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California's protection and advocacy system

**California State Senate Hearing on Barriers to Voter Participation
The Senate Committee on Elections and Constitutional Amendments
Rancho Santiago Community College, Santa Ana
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**Testimony
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About Disability Rights California

Disability Rights California is 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. Disability Rights California is authorized under various federal statutes to ensure the protection and advocacy of Californians with disabilities and is the protection and advocacy system in California. Under the Help America Vote Act of 2002 (HAVA), Disability Rights California 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."¹

Many barriers exist that prevent people with disabilities from fully exercising their right to vote. We believe there are ways to eliminate those barriers so that people with disabilities can have full participation in the electoral process.

¹ 42 U.S.C. § 15461.

Background: Voters with Disabilities

Exercising one's right to vote, as this Legislature has previously stated, is the most fundamental of our rights as citizens.² Embedded in the right to vote, as made express by our state's Constitution, is the right to vote in secret.³ These rights apply equally to adults with disabilities who are California residents and U.S. Citizens.⁴ These rights are strengthened by federal election laws, such as the Help America Vote Act and the Americans with Disabilities Act, which require an accessible, private, and independent voting process and to a lesser extent by California's election statutes which expressly, provide for equal access for individuals who are blind or have visual impairment.

California's population is comprised of approximately 20% adults with disabilities. Among this population are individuals with a vast array of disabilities. These include among others physical, manual dexterity, neurological, developmental, psychiatric, and learning disabilities. We know from our experiences talking to people of all ages and disabilities that exercising their right to vote is of great importance to them. Yet this is not reflected in the percentages of individuals with disabilities that historically vote.

According to a fact sheet developed by Lisa Schur and Douglas Kruse of Rutgers University⁵, the voter turnout rate for people with disabilities in California in the 2008 election was 8.1 percentage points lower than for people without disabilities, which is slightly lower than the national rate of 7 percentage points lower than for people without disabilities. In our experience, the reason for the lower rate of participation by individuals with disabilities is found in the multiple barriers they face registering to vote, obtaining accessible information about upcoming elections, navigating voting systems, getting to and from the polling place, and casting their ballot.

² California Elections Code § 19225(c).

³ California Constitution, Article II, Section 7.

⁴ The only exceptions are Californians who are currently in prison, or have not satisfied the requirements of parole, or whose right to vote has been expressly removed by a judge in connection with, but not solely because of, a Conservatorship.

⁵ http://www.eac.gov/News/docs/fact-sheet-on-disability-and-voter-turnout-in-2008-dr-schur.pdf/attachment_download/file

Ten years have passed since the Help America Vote Act became law but yet, HAVA's promise of equal voting opportunities for people with disabilities has not been achieved in California. Barriers continue to exist for people with disabilities. California can address the disparities and protect the rights of persons with disabilities to a private vote.

Barriers to Participation in the Full Electoral Process

Californians with disabilities face barriers to full voting participation at every step of the process.

Voter Registration

Preparatory steps to voting include having a meaningful process by which to register to vote and obtaining accessible information about elections and deadlines, ballot contents, and where to vote.

We know from our experiences talking to people of all ages and disabilities as well as their families, providers, and professionals in the community, that there is a lack of information as well as misperceptions about the right to vote of some individuals with disabilities. We also know that individuals with disabilities do not always have accessible information about how and where to register to vote.

Along these lines, it is incumbent on the Secretary of State and County Election Officials to conduct meaningful outreach about the right to vote and voter registration opportunities to Californians with disabilities in the communities in which they live and in formats that are accessible. A few weeks ago, the Secretary of State rolled out the new online voter registration system. Data shows that the launch was a success for many Californians. However, because the online system was not beta tested prior to its launch to ensure accessibility, Californians who use a screen reader with their computer have not been able to benefit from the online system. This includes people who are blind, have visual impairment, learning disabilities and developmental disabilities.

Additionally, under the National Voter Registration Act, California state agencies that provide services to Californians with disabilities are mandated to provide registration opportunities. This includes, among

others, the Department of Developmental Services, the Department of Social Services, the Department of Health Care Services, and the Department of Mental Health Care Services. To be a meaningful opportunity, there must be consistency throughout the state and across state agencies.

Preparing to Vote

Once registered to vote, it is critical to have accessible information about election dates and deadlines, ballot contents, and where to vote. Along these lines, it is imperative that the Secretary of State and County Election Officials test the accessibility of written and online materials. And to do so before they are presented to the public. This can be achieved through in-house assistive technology experts and also in partnership with the disability community.

Polling Place Accessibility

The Americans with Disabilities Act and California law require polling places to be accessible. Accessibility means that the path of travel to and from the polling place, the path of travel inside the voting area, and the voting area itself are all free of barriers. Selection of accessible polling places and comprehensive training of poll workers are steps that can be taken to ensure access.

The Department of Justice created a comprehensive poll site accessibility checklist for use by County Election Officials to foster compliance.⁶ In 2010, the California Secretary of State also issued comprehensive guidelines and a checklist.⁷ The guidelines restate federal and state law. The items were created in partnership with the Department of Rehabilitation and the disability community. There are variances from county to county on implementation. Accessibility compliance varies from 30% to 60% based on our experiences working at the county level. Although the State guidelines are relatively new, the laws behind them are not. We appreciate the challenges counties face in identifying and securing

⁶ <http://www.ada.gov/votingck.htm>

⁷ <http://www.sos.ca.gov/elections/polling-place-accessibility/>

polling places. However, compliance with accessibility laws should be further along and should be a greater priority.

Poll worker training is also essential to ensuring access at polling places. We know from our experiences working with county election officials that they are commonly pressed for time when they train poll workers. More often than not when we approach a county our assistance is welcomed in training poll worker about disability etiquette and how to set up a polling place in an accessible manner. However, this is not enough.

It is incumbent on counties to prioritize accessibility during poll worker trainings. We know from talking to the community, who survey polling places on Election Days and from the Election Day Hotline calls we receive, that some barriers are pre-existing. But many are not. These barriers can be avoided with training or can be mitigated relatively easily. Common barriers include for example, making sure all doors and gates are unlocked and open, electronic voting systems are plugged in and operational, accessible parking spots are available and not blocked, the designated accessible voting system is placed in a location that does not require the use of stairs. Voters with disabilities can be and are prevented from voting all together and in a private manner for any of these reasons. The fact that California law provides for curbside voting when a polling place is not accessible does not mean it can be relied upon as the default remedy. Curbside voting should be the exception to the rule and should be of the voter's choosing.

Accessible Voting Systems

HAVA requires that each polling place have an accessible voting system so that voters with disabilities, including voters who are blind, can vote privately and independently.⁸ The entire process must be accessible, including marking, verifying and casting the ballot, in order to ensure that people with different disabilities can vote privately and independently. Historically many people with disabilities have been unable to vote privately and independently, including people who are blind or visually impaired, people who have manual dexterity disabilities for example due to stroke, cerebral palsy, or quadriplegia, and people with developmental disabilities and learning disabilities.

⁸ 42 U.S.C. § 15481.

Variations in how counties spent their HAVA and Proposition 41 funds have created a terrain in which where a person lives effects whether they have an opportunity to vote privately and independently.

The fact that California law allow a voter to seek assistance from a person of their choosing to cast and verify their ballot⁹ is not an acceptable remedy. Its use should be the exception not the rule. It is second class citizenry to have to exchange one's right to privacy in order to fulfill one's right to vote. We know from talking to the disability community that this happens.

Vote By Mail

For some people with disabilities, vote by mail ballots allow the voter to vote privately and independently, but for many people with disabilities, vote by mail ballots create a barrier to privacy and independence. Obstacles are disproportionately experienced by voters who are blind or visually impaired, have manual dexterity disabilities or cannot read due to learning disabilities. Currently California allows voters to choose to vote by mail. This allows those who find voting by mail to be most accessible - to vote by mail - and those who find voting at a polling place to be most accessible - to vote at a polling place. Maintaining the options is essential to upholding the right to a private vote.

Recommendations

1. California Election Law Should Provide Parity with HAVA

HAVA's privacy and independence access requirements apply to all individuals regardless of disability type.¹⁰ California law, however, does not.¹¹ Amending California law to obtain parity with HAVA would be a significant first step to acknowledging and addressing the barriers people with all types of disabilities encounter to exercising their right to vote. In doing so, the California Legislature should apply to all voters with disabilities the right to a private right of action that is afforded under California law to voters who are blind or visually impaired who experience

¹⁰ 42 USC §§ 15481(a)(1)(a) and (a)(3)(A).

¹¹ California Elections Code §§ 2025, 19225, and 19227.

barriers during the voting process.¹² HAVA does not provide for a private right of action under such circumstances. HAVA merely allows for a voter to file a complaint to report violations of law. In providing for a private right of action in California, the state can ensure that its residents with disabilities have full access to meaningful remedies.

2. Strengthen Outreach by Election Officials to the Disability Community

From our work on the local level on Voter Accessibility Advisory Committees and other stakeholder meetings, we know that County Election Officials conduct outreaches about voter registration and the voting process throughout various communities. We know some counties bring their voting systems to the community as a way for them to become familiar with and ask questions about how to use the system before Election Day. For example, voter outreach to students and youth as well as about the option to vote by mail has seemed to be a particular priority among various counties. We, however, have noticed a lack of similar priority to develop and implement outreach plans to disability communities. Outreach can improve the chances that eligible individuals know about their right to vote, have an opportunity to register to vote, and become aware of the voting system options in their locale. It also provides a very important opportunity to ask questions of County Election representatives that can better ensure that voters have what they need to vote.

3. Strengthen Opportunities for Participation by Individuals with Disabilities

There are currently two formal opportunities for Election Officials to work in partnership with the disability community. The Secretary of State hosts a Voter Accessibility Advisory Committee (VAAC) comprised of county election officials and disability rights advocates such as Disability Rights California and others. Historically, the VAAC has been used to foster discussion about voting barriers, to identify solutions, and to monitor progress.

In this spirit, the Secretary has encouraged County Election Officials to host VAACs at the local level. Disability Rights California participates on a

¹² California Elections Code § 19229.

number of county VAACs. However, it should be noted, that as a general rule, the VAACs are not operational in many counties.

We know that VAACs can be mutually beneficial to Election Officials and to the disability community. Successes include providing technical assistance to the Secretary of State for the 2010 Polling Place Accessibility Guidelines and to County Election Officials for their poll worker trainings and poll site accessibility compliance.

More can be and should be done by California to monitor County adoption of VAACs as well as progress achieved to identify and address barriers to voting faced by voters with disabilities.

4. Enforce Federal and State Voting Accessibility Laws

The Department of Justice provides enforcement of HAVA and the ADA. However, the complaint process begins with the California Secretary of State. We are not aware of the rate at which California is receiving nor investigating complaints filed by voters with disability regarding accessibility and privacy and independence violations. Based on our work in the community, voters do not know about their right to file a complaint or the process for doing so. To our knowledge very few complaints have been filed. This is however disproportionate with the information voters with disabilities have brought to our attention over the years. It is not only essential that California provide voters with disabilities with information about their rights and remedies but the appropriate state agency should monitor and audit the performance of the Secretary of State and County Election Officials in following through on complaints filed by voters with disabilities.

Along similar lines, California should monitor and audit the state agencies that are mandated under the National Voter Registration Act to provide voter registration opportunities to the individuals with disabilities they serve.

5. Ensure Vote by Mail Preserves Options

Over the past few years, we have observed a significant effort by counties and the California to move towards vote by mail only elections and/or to heavily promote vote by mail as an option. For reasons explained above, vote by mail by its very nature is contrary to voting in a private manner for

many persons with disabilities. Any efforts to increase the use of vote by mail ballots should include an in depth analysis, before implementation, of the types of mitigating measures needed to ensure these voters are not disenfranchised or forced to vote in a manner that denies the cornerstone right to a secret and private vote.