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California's protection and advocacy system

**"Best Processes to Reduce and Eliminate
Accessibility Barriers for Voters with Disabilities"**

**Presentation to the Presidential Commission on Election
Administration**

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

I. Background: Information About Voters with Disabilities

Inherent to the right to vote, as made express by California's state Constitution, is the right to vote in secret.² These rights apply equally to adults with disabilities who are California residents and U.S. Citizens.³ 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.

Voting and the Right to Vote Are Important to Individuals with Disabilities

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

¹ 42 U.S.C. § 15461.

² California Constitution, Article II, Section 7.

³ 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.

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.

Barriers to Accessible Voting Contribute to Lower Voter Turnout Rates

According to a fact sheet developed by Lisa Schur and Douglas Kruse of Rutgers University⁴, 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. In our experience, the reason for the lower rate of participation by individuals with disabilities is found in the multiple barriers they face including barriers to registering to vote, obtaining accessible information about upcoming elections, having access to working accessible voting systems, transportation, accessible polling places and casting their ballot privately and independently.

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.

II. Barriers to Participation in the Full Electoral Process and Best Practices to Reduce and Eliminate Barriers

Californians with disabilities face barriers to full voting participation at every step of the process. There are numerous practical best processes available to Election Officials to reduce and eliminate these barriers.

A. Barriers to Registering 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.

⁴ <http://www.eac.gov/News/docs/fact-sheet-on-disability-and-voter-turnout-in-2008-dr-schur.pdf/attachment/download/file>

1. Insufficient Opportunities to Register to Vote

It is incumbent on the Secretary of State, County and City Election Officials, and the National Voter Registration Act (NVRA) mandated voter registration agencies to conduct meaningful, accessible, and consistent outreaches to Californians with disabilities about the right to vote, voter registration opportunities, and voting options (i.e. at a poll site, voting by mail, emergency hospital ballots) .

2. Best Processes to Increase Voter Registration Opportunities

a. Cultural Competency Training of NVRA Mandated Voter Registration Agencies to Address Misconceptions about the Voting Rights of Individuals with Disabilities

There are many misconceptions about the right of individuals with disabilities to vote. For example, the fact that a person uses a wheelchair, or cannot read, or cannot write, or has a speech impairment, does not bar a person from registering to vote or from voting. Individuals with developmental or psychiatric disabilities are sometimes presumed to be under conservatorship and therefore presumed ineligible to register to vote or otherwise presumed ineligible to vote if they reside in a facility such as a state hospital, nursing facility, or board and care. Under California law, a person is entitled to register to vote if they are a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election. California Elections Code § 2101. A person under conservatorship is not barred from registering to vote unless a judge expressly makes a separate finding that the individual is not able to understand what it means to register to vote. The fact of having conservatorship status alone does not make a person ineligible to register to vote.

We know from talking to the community and from our own experiences that presumptions such as these are made and that they affect whether a person is offered voter registration materials or not. One way to address this barrier is to incorporate disability cultural competency information into trainings given to the mandated voter registration agencies under the NVRA. One example of such training is the collaboration between our

organization, the ACLU, County Election Officials, and the California Secretary of State.

As part of the implementation of SB 35 (Padilla), Chapter 505, Statutes of 2012 in California which codifies the NVRA, we are training employees of the mandated voter registration agencies about individuals with different types of disabilities, their rights, and best practices for interacting and talking about voter registration. During the trainings, attendees have asked very important questions which led to good discussions which we think will help to reduce the stigma and resulting barriers experienced by individuals with disabilities. Training materials are available at: <http://www.sos.ca.gov/elections/nvra/sb35/>

b. Development and Implementation of Disability Community Outreach Plans by Election Officials

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 people to become familiar with them and to have an opportunity to ask questions about how to use the system before Election Day.

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 a 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.

c. Provision of a Variety of Accessible Formats to Register to Vote and Provision of Accessible Voter Registration Information

Until recently, there was only one format, paper, in which Californians could register to vote. For individuals who are blind, or have other vision

disabilities such as low vision, or learning disabilities, the paper format is not accessible. It is also not accessible for voters who have manual dexterity disabilities and as a result, cannot write with a pen to complete the form. It may also not be accessible to individuals who are deaf and whose primary language is ASL. This is because ASL is a distinct language with its own grammar structure.

Shortly before the November 2012 Presidential Election, the California Secretary of State launched an online voter registration system. This new format is accessible to some individuals with disabilities but it is not accessible for individuals who use a screen reader. This includes individuals that are blind, have low vision, or have certain types of learning disabilities. Ongoing discussions with the Secretary have resulted in agreements about how to make the system more accessible. This includes obtaining feedback from the disability community about accessibility before new formats are made public.

B. Barriers to Voter Education Materials

Once registered to vote, it is critical to have accessible information about election dates and deadlines, ballot contents, and where to vote.

In California, voter education materials are provided by the California Secretary of State and County Election Officials. Formats include print based materials and web-based materials.

1. Best Processes to Increase Voter Education Opportunities
 - a. Development and Implementation of Disability Community Outreach Plans by Election Officials

A fundamental best process is for Election Officials to create and implement on a consistent basis an outreach plan for individuals with disabilities who reside in the community or in a facility. Please see the discussion above under "Voter Registration".

b. Statewide and County Voter Accessibility Advisory Committees (VAACs)

There are currently two formal opportunities for Election Officials to work in partnership with the disability community. The Secretary of State hosts a Voting 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 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 have been 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 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.

c. Provision of Accessible Voter Education Materials in a Variety of Formats and Beta-Test Before Distribution

One of the best ways to provide accessible materials is to use plain language. Plain language is a way of providing information that focuses on readers. This means taking into account how the information is organized (both sequentially and spatially) and using the most direct ways to convey the information. Plain language applies to written text and to web pages. The "Plain Writing Act of 2010" requires that federal agencies use "clear Government communication that the public can understand and use." The League of Women Voters in California provides a non-partisan "Easy Voter Guide."

The Easy Voter Guide is invaluable and relied upon by voters with developmental and learning disabilities among others. The Easy Voter Guide can be reviewed at www.easyvoter.org. Additional information about plain language practice can be found at www.plainlanguage.gov and at the Center for Plain Language. It is incumbent on California Election Officials to adopt plain language techniques as a best practice.

Another best process is to provide audio and visual formats such as audio web-based files, adjustable font size on web pages, large type written materials, and ASL videos. Additionally, Section 508 of the Rehabilitation Act of 1973 sets forth accessibility standards for electronic information such as web-based content.

A third best process is to invite individuals with a variety of types of disabilities to "beta-test" materials and to provide feedback before fiscal resources are spent printing and distributing the materials or launching websites. One example, is working in collaboration with the State and County VAACs as well as assistive technology experts.

C. Polling Place Accessibility Barriers

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.

The U.S. Department of Justice (DOJ) created a comprehensive poll site accessibility checklist for use by County Election Officials to foster compliance. The DOJ checklist can be found at <http://www.ada.gov/votingck.htm>. In 2010, the California Secretary of State also issued comprehensive guidelines and a checklist. These guidelines and checklist can be found at <http://www.sos.ca.gov/elections/polling-place-accessibility>. The guidelines restate federal and state law. The items were created in partnership with the Department of Rehabilitation and the disability community.

In addition, many deaf voters only understand American Sign Language (ASL), which is grammatically and structurally different than English. Therefore, communicating in pen and paper may not work. Without an ASL

interpreter, such a person would not be able to communicate with the poll workers or even read the ballot or any other written information.

1. Poll Site Accessibility Varies County by County

There are variances from county to county on implementation of federal and state accessibility requirements. Accessibility compliance varies, on average, 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 polling places. However, compliance with accessibility laws should be further along and should be a greater priority.

2. The Quality of Poll Worker Accessibility Training Varies County by County

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. Generally, the topic of accessibility is not given nearly enough time in training, sometimes unintentionally giving poll workers the wrong idea that accessibility is not that important. More often than not, when we approach a county, our assistance is welcomed in training poll workers and the county staff that trains poll workers about disability etiquette and how to set up a polling place in an accessible manner. However, this is not enough.

We know from talking to the community, those 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, accessible 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.

3. Best Processes to Reduce and Eliminate Poll Site Accessibility Barriers

a. Use of Equipment to Mitigate Barriers

Selection of accessible polling places is key to ensuring accessibility. Accessibility should be one of the top priorities for county election officials when choosing poll sites. We understand that, in some communities, this is not always possible. In such circumstances, counties should be prepared with ways to minimize accessibility barriers at polling places. Examples are portable ramps and cones to make temporary accessible parking places.

b. Comprehensive Poll Worker Training

Comprehensive training of poll workers on access issues for people with disabilities. It is incumbent on counties to emphasize accessibility during poll worker trainings. This may mean adding 30-45 minutes to the training to discuss accessibility issues in depth. Another option is to integrate accessibility into every aspect of the training. The importance of accessibility must be stressed.

c. HAVA Complaint Oversight

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. A report of how many HAVA complaints about accessibility issues have been filed nationwide could illuminate whether there is an issue of letting people know of their complaint rights nationally or only in California.

d. Voter Accessibility Advisory Committees (VAACs)

Please see above. In Marin, Santa Cruz and Los Angeles counties, the Registrar of Voters seeks the input of the VAAC in selecting accessible polling places. Specifically, the Registrar of Voters in Marin County routinely asks VAAC for ideas of polling places. Also, in addition to asking VAAC members for ideas for accessible polling places, the Registrar of Voters for Santa Cruz County, when there is a doubt as to whether polling is accessible enough given the topography, goes to the VAAC for input.

D. Accessible Voting Systems Barriers

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.⁵ 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.

Under HAVA, accessible voting systems must meet the standards in the Voluntary Voting System Guidelines (VVSG). Under the VVSG, an accessible voting system must provide:

- An audio-tactile interface so that a blind voter can listen to the ballot and navigate/mark the ballot through tactile controls;
- Enlarged and enhanced text for individuals who have vision loss but cannot use an audio ballot;
- Simultaneous audio and enhanced visual display for individuals who have vision loss and those with print disabilities such as dyslexia; and
- A “non-manual” input option (usually dual switch) that allows individuals with very limited motor skills navigate/mark the ballot.

⁵ 42 U.S.C. § 15481.

'[M]ost of the access features required by the VVSG (excluding those related to accessibility of paper ballots) are being delivered by one or more direct response electronic (DRE) systems or ballot marking devices (BMD) with an electronic interface currently on the market."⁶ Accessible voting systems that comply with the VVSG standards "deliver a wide range of access features that allow individuals with a variety of disabilities to vote secretly and independently, like all other Americans."⁷ These accessible voting machines have allowed many people with disabilities, in California and nationally, to vote secretly and independently for the first time.

Variances in how counties spent their HAVA funds have created a terrain in which where a person lives effects whether they have an opportunity to vote privately and independently. For example, each county uses different accessible voting systems

California law allows a voter to seek assistance from a person of their choosing to cast and verify their ballot.⁸ It 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.

From complaints we have received through our Election Day Hotline and from talking to the disability community, we know that this happens. There are a variety of reasons why people are prevented from using the accessible voting systems, including:

- A lack of knowledge of the availability of an accessible voting system because, in many counties, poll workers are trained to only offer the use of the accessible voting system to voters who the poll workers believe may need to use it.

- Accessible voting system may not be working.

⁶ Testimony by Diane Cordry Golden before the Committee on House Administration, Elections Subcommittee Hearing on Election Reform: Machines and Software, March 15 2007, at page 2.

⁷ *Id.*

- Poll workers often do not set up the accessible voting system because they do not remember how to do so and/or they figure no one will use it.
- Many people with disabilities do not know how to use an accessible voting machine. Many poll workers do not know how to use it and, therefore, cannot tell voters how to use it.

Best Processes

a. Accessible Voting Systems Should Be Offered to All Voters

In order for voters with disabilities to use the accessible voting system, they have to know that it exists. Disability Rights California staff regularly attends poll worker trainings. In many counties, poll workers are trained not to tell voters about the presence of an accessible voting system unless they ask to use it so that very few people will use it. Santa Cruz County tells all voters about the accessible voting systems. Since not all disabilities are apparent, all people who need an accessible voting system can use it without disclosing their disability. This county has a poll worker stay by the accessible voting system, and provides them with extra training on the system.

b. Comprehensive Poll Worker Training

Poll workers need more extensive training on the importance of accessible voting systems and how to use it to cast a ballot secretly and independently. We have observed several poll worker trainings. While all counties train poll workers on how to set up an accessible voting machine, some also tell them that they will not be used much, which does not give them incentive to learn. They need to understand that they are just as important as a paper ballot.

In some counties, poll workers do not receive training on how to cast a ballot using an accessible voting system. This is problematic because, if a voter with a disability is trying to cast their vote using an accessible voting machine for the first time and has questions about how it works, there is nobody to ask. The reason often given by counties for the lack of training is that it is too complicated. This is precisely the reason to train poll workers,

so they can explain it to voters on Election Day so that voters with disabilities do not end up disenfranchised.

c. Availability of More Than One Accessible Voting System

The California Secretary of State has told counties that there must be *one, and only one*, accessible voting system in each polling place.⁹ But we think Counties should be required to have more than one accessible voting system. That way, if one had a malfunction, the voter with a disability could still vote secretly and independently on the other one. Having the person return later while the county deploys another accessible voting system is not helpful because the polls may close before another voting system can be obtained or the voter may not be able to return later due to work, family obligations, or transportation. Counties should also be required to test each accessible voting system as close to Election Day as possible, including all accessories (e.g., headsets, external controllers, etc.).

E. Barriers Presented by Voting by Mail Paper Ballots

Over the past few years, we have observed a significant effort by counties and California to move towards vote by mail only elections and/or to heavily promote vote by mail as an option. For some people with disabilities, vote by mail ballots allow the voter to vote privately and independently. However, for many people with disabilities, vote by mail ballots create a barrier to privacy and independence because another person has to read the ballot and/or mark their selections. 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.

⁹ California's Secretary of State's 2010 HAVA State Plan <http://www.sos.ca.gov/elections/hava/state-plan/state-plan-final.pdf>, at page 47

Best Processes - Voting By Mail Should Remain the Choice of the Voter

As explained above, all registered voters 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 voters with a full range of disabilities are not disenfranchised or forced to vote in a manner that denies the cornerstone right to a secret and private vote.

Conclusion

It is crucial for individuals with disabilities be allowed to exercise their right to vote independently and secretly, just like every other voter. As Congress points out in its findings when it enacted the American with Disabilities Act in 1990:

Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.

42 U.S.C. § 12101(a)(2). Congress also lists voting as one of the areas in which discrimination against people with disabilities is still a problem is voting. 42 U.S.C. § 12101(a)(3). As explained above, while we have come a long way since the passage of the ADA, there are still barriers that people with disabilities face when attempting to vote. They begin with the voter registration process. Some people with disabilities encounter barriers in accessing voter information in order to allow them to make informed decisions at the poll. Once they get to the polling place, people with disabilities sometimes find inaccessible polling places or the accessible voting system may not be working, taking away the person's right to an independent and secret vote.

In California, the requirement that there be one, and only one, accessible voting system at each polling place serves as a barrier to an independent and secret vote since it does not provide a back-up plan in case a voting system malfunctions. Also, this restriction unnecessarily segregates voters with disabilities from other voters because most counties discourage the

use of accessible voting systems by voters who do not have disabilities. This perpetuates the discrimination that the ADA has attempted to alleviate.

In the pages above, we have set forth best processes to enable people with disabilities to vote independently and secretly. We appreciate the opportunity to give the Commission these comments.