

³⁹⁷ Id. at 34.

³⁹⁸ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*,

<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 184.³⁹⁹ *Jackson v. Norris*, 195 A. 576 (Md. 1937).

⁴⁰⁰ MSA SC 5503-38-1, *BALTIMORE CITY CIRCUIT COURT NO. 2 (Equity Papers A, Miscellaneous) 1937, Box 1970 File No. 22628A [MSA T56-1951, 3/24/10/18]*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1536.pdf> at 38.

⁴⁰¹ Archives of Maryland (Biographical Series), *F. Neal Parke, (1871-1955)*,
<http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/014400/014463/html/14463bio.html>
(November 4, 2005).

⁴⁰² MATTHEW PAGE ANDREWS, *TERCENTENARY HISTORY OF MARYLAND*, Vol. II. 84 (1922).

⁴⁰³ *Id.* at 84-85.

⁴⁰⁴ *Id.* at 88.

⁴⁰⁵ *Id.* at 88.

⁴⁰⁶ *Id.* at 88.

⁴⁰⁷ *Id.* at 88.

⁴⁰⁸ *Id.* at 88.

⁴⁰⁹ *Id.* at 88.

⁴¹⁰ *Id.* at 88.

⁴¹¹ *Id.* at 89.

⁴¹² *Id.* at 89.

⁴¹³ Archives of Maryland (Biographical Series), *F. Neal Parke, (1871-1955)*,
<http://www.mdarchives.state.md.us/megafile/msa/speccol/sc3500/sc3520/014400/014463/html/14463bio.html>
(November 4, 2005).

⁴¹⁴ *Jackson v. Norris*, 195 A. 576, 580 (Md. 1937).

⁴¹⁵ *Id.*

⁴¹⁶ *Id.* at 581.

⁴¹⁷ *Id.* at 583.

⁴¹⁸ *Id.* at 583.

⁴¹⁹ *Id.* at 584.

⁴²⁰ *Id.* at 585.

⁴²¹ *Id.* at 586.

⁴²² *Id.* at 586.

⁴²³ *Id.* at 588.

⁴²⁴ *Id.* at 590.

⁴²⁵ *Id.* at 590.

⁴²⁶ *Vote Machine Appeal Case Lost by City*, THE SUN, BALT., Morning Ed., Dec. 8, 1937, at 26.

⁴²⁷ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 91, 93.

⁴²⁸ MSA SC 5503-38-1, *Hattie Daly and William Norris v. Mayor and City Council, Voting Machines, Box 637 File No. 68164A (BCA RG 13-2-68164A)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1548.pdf> at 346.

⁴²⁹ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc., Box 640 File No. 68404 (BCA RG 13-2-68404)*,
<http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 307.

⁴³⁰ *Id.* at 337.

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ *Id.* at 358.

⁴³⁵ *Id.* at 358.

⁴³⁶ *Id.* at 367.

⁴³⁷ *Id.* at 367-369.

⁴³⁸ *Id.* at 368.

⁴³⁹ *Id.* at 370.

⁴⁴⁰ Id. at 371.

⁴⁴¹ Id. at 371.

⁴⁴² Id. at 371-372.

⁴⁴³ Id. at 372.

⁴⁴⁴ Id. at 372.

⁴⁴⁵ Id. at 373.

⁴⁴⁶ *New Action Denied on Vote Machines*, THE SUN, BALT., Morning Ed., Dec. 16, 1937, at 22.

⁴⁴⁷ Id.

⁴⁴⁸ Id.

⁴⁴⁹ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc.*, Box 640 File No. 68404 (BCA RG 13-2-68404), <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 98.

⁴⁵⁰ *Suit Requests new Bids on Vote Machines*, THE SUN, BALT., Morning Ed., Dec. 16, 1937, at 22.

⁴⁵¹ Id.

⁴⁵² *Vote Machine Case Decided in City's Favor*, THE SUN, BALT., Morning Ed., Jan. 11, 1937, at 20.

⁴⁵³ MSA SC 5503-38-1, *Opinion - Power of the voting machine board to use loan funds to provide a storage place for voting machines*, Box 639 File No. 68402 (BCA RG 13-2-68402), <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1549.pdf> at 27.

⁴⁵⁴ *Voting Machines Puzzle Electorate No Longer*, THE SUN, BALT., Morning Ed., Nov. 9, 1938, at 3.

⁴⁵⁵ Id.

⁴⁵⁶ Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711, 1719 (2005).

⁴⁵⁷ MSA SC 5503-38-1, *General correspondence on voting machine cases, contract, minutes of the board, specifications, etc.*, Box 640 File No. 68404 (BCA RG 13-2-68404), <http://ecplio.net/megafile/msa/speccol/sc5300/sc5339/000143/000000/000006/restricted/5458-51-1550.pdf> at 196.

⁴⁵⁸ Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711, 1717-1718 (2005).

⁴⁵⁹ Id. at 1718.

⁴⁶⁰ Id. at 1719.

⁴⁶¹ Id. at 1720.

⁴⁶² Id. at 1721.

⁴⁶³ Id. at 1721.

⁴⁶⁴ Id. at 1722.

⁴⁶⁵ Id. at 1722.

⁴⁶⁶ Id. at 1723.

⁴⁶⁷ Id. at 1723.

⁴⁶⁸ Id. at 1723.

⁴⁶⁹ Id. at 1723.

⁴⁷⁰ Id. at 1713.

⁴⁷¹ Id. at 1713.

⁴⁷² Id. at 1723-1724

⁴⁷³ Id. at 1716.

⁴⁷⁴ Id. at 1736.

⁴⁷⁵ Id. at 1736.

⁴⁷⁶ Id. at 1736.

⁴⁷⁷ Id. at 1736.

⁴⁷⁸ Id. at 1793.

⁴⁷⁹ Id. at 1731.

⁴⁸⁰ Maryland State Department of Elections, *State of Maryland Diebold AccuVote-TS Voting System Security Action Plan, September 23, 2003* (updated on November 26, 2003), http://www.elections.state.md.us/pdf/voting_system_security_action_plan.pdf at 3.

⁴⁸¹ Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 FORDHAM L. REV. 1711, 1731 (2005).

⁴⁸² Id. at 1733.

⁴⁸³ Maryland State Department of Elections, *State of Maryland Diebold AccuVote-TS Voting System Security Action Plan, September 23, 2003* (updated on November 26, 2003), http://www.elections.state.md.us/pdf/voting_system_security_action_plan.pdf at 3.

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⁴⁸⁵ Id.

⁴⁸⁶ Tadayoshi Kohno, Adam Stubblefield, Aviel D. Rubin, & Dan S. Wallach, *Analysis of an Electronic Voting System*, <http://avirubin.com/vote.pdf> at 1.

⁴⁸⁷ Id.

⁴⁸⁸ Id. (emphasis added)

⁴⁸⁹ Maryland State Department of Elections, *State of Maryland Diebold AccuVote-TS Voting System Security Action Plan, September 23, 2003* (updated on November 26, 2003), http://www.elections.state.md.us/pdf/voting_system_security_action_plan.pdf at 4.

⁴⁹⁰ Science Applications International Corporation, *State of Maryland Department of Budget and Management, Statewide Security Support IT Security Certification and Accreditation Guidelines, October 25, 2003*, <http://www.dbm.maryland.gov/catalog/opendoc.asp?UserID=2&ID=313005>.

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⁴⁹² Id. at 3.

⁴⁹³ Id. at 3.

⁴⁹⁴ Id. at 3.

⁴⁹⁵ Id. at 4.

⁴⁹⁶ Maryland State Department of Elections, *State of Maryland Diebold AccuVote-TS Voting System Security Action Plan, September 23, 2003* (updated on November 26, 2003), http://www.elections.state.md.us/pdf/voting_system_security_action_plan.pdf at 4.

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⁴⁹⁸ *Letter from Linda H. Lamone to James Dipaula of September 23, 2003*, http://www.elections.state.md.us/pdf/voting_system_cover_letter.pdf at 1.

⁴⁹⁹ RABA Technologies, LLC, *Trusted Agent Report Diebold AccuVote-TS Voting System*, http://www.raba.com/press/TA_Report_AccuVote.pdf at 3.

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⁵⁰¹ Id. at 8.

⁵⁰² Id. at 15.

⁵⁰³ Id. at 22.

⁵⁰⁴ *Linda Schade, et al. v. Maryland State Board of Elections, et al.*, (unpublished), <http://news.lp.findlaw.com/hdocs/docs/elections/schadevmd42204cmp.pdf> at 1.

⁵⁰⁵ Id.

⁵⁰⁶ Id. at 7.

⁵⁰⁷ Id. at 3.

⁵⁰⁸ Id. at 6.

⁵⁰⁹ Stephanie Desmon, *Ruling on State Balloting Affirmed*, THE SUN, BALT., Online, <http://www.baltimoresun.com/news/elections/bal-md.diebold15sep15,1,7713940.story?coll=bal-local-headlines>, (Sept. 15, 2004).

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⁵¹² Id.

⁵¹³ Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 Fordham L. Rev. 1711, 1740 (2005) (emphasis added).

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