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Testimony of Fred Nisen

Senate Elections and Constitutional Amendments Committee

Joint Oversight Hearing: Low Voter Turnout

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Good afternoon. My name is Fred Nisen. I am an attorney with Disability Rights California (DRC), an independent, non-profit, statewide organization mandated by the federal government to provide legal services to individuals with disabilities in California regarding their disability, civil, and service rights. Under the Help America Vote Act (HAVA), DRC is charged with ensuring “the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places.”

DRC has five regional offices throughout California. I work out of DRC’s Bay Area Regional Office in Oakland and coordinate our voting-related work.

In a recent study done by researchers at Rutgers University after the November 2012 election, it was revealed that, in California, the voter turnout of voters with disabilities was eight percentage points lower than voters without disabilities. In a report that we have submitted, we have identified barriers that voters with disabilities face at every step of the voting process. This includes voter registration, voter education materials, voting at polling places (including access to the polling place and

accessible voting systems that do not work or are not set up at all), and voting by mail.

Voter registration issues include failure of some election officials and mandated voter registration agencies under the National Voter Registration Act (NVRA) to conduct meaningful, accessible and consistent outreaches to Californians with disabilities about the right to vote, voter registration opportunities and voting options. To address this issue, DRC, in collaboration with the ACLU and the Secretary of State's office have conducted trainings in several counties to mandated voter registration agencies. DRC speaks at these trainings about the right to vote for people with disabilities, as well as provide information about cultural competence regarding disability.

Another best practice to improve voter registration for people with disabilities is for Election officials to conduct outreaches about voter registration and voting process throughout various communities. We know that some counties take the accessible voting systems with them to outreaches to the disability community. This helps make voters with disabilities aware of the equipment and gives them a chance to ask questions about how to use the system before Election Day.

Once a person with disabilities is registered to vote, they must be able to receive the information about election dates and deadlines, ballot contents and where they vote in a format that is accessible to them. Currently, the state and counties both provide voter information in print form and web based. They need to consult with the Voter Accessibility Advisory Committee (VAAC) for the Secretary of State or the particular county about what formats are accessible. Voter educational materials should be beta tested to people with disabilities, especially those who use screen readers to make sure that they are accessible. In addition, they should be written in plain language.

DRC works on a number of county VAAC, as well as the Secretary of State VAAC. Based on our work on the county VAAC, we noted that accessibility compliance varies from 30-60 percent of the polling places are accessible. We understand the challenges that many counties face in finding accessible polling places. However, compliance should be higher.

We are concerned that accessibility is not given enough time in poll worker trainings, giving the impression that accessibility is not priority. One of our

areas of focus in every election season is to train the trainers of poll workers on accessibility issues and about disability etiquette. For the counties that we can make it to, the counties are grateful for our assistance.

Some barriers cannot be avoided but many can be mitigated relatively easy. Some common examples are making sure the accessible entrance is not locked, or that there is accessible parking, or making sure the elevator is not locked. The most common complaints that we get on our Election Day Hotline is that the accessible voting system is not plugged in and set up, or is not working.

The accessible voting system is crucial to allow people with disabilities their right to a private and independent vote as guaranteed by the California Constitution and HAVA. The right to a private and independent vote is very important to everybody including voters with disabilities. For people with manual dexterity impairments, vision impairments, learning disabilities, or intellectual or developmental disabilities, the accessible voting systems may be the only way for them to vote privately and independently. While it is true that a voter with a disability is permitted to have assistance by the poll worker or anyone of his or her choosing (other than their employer), the assistance by another person must be voluntary and not a substitute for an accessible voting system because it forces them to waive the right to a private and independent vote.

The previous Secretary of State had a rule that one, and only one, accessible voting system must be in each in each polling place. Therefore, if the accessible voting system breaks down at a polling place, a voter with disabilities would be forced to come back at least two hours later for the new accessible voting system (if the polls will be still be open and if the voter's schedule allows it) or waive their right to a private and independent vote by allowing someone to mark their ballot. The restriction of one accessible voting system per polling place should be lifted.

VOTE-BY-MAIL

Currently, California allows voters to choose to vote by mail. For people with disabilities, this allows for those who find it most convenient to vote by mail to do so and also allows for those people with disabilities to vote at their polling place and preserve their right to a private and independent

ballot via the accessible voting system. Maintaining this option is essential to preserving the right to a private vote.

There have been a number of proposals to make some, or all elections vote by mail (VBM). Many proposals would include provisions for vote centers where persons could turn in their VBM ballot or cast a ballot. However, it should be kept in mind that travel could sometimes be a serious obstacle to persons with disabilities, so there would have to be numerous vote centers, fully accessible with multiples accessible voting systems.

There a number of ways that counties can ensure that voters with disabilities maintain their right to a private and independent vote in VBM-only elections. When considering how counties can preserve the right to a private and independent vote, it must me noted that “one size fits all” will work in a state with 58 counties that are very diverse, from the urban metropolises of Los Angeles and San Francisco to the rural areas of counties like Nevada and Butte. Counties should convene stakeholders. Possible options include:

Careful Selection of Location of Vote Centers – Many proposals would base the placement of vote centers on population. This would be fine for extremely dense areas such as San Francisco or Los Angeles but would ignore the needs of persons with disabilities in more rural areas. The layout of the county should determine placement. For example, if there are 5,000 people in a 15-mile radius, it would not be helpful if the requirement would be one vote center per 5,000 voters. Also, vote centers should be accessible to public transportation.

Early Voting – Opening vote centers before Election Day, (including the weekend before) would increase the chances of persons with disabilities being able to set up transportation to the vote center.

Mobile Polling Sites – This would allow greater accessibility to rural voters, and ensure that the mobile polling place is equipped with an accessible voting system. It could run either on an appointment basis and/or scheduled times around the community.

E-mail Ballots – Many voters with disabilities would be more likely to vote if a ballot were e-mailed to them in an accessible format. This is not Internet voting. The voter could then mark and print their ballot and mail to the

county election official. As noted in my report, the State of Maryland, pursuant to a federal court order, uses an online ballot marking tool that voters with disabilities can use to mark their “absentee ballot.”

It is crucial that all individuals with disabilities be ensured their right to a private and independent ballot, just like any other voter. In the event of any VBM-only elections, provisions must be made for voters with disabilities who cannot independently and privately mark and cast a ballot.

Thank you for allowing me to testify. Please let me know if you have any questions about my testimony or my report.