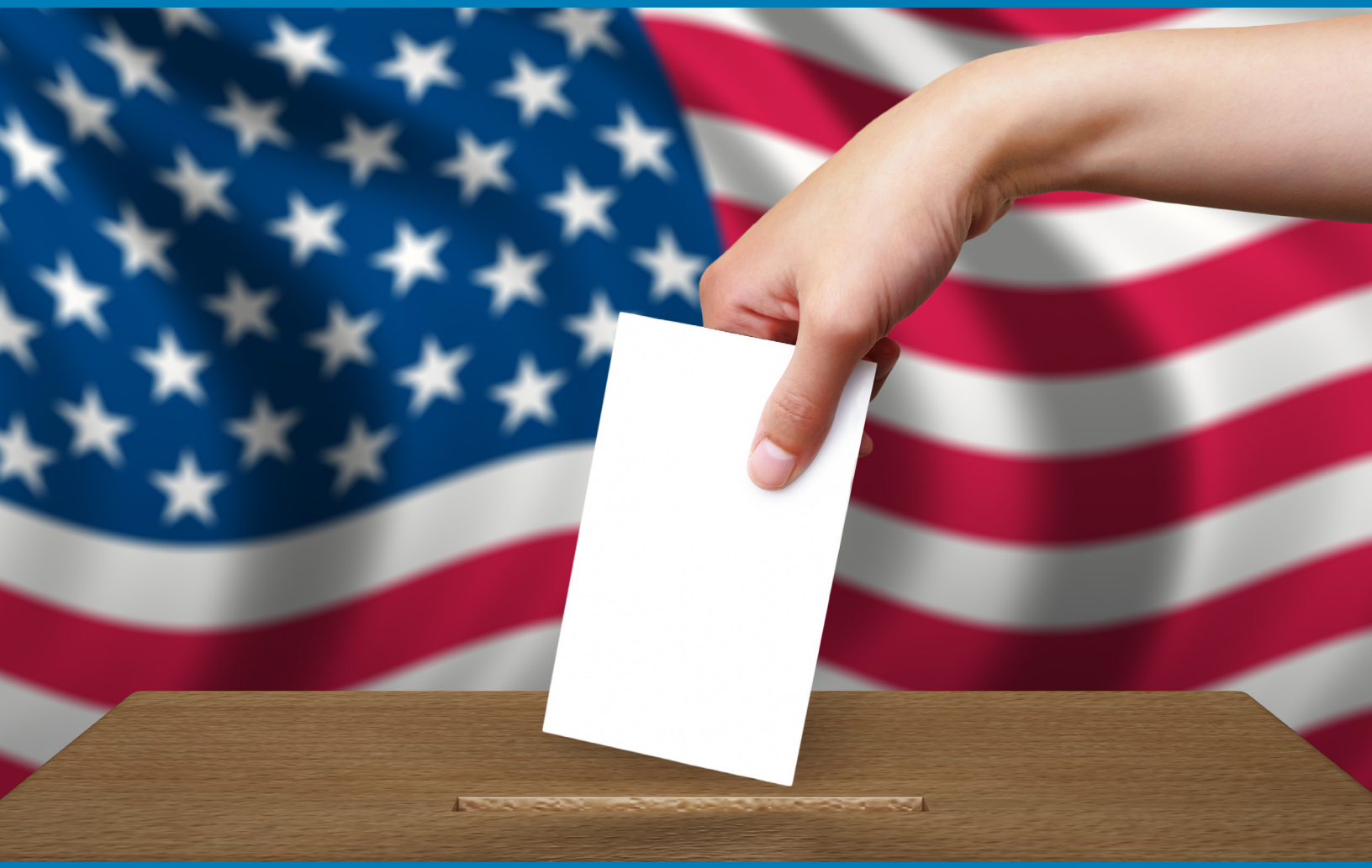
Experience of Voters with Disabilities in the 2012 Election Cycle

October 24, 2013



National Council on Disability

National Council on Disability
1331 F Street, NW, Suite 850
Washington, DC 20004

Experience of Voters with Disabilities in the 2012 Election Cycle

This report is also available in alternative formats on the National Council on Disability (NCD) Web Site (www.ncd.gov).

202-272-2004 Voice
202-272-2074 TTY
202-272-2022 Fax

The views contained in this report do not necessarily represent those of the Administration, as this and all NCD documents are not subject to the A-19 Executive Branch review process.

National Council on Disability

An independent federal agency making recommendations to the President and Congress
to enhance the quality of life for all Americans with disabilities and their families.

Letter of Transmittal

October 24, 2013

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

The National Council on Disability (NCD) is pleased to submit the enclosed report, "Experiences of Voters with Disabilities in the 2012 Election Cycle."

The right to vote is a unique and singularly important indicator of citizenship in a democracy, in the United States and throughout the free world. For too long, people with disabilities have been in the shadows in exercising this basic civil right. The causes of voter disenfranchisement are myriad, but they include physical inaccessibility, a failure to provide registration and voting materials in accessible formats, a lack of private and independent voting for many citizens, and the denial of the right to vote on the basis of erroneous assumptions about a person's capability because of his or her disability.

The Help America Vote Act (HAVA), enacted in 2002, mandated improvements to the electoral process by establishing minimum standards for uniform and nondiscriminatory election technology and administration requirements, including, for the first time, requirements that citizens with disabilities be able to vote independently and privately. HAVA joins existing voting rights laws to prohibit voter discrimination, suppression, intimidation, and denial of voting access for people with disabilities, coupled with the protections of the Americans with Disabilities Act (ADA) and building upon the mandate of the Voting Rights Act of 1965.

As you said during your 2013 State of the Union address, "our most fundamental right as citizens: the right to vote. When any Americans ... are denied that right ... we are betraying our ideals." The full participation of all citizens, including those with disabilities, in the electoral process is imperative. Voting is the very cornerstone of our great democracy. Registering to vote, accessing polling places, and casting a ballot are all part of a civil right that may not be compromised. Since 2002, HAVA has helped make voting an act of civic participation for people with disabilities; however, as this report demonstrates, much work remains to be done.

1331 F Street, NW ■ Suite 850 ■ Washington, DC 20004
202-272-2004 Voice ■ 202-272-2074 TTY ■ 202-272-2022 Fax ■ www.ncd.gov

The report documents the experiences of voters with disabilities during the 2012 general election cycle and offers concrete policy and procedural recommendations to improve voter participation and accessibility for citizens with disabilities now and in future elections. Among other core points based on the findings of the report, NCD recommends that:

- States and localities must ensure that all voter service centers and polling precincts be fully accessible, in compliance with the ADA, Section 504 of the Rehabilitation Act, and HAVA.

- The Presidential Commission on Election Administration should recommend and the Election Assistance Commission should encourage state and local jurisdictions to ensure that universally designed, accessible voting machines are available, functioning, and situated to provide complete privacy for voters with disabilities.

- State and local election officials must invest in adequate training for all election personnel and volunteers. Such comprehensive training should include (1) the obligations and requirements of HAVA and other relevant federal and state statutes regarding the voting rights of people with disabilities, including the right of voters to receive voting assistance from a person of their choosing; (2) the state and local voting process and election system; (3) how to set up, operate, and demonstrate the use of accessible voting machines; and (4) disability awareness and etiquette training.

NCD looks forward to working with the Administration in continuing to ensure that all Americans with disabilities are afforded the opportunity to cast a vote, independently and privately.

Respectfully,

Jeff Rosen
Chairperson

National Council on Disability Members and Staff

Members

Jeff Rosen, *Chair*
Kamilah Oni Martin-Proctor, *Co-Vice Chair*
Lynnae Ruttledge, *Co-Vice Chair*
Gary Blumenthal
Chester A. Finn
Sara Gelser
Matan Aryeh Koch
Captain Jonathan F. Kuniholm, USMC (Retired)
Stephanie Orlando
Ari Ne'eman
Janice Lehrer-Stein
Clyde E. Terry
Fernando M. Torres-Gil, Ph.D.
Alice Wong
Pamela Young-Holmes

Staff

Rebecca Cokley, Executive Director
Stacey S. Brown, Staff Assistant
Julie Carroll, Senior Attorney Advisor
Lawrence Carter-Long, Public Affairs Specialist
Joan M. Durocher, General Counsel & Director of Policy
Geraldine-Drake Hawkins, Ph.D., Senior Policy Analyst
Sylvia Menifee, Director of Administration
Robyn Powell, Attorney Advisor
Anne Sommers, Director of Legislative Affairs & Outreach

ACKNOWLEDGMENTS

The National Council on Disability (NCD) expresses its appreciation to the National Disability Rights Network (NDRN), the nonprofit membership association for the federally mandated Protection and Advocacy (P&A) systems and client assistant programs (CAPs); specifically, to Curtis L. Decker, executive director, Delores Scott, former senior attorney, and Janice Johnson Hunter, deputy executive director for legal services. NCD also thanks EIN SOF Communications, Inc., a strategic marketing firm specializing in disability-inclusive diversity and public policy—specifically, Tari Hartman Squire, CEO—for its assistance in researching, writing, and disseminating the 2012 Voting Experience Questionnaire and this report. NCD recognizes the contributions of the nearly 900 voters with disabilities who responded to the questionnaire and shared their voting experiences and stories.

TABLE OF CONTENTS

Letter of Transmittal **1**

National Council on Disability Members and Staff **3**

ACKNOWLEDGMENTS **4**

EXECUTIVE SUMMARY **9**

Key Findings and Recommendations 9

FINDING 1: People with disabilities continue to face barriers in exercising their voting rights because of architectural and physical barriers at registration and polling sites. *9*

FINDING 2: Voters with disabilities do not have equal access to voting systems because states and localities have not invested adequate resources, planning, and training to provide reliable, accessible voting technology. *11*

FINDING 3: Voters with disabilities face discrimination at voter registration and polling sites resulting from poorly trained election personnel and volunteers. *14*

FINDING 4: The Federal Government plays a vital role in ensuring the integrity of the election process in the United States. *15*

FINDING 5: The enforcement role of the Department of Justice is critical to compliance with federal statutes by states and localities. *19*

INTRODUCTION **23**

Genesis of the Report 29

CHAPTER 1. METHODOLOGY AND SCOPE OF THE REPORT **33**

Process for Developing, Testing, and Distributing the Questionnaire .. 33
Response from Voters 35
Analysis of Data 36
Scope of the Report 37

CHAPTER 2. THE HELP AMERICA VOTE ACT **39**

HAVA Voting Systems and Accessibility Requirements 41
HAVA Section 261 and SOS Offices 43
HAVA Section 291: Protection and Advocacy Systems 46
Reporting Requirements 47
Challenges and Barriers 49

CHAPTER 3. OTHER FEDERAL LAWS THAT AFFECT VOTING RIGHTS OF PEOPLE WITH DISABILITIES 51

Voting Rights Act 52
Voting Accessibility for the Elderly and Handicapped Act 53
Americans with Disabilities Act 54
National Voter Registration Act 55

CHAPTER 4. EXPERIENCES OF VOTERS WITH DISABILITIES DURING THE 2012 GENERAL ELECTION 57

Assistance with Voter Registration 57
Physical and Architectural Barriers to Entering the Polling Place 58
Physical, Architectural, Technological, and Attitudinal Barriers Inside the Polling Place 60
Challenges to Competency and Eligibility of Voters with Disabilities ... 63
Voter Education and Training 65
Voter Photo Identification 66
Additional Comments 67
Impact of Hurricane Sandy 68
What Does This All Mean? 69

CHAPTER 5. POSTELECTION UNDERTAKINGS AT THE FEDERAL AND STATE LEVELS 71

Presidential Commission on Election Administration 71
NCD Policy Forum 72
2013 Legislative Efforts That Promote Voter Disenfranchisement 79

CHAPTER 6. FINDINGS AND RECOMMENDATIONS 83

FINDING 1: People with disabilities continue to face barriers in exercising their voting rights because of architectural and physical barriers at registration and polling sites. 83
FINDING 2: Voters with disabilities do not have equal access to voting systems because states and localities have not invested adequate resources, planning, and training to provide reliable, accessible voting technology. 85
FINDING 3: Voters with disabilities face discrimination at voter registration and polling sites resulting from poorly trained election personnel and volunteers. 88
FINDING 4: People with disabilities have limited access to voter education, despite its importance to understanding the election process and voting rights. 89
FINDING 5: The Federal Government plays a vital role in ensuring the integrity of the election process in the United States. 92
FINDING 6: The enforcement role of the Department of Justice is critical to compliance with federal statutes by states and localities. 96

FINDING 7: The enactment of laws requiring stricter identification at the polls, including voter photo IDs, will increase barriers to the voting process and further disenfranchise voters with disabilities. 98
FINDING 8: People with disabilities who are under guardianship face increasing barriers to voting owing to state laws. 99

CONCLUSION 101

APPENDIX A. 2012 VOTER EXPERIENCE QUESTIONNAIRE 103

APPENDIX B. HAVA APPROPRIATIONS, 2003–2012 105

APPENDIX C. HAVA-FUNDED SECRETARY OF STATE OFFICE 261 ACTIVITIES, 2003–2010 107

APPENDIX D. HAVA-FUNDED P&A ACTIVITIES, 2003–2010 111

ENDNOTES 115

EXECUTIVE SUMMARY

The voting controversy during the presidential election in 2000 created a long overdue rallying point to improve a broken electoral system in the United States. A joint study and 2001 report by the Massachusetts Institute of Technology (MIT) and the California Institute of Technology (CIT) found that 4 to 6 million votes had been lost and uncounted as a result of registration, balloting, voting equipment, and polling place problems.[1] The Help America Vote Act (HAVA), enacted by Congress in 2002, mandated improvements to the electoral process by establishing minimum standards for uniform and nondiscriminatory election technology and administration requirements, including, for the first time, requirements that citizens with disabilities be able to vote independently and privately.

HAVA joins existing voting rights laws to prohibit voter discrimination, suppression, intimidation, and denial of voting access for people with disabilities, coupled with the protections of the Americans with Disabilities Act (ADA) and building upon the mandate of the Voting Rights Act of 1965. This report examines the impact of HAVA through the experiences of voters with disabilities during the 2012 election cycle.

Key Findings and Recommendations

FINDING 1: People with disabilities continue to face barriers in exercising their voting rights because of architectural and physical barriers at registration and polling sites.

States and localities have not invested adequate resources, planning, or training to meet architectural and physical access compliance standards required to increase participation and improve the experience of voters with disabilities.

In written testimony submitted to NCD for its April 23, 2013, Policy Forum, Congressman Steny Hoyer (D-MD), who was the lead sponsor in the U.S. House of Representatives of

the 1990 Americans with Disabilities Act (ADA) and the 2008 ADA Amendments Act, stated, "Congress has a responsibility to continue funding HAVA programs, including the grant program to make polling places accessible to all Americans…. We must approve a budget and appropriations bills that provide the resources to fund HAVA at levels that will treat all voters the same. To that end, I requested that the Labor, Health and Human Services, and Education Appropriations Subcommittee include $17 million toward the implementation of HAVA programs in next year's [FY 2014] budget."[2]

Other witnesses at the NCD Policy Forum also expressed the belief that adequate funding is crucial to improving access for voters with disabilities and that improvement in making polling places accessible is the result in large part to the power of federal grants.

Recommendations

- ***States and localities must ensure that all voter service centers and polling precincts be fully accessible, in compliance with the ADA, Section 504 of the Rehabilitation Act, and the Help America Vote Act (HAVA).***
  NCD recommends that state and local election officials ensure the architectural accessibility of all Voter Service Centers and polling precincts—in compliance with the ADA, Section 504 of the Rehabilitation Act, and HAVA—by conducting accessibility compliance reviews before the primary and general elections and making appropriate modifications. States and localities should use existing federal resources, including U.S. Election Assistance Committee (EAC) election management resources.

  If the state is facing accessibility complaints, the Department of Justice Project Civic Access (PCA) compliance reviews should be used to facilitate and benchmark real change and address accessibility concerns across all areas to promote civic participation of people with disabilities. Additionally, state and local election boards should collaborate with Protection and Advocacy systems (P&As), the ADA National Network, disability rights groups, and self-advocates to survey registration and polling sites, using the Department of Justice (DOJ) ADA

Checklist for Polling Places and other similar resources for accessible parking, curb cuts, sidewalk maintenance, accessible doors and entrances, paths of travel, restroom accessibility, and any other physical barriers, and to identify potential modifications. Accessibility should be determined before any new site is designated for voter registration or voting.

- ***Local boards of elections must be provided with the fiscal resources to make modifications necessary to meet accessibility requirements under the ADA.***
  NCD recommends that state election entities, including secretary of state offices, help localities maximize the availability of adequate funding to provide the necessary planning, training, materials, and resources to make modifications necessary to meet accessibility requirements under the ADA and HAVA.

- ***The Department of Justice must increase its enforcement of ADA compliance and pursue complaints raised by voters with disabilities.***
  NCD recommends that DOJ commit increasing resources, staff, and focus to ensure the physical, technological, and architectural accessibility of the voting process for people with disabilities through its enforcement of the ADA and Section 504 compliance. NCD further recommends that DOJ support enforcement actions brought by P&As and private litigators as enforcement partners.

FINDING 2: Voters with disabilities do not have equal access to voting systems because states and localities have not invested adequate resources, planning, and training to provide reliable, accessible voting technology.

Although all state jurisdictions have received HAVA funding to upgrade voting systems, including accessible voting machines, voters with disabilities were disenfranchised during the 2012 elections because of voting machines that malfunctioned, were broken, were unavailable for use, or that poll personnel were unable to demonstrate or operate. Voters with disabilities were denied an equal opportunity for voting access and the opportunity to cast a private and independent ballot.

At the NCD Policy Forum on April 23, 2013, a number of distinguished panelists testified about the need for continued HAVA funding to the states for voting technology. Mark Richert, director of public policy, American Federation for the Blind (AFB), noted, "I hope that over the course of this afternoon, we'll make the connections to the extent we do not invest as adequately as I believe we need to in protecting/managing the most sacred right that we have in this country."[3] Mr. Richert said, "The funds that have been made available to make the equipment available have been effective," but there is a lack of training on the part of polling officials. He added, "If our polling workers are not prepared to use the equipment, it's worthless."[4]

Recommendations

- ***The Presidential Commission on Election Administration should recommend and the Election Assistance Commission (EAC) should encourage state and local jurisdictions to ensure that universally designed, accessible voting machines are available, functioning, and situated to provide complete privacy for voters with disabilities.***
  NCD recommends that the Presidential Commission on Election Administration and the EAC encourage state and local jurisdictions to maintain universally designed, accessible voting machines that are available, functioning, and situated to provide complete privacy for voters with disabilities.

- ***Congress in its oversight capacity should direct and ensure continued research and create incentives for the development of universally designed electronic/digital voting technology and processes that preserve the privacy of the ballot and the independence of the voter while allowing verification of the vote and system reliability.***
  NCD recommends that Congress direct further research and create incentives for the development of universally designed electronic/digital voting technology to meet HAVA's specific requirements for voting systems to be accessible to people with disabilities and to permit a voter to verify his or her vote on the ballot in a

private and independent manner before the ballot is cast and counted. Many of the voting technologies currently in use, including direct recording electronic (DRE) and optical scan systems, have been fraught with problems as identified by voters; these problems undermine voter confidence. HAVA expressly mandates research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

- ***Congress should appropriate funding for state secretary of state (SOS) offices to support the purchase, upgrading, and maintenance of electronic voting systems.***
  NCD recommends that Congress appropriate funding for SOS offices to support the purchase, upgrading, and maintenance of electronic voting systems. In the current world of technological advances and ever-changing electronic business methods, updating and improvement in voting systems is perhaps the most costly of HAVA's innovation goals, but it holds the most promise for providing a barrier-free voting experience for voters with disabilities.

- ***The DOJ Civil Rights Division's Voting Rights, Disability Rights, and Federal Coordination and Compliance sections should work closely together to identify state and local jurisdictions that are failing to meet their legal obligations to provide accessible voting systems for voters with disabilities, and should provide targeted monitoring and require remediation.***
  NCD recommends that the DOJ Civil Rights Division's Voting Rights, Disability Rights, and Federal Coordination and Compliance sections work together to identify state and local jurisdictions that are failing to meet HAVA mandates.

  These DOJ sections can leverage their expertise and fortify their influence to ensure consistency and effective enforcement of voting rights statutes and the ADA across all federally mandated programs that may affect voting access for people with disabilities.

NCD further recommends that DOJ, in conjunction with the Presidential Commission on Election Administration and the EAC, update and reissue guidance to the states on the legal obligation to provide accessible voting systems for voters with disabilities. The guidance should address requirements under HAVA, other relevant voting rights laws, and accessibility compliance under the ADA.

FINDING 3: Voters with disabilities face discrimination at voter registration and polling sites resulting from poorly trained election personnel and volunteers.

Voters with disabilities continue to encounter election system personnel who are condescending or rude or who demonstrate pejorative attitudes toward voters with disabilities, owing to lack of training and personal bias. State and local election personnel, including Election Day officials and volunteers, require extensive training on the voting rights of people with disabilities, the local voting system, and the requirement to provide all presenting voters with the opportunity to cast a private, independent ballot.

Recommendations

- ***State and local election officials must invest in adequate training for all election personnel and volunteers.***
  NCD recommends that state and local election officials invest in adequate training for all election personnel and volunteers. Such comprehensive training should include (1) the obligations and requirements of HAVA and other relevant federal and state statutes regarding the voting rights of people with disabilities, including the right of voters to receive voting assistance from a person of their choosing; (2) the state and local voting process and election system; (3) how to set up, operate, and demonstrate the use of accessible voting machines; and (4) disability awareness and etiquette training. Elections personnel, particularly election judges and supervisors, should employ heightened scrutiny during hours of operation to make sure that voters with a full spectrum of disabilities receive assistance, effective communication, and respect. NCD further recommends that, to achieve

this training goal, states and localities collaborate with trusted local sources as well as national disability organizations and disability-related entities, such as the National Council on Independent Living, the National Disability Rights Network, and the ADA National Network.

- ***State and local election officials must increase their efforts to hire people with disabilities for all election personnel and volunteer positions.***
  NCD recommends that state and local election officials increase their efforts to recruit and hire people with disabilities for all election personnel and volunteer positions. Such efforts will require focused outreach to the disability community.

FINDING 4: The Federal Government plays a vital role in ensuring the integrity of the election process in the United States.

While federal elections are administered under state laws and policies, Congress has enacted laws to ensure that every U.S. citizen has equal access to exercising the right to vote. The executive, legislative, and judicial branches of the Federal Government play important roles in protecting the election process and enforcing the right of all citizens to cast private and independent ballots.

Recommendations

- ***The independent Election Assistance Commission established under HAVA must be fully reconstituted so it can meet its statutory mandates.***
  The EAC was established under HAVA to serve as a national clearinghouse and resource for election administration information; provide funds to states to improve election administration; and create minimum standards for states in key areas of election administration. This four-member commission was without a quorum beginning December 2010; since December 2011, the EAC has had no commissioners, and both the executive director and general counsel resigned in late 2011. Without commissioners or a staff, the EAC cannot perform its mandated functions under HAVA. In a memo issued in early 2011, the general

counsel and acting executive director suspended activity by the EAC-mandated advisory boards because there was no designated federal official appointed to conduct official business.

Without commissioners, there can be no actions by the important EAC boards, including the 37-member Board of Advisors and the 110-member Standards Board, as well as the Technical Guidelines Development Committee. It is critical that these seats be filled and that the EAC be staffed immediately. Panelists at the NCD Policy Forum noted the lack of commissioners. Former Senator Christopher Dodd (D-CT) said:

> HAVA established a new commission to assist states in [meeting HAVA requirements]. The EAC, conceived and championed by my former colleague, Mitch McConnell, was a resource for election officials, a place to turn to for professional advice and counseling on topics from resources to systems in their states to guidelines for administering an election. Unfortunately, they are without any commissioners. One of the recommendations I would make to this group is that you insist these jobs be filled.[5]

- ***The Presidential Commission on Election Administration should draw on the reported experiences of voters with disabilities to improve the experience of all voters.***

  NCD recommends that the Presidential Commission on Election Administration use this and other recent reports that capture the experiences of voters with disabilities, along with a concerted effort to focus on disability voting concerns at their public meetings, to identify the challenges related to physical, architectural, technological, and attitudinal barriers to voting and to develop solutions to improve the experience, and protect and ensure the rights of voters with disabilities and all voters.

  Support for this recommendation was offered by former Senator Dodd at the NCD

Policy Forum. When he was asked what specific advice NCD could give the presidential commission, he said, “Well, start with the basics. You have to be in the room and at the table…that ought to be fundamental. To talk about this and not be at the table…. I'm not suggesting one seat either. You can become advocates not only for your own community but for everyone else as well. So it ought not to be a seat physically designated for disability, but because you bring a wealth of knowledge for all Americans. So I would begin there.”[6]

- ***The Presidential Commission on Election Administration should identify and recommend promising practices related to voting processes that can enhance the experience of voters with disabilities while protecting their rights.***

  NCD recommends that the Presidential Commission on Election Administration identify, investigate, and report on promising practices related to voting processes that can be made available to protect the rights and enhance the experience of voters with disabilities, and eliminate barriers to the electoral process. Such practices might include vote-by-mail systems such as that currently used in Oregon and the permanent absentee ballot voter status recently introduced in Connecticut.

  Hurricane Sandy dealt a devastating blow to a number of precincts in the northeast corridor right before the 2012 general election, severely challenging the resources of state and local election officials and the ability of voters (including first responders) to get to the polls. NCD recommends that the commission work with state and local election officials and the National Association of Secretaries of State’s Task Force on Emergency Preparedness for Elections to devise effective emergency response procedures for elections to ensure that the requirements of voters with disabilities are considered as preparedness protocols are developed. Both the National Disability Rights Network (NDRN) and the National Council on Independent Living (NCIL) have memorandums of understanding with the Federal

Emergency Management Agency (FEMA), and those two entities should take an active leadership role in this process.

- ***Congress should restore and maintain full HAVA funding for the secretary of state offices and the P&As.***
  NCD recommends that Congress restore FY 2014 HAVA funding to the secretary of state (SOS) offices to help states comply with minimum HAVA provisions. Funding and oversight are crucial to ongoing improvement of the electoral process and its systems. Similarly, funding should be maintained for the P&A systems pursuant to Section 291.

  NCD further recommends that Congress require SOS offices to file their mandatory annual reports with the EAC and with the Administration on Intellectual and Developmental Disabilities of the Department of Health and Human Services (AIDD-HHS) so that AIDD-HHS can monitor state spending to ensure compliance with the HAVA disability goals.

  In a similar vein, NCD recommends that Congress request the Government Accountability Office (GAO) to conduct a field study during the 2016 general election to chart progress and establish a further point of comparison since their "Voters with Disabilities: Challenges to Voting Accessibility" surveys and reports in 2000 and 2008. Additionally, Congress should request that GAO investigate the experiences of SOS offices in their use of HAVA funds to improve and reform voting systems for voters with disabilities. GAO witness Barbara Bovbjerg commented at the NCD Policy Forum, "Our work suggests that polling places have become somewhat more accessible…and, amazingly, that accessible voting systems were available to nearly everyone…. [Y]et polling places continue to have impediments and almost half haven't thought through how to place the system so that voters can use it privately and independently."[7]

FINDING 5: The enforcement role of the Department of Justice is critical to compliance with federal statutes by states and localities.

DOJ has heightened its monitoring and enforcement of the voting rights statutes and the ADA. During the 2012 general election cycle, DOJ was a more visible, active enforcement partner with nonpartisan voter protection coalitions such as the P&A system and the Election Protection coalition led by the Lawyers Committee for Civil Rights Under Law.

However, testimony at the NCD Policy Forum on HAVA suggested the need for more vigorous enforcement. DOJ must continue to increase its presence through monitoring and rigorous enforcement in states and localities where the rights of voters with disabilities have been abridged and voters disenfranchised. As discussed in this report, DOJ must use enforcement actions under HAVA, the ADA, and Section 504 of the Rehabilitation Act.

Recommendations

- ***DOJ should increase and expand its monitoring of polling sites for compliance with the ADA and Section 504 of the Rehabilitation Act.*** NCD recommends that DOJ increase and expand its monitoring of polling sites for compliance with ADA Title II and Title III, and bring enforcement actions as necessary. NCD recommends the use of DOJ's Project Civic Access to identify areas of noncompliance and required remediation. DOJ should include Project Civic Access compliance reviews in response to all voting access complaints under review. NCD also recommends that DOJ broadly publicize its voter complaint process and vigorously pursue all complaints received.

  Further, NCD recommends that DOJ use the local expertise of Protection and Advocacy for Voting Access (PAVA) programs and other voting advocacy entities in monitoring, identifying, and addressing noncompliance. This targeted attention on voting access compliance, particularly on Election Day, will continue to send a

strong message to state and local jurisdictions that they can no longer discriminate against voters with disabilities.

- ***DOJ should be vigilant in enforcing the Voting Rights Act and remediating any violations of federal voting laws.***
  NCD recommends that DOJ remain vigilant in enforcing the Voting Rights Act of 1965 related to any discriminatory election procedures, including voter identification laws that have the potential to disenfranchise voters with disabilities. It is an important enforcement tool, as has been proven with proposed voter photo ID requirements in Texas.

  NCD similarly recommends that DOJ intervene and pursue complaints to remediate any violations of federal voting laws, proposals, and practices that impinge on voter rights.

- ***DOJ should expand its monitoring and oversight of the accessibility of polling places for people with disabilities.***
  NCD recommends that DOJ expand its monitoring and oversight of the accessibility of polling places for people with disabilities, using the following suggestions offered by GAO in its 2009 report:

  > Working with states to use existing state oversight mechanisms and using other resources, such as organizations representing election officials and disability advocacy organizations, to help assess and monitor states' progress in ensuring polling place accessibility, similar to the effort used to determine state compliance with HAVA voting system requirements.
  >
  > Expanding the scope of Election Day observations to include an assessment of the physical and technological access to the voting area and the level of privacy and independence being offered to voters with disabilities by accessible voting systems.

Expanding the ADA Checklist for Polling Places to include additional information on the accessibility of the voting area and guidance on the configuration of the accessible voting system to provide voters with disabilities with the same level of privacy and independence as is afforded other voters.

INTRODUCTION

The right to vote is a unique and singularly important indicator of citizenship in a democracy, in the United States and throughout the free world. For too long, people with disabilities have been in the shadows in exercising this basic civil right. The causes of voter disenfranchisement are myriad, but they include physical inaccessibility, a failure to provide registration and voting materials in accessible formats for people with disabilities, a lack of private and independent voting for many citizens, and the denial of the right to vote on the basis of erroneous assumptions about a person's capability because of his or her disability.

Congress understands the importance of voting in a free society and has enacted laws to ensure that states conduct elections free of discrimination, suppression, intimidation, or fraud; that all voters have access to the process; and that the process itself is accessible and usable. These laws include the following:

- Voting Rights Act of 1965[8]
- Voting Accessibility for the Elderly and Handicapped Act of 1984[9]
- Americans with Disabilities Act of 1990[10]
- National Voter Registration Act of 1993[11]
- Help America Vote Act of 2002[12]

As described in chapters 2 and 3, these voting rights laws prohibit discrimination on the basis of race, color, or membership in a minority language group; prohibit intimidation of voters; provide that voters who need assistance because of disability, aging, or illiteracy can obtain assistance from a person of their choice; require minority language election materials and assistance in certain jurisdictions; provide for accessible election machines

for voters with disabilities; require provisional ballots for voters who assert that they are eligible but whose names do not appear on poll books; and require states to ensure that citizens can register to vote at state departments of motor vehicles, public assistance offices, and other state agencies, and through the U.S. mail; and include requirements regarding maintaining voter registration lists.

The U.S. Department of Justice (DOJ) Civil Rights Division, Voting Section enforces the civil provisions of federal laws that protect the right to vote.[13] Representatives of the Civil Rights Division monitored select polling sites on the 2012 general Election Day.

The Help America Vote Act (HAVA),[14] signed into law on October 29, 2002, was enacted to make major improvements to voting systems across the country following the debacle of the 2000 elections. Most important, the enactment of HAVA acknowledged the unique obstacles faced by people with disabilities at the polls and throughout the voting process.

Congressman Steny H. Hoyer, Democratic Whip of the U.S. House of Representatives, in written comments to NCD dated April 23, 2013, described how HAVA addressed the needs of voters with disabilities:

> First, it sought to make sure polling places are accessible by creating a grant program, administered by the Department of Health and Human Services, to make polling places accessible to persons with disabilities.
>
> Second, it mandated in every polling place in the United States at least one machine that can provide all voters the ability to cast a ballot privately and independently. These two pillars may sound simple and straightforward, but they were anything but simple at the time HAVA was negotiated.

He continued:

> HAVA was the product of almost two years of bipartisan, bicameral negotiation. Unbelievably, much of this time was focused on achieving these two provisions because of a lack of appreciation at the time for just how common it was for disabled voters to face physical obstacles gaining entry to polling places and, once in them, actually casting a ballot without the assistance of a poll worker, relative, or friend. It may be easy for some cynics to trivialize the discomfort a voter with a disability feels when he or she needs the help of someone else to cast a ballot. But the bottom line is that our democracy is based on the principle of the private ballot—the premise that the people's will can only be accurately registered when their votes are freely and privately cast, without fear of recrimination or manipulation.[15]

HAVA, in conjunction with other federal voting and disability rights laws, is a potent agent for improving the election process for voters with disabilities. But what has been gained for voters with disabilities since its enactment?

Reporting on its 2008 study of polling places, the Government Accountability Office (GAO) noted that "while improvements over the 2000 presidential election were significant, 73 percent of polling places were inaccessible in one or more ways during the 2008 presidential election."[16] At the NCD Policy Forum on HAVA, Barbara Bovbjerg (GAO's managing director for education, workforce, and income security) discussed the GAO polling place accessibility studies, noting that "the proportion of polling places in 2008 without potential impediments increased and almost all polling places had an accessible voting system as states and localities made various efforts to help facilitate accessible voting." In summarizing the distinct changes observed in the field in 2008, six years after the passage of HAVA, Bovbjerg commented:

> I think I would sum it up with there's better awareness, but it's still not really good. Twenty-seven percent without impediments still means that 73 percent have impediments. But I was very surprised to see the mere unanimity of the polling places in having the accessible voting system. I think that's the power of federal grant money and I think it's the power of the requirement. It's a very clear

> requirement. Of course the question is can people get into the building to use it? Are people who are managing that system able to make it work? And have they placed it appropriately?[17]

Recent figures released by the U.S. Census show that Americans with disabilities comprise over 18 percent of our population, or 56.7 million Americans.[18] Reports from the most recent elections have been emerging since November 2012, detailing a mix of successes and continuing challenges.

Professors Lisa Schur and Douglas Kruse at the Rutgers (NJ) University School of Management and Labor Relations have followed the numbers and percentages of voters with disabilities for several election cycles.

According to a study by Schur and Kruse, 14.7 million people with disabilities voted In the November 2008 presidential election. Sixty-four percent of eligible people without disabilities voted, while just 57 percent of those with disabilities cast ballots.[19] Also in 2008, the voter registration rate for people with disabilities was 3 percent lower than the rate for people without disabilities. Schur and Kruse attributed the lower voter turnout to difficulty getting to the polling place, a lower level of income, a lower level of political recruitment, and a lower level of political efficacy.[20]

Two years later, following the November 2010 elections, Schur and Kruse reported 11 million voters with disabilities, which was only 3 percentage points lower than the percentage of voters with no disability. During both election cycles, Schur and Kruse found no employment gap between voters with and without disabilities. This suggested to them that employment provides resources and social contacts that encourage voting.[21]

The complete results of the 2012 Rutgers election study had not yet been released when this report was published; however, in a presentation before the Election Assistance Commission in May 2013, Schur and Kruse reported that voter turnout continues to be lower for people with disabilities and opined that inaccessible polling places play a major

role “both by making voting more difficult and possibly sending the message that people with disabilities are not welcome in the political sphere.”[22]

This sampling of surveys and questionnaires looking at turnout for voters with disabilities in 2008, 2010, and 2012 suggests that the participation of people with disabilities in the electoral process is increasing, but significant barriers still exist.

New Jersey Community Access Unlimited (CAU), a service provider for people with disabilities, released information in January 2013 demonstrating that its clients with disabilities participated in the November 2012 general election at a level that far exceeded the overall national level of voting. CAU reported that more than 84 percent of its clients cast a vote in the November 6, 2012, election. Some CAU clients responded to the NCD questionnaire following the election.[23] These voters included a 50-year-old who was voting for the first time.[24]

The CAU clients reported barriers including a lack of wheelchair-accessible entrances, having their eligibility questioned by poll workers, and being treated harshly by poll workers. Nonetheless, the CAU information may signal an increase in the number of voters with disabilities.

The New York State Independent Living Council (NYSILC) in Albany conducted an online postelection survey of New York voters with disabilities following the November 2012 election. In a sample of 112 voters, 99 percent indicated that they were registered and that they had voted on Election Day. While the majority (69 percent) reported no problems at the polls, 22 percent cited problems including physical barriers, broken accessible voting machines, and lack of sign language interpreters.[25]

Following the November 2012 election, the National Federation of the Blind (NFB) conducted an online survey of voters who are blind or have low vision to assess their voting experiences at the poll. After surveying more than 500 voters, NFB concluded that its data indicated “a positive trend in the number of blind voters who cast their ballot privately and independently at the polls and who did so with an accessible voting

machine. However, the results of these surveys also indicate a decrease in poll workers' knowledge of how to operate the accessible voting machine, a decline in poll workers' treatment of blind voters, and a decline in blind voters' satisfaction with their voting experience."[26] NFB was rightfully concerned that these negative experiences might discourage participation in future elections and urged that poll worker training be improved to ensure that voters who are blind have the same positive voting experience as their sighted peers.

In testimony and a written statement to the NCD Policy Forum, Lou Ann Blake, director of outreach, Jernigan Institute, NFB, underscored the need for trained poll workers and improved technology whereby all voters use the same voting system:

> Blind voters who use accessible voting machines were able to cast a private and independent ballot. However, the data also indicates that a significant portion of blind voters were not able to cast a private and independent ballot due to poll workers who did not know how to operate the voting machines as well as technical issues related to the voting machine…. [M]achines that require a poll worker's intervention to start the accessibility features are a problem, and if everybody voted on the same machine, a lot of these problems would be taken care of.[27]

The Lawyers Committee for Civil Rights Under Law issued its 2012 Election Protection Report in February 2013.[28] Election Protection coalition partners include leading civil, disability, and voting rights organizations, including NDRN and P&A programs. Coalition members played an active role—providing on-the-ground monitoring and responding to more than 423 Election Day disability-related complaints that filtered through the Election Protection hotline. Election Protection reported, "Voters with disabilities faced particular hurdles on Election Day, often as a consequence of the lack of polling place resources and long wait times."[29] Specific problems that resulted in disenfranchisement for voters with disabilities included polling places refusing to provide curbside voting, a lack of seating, voters being asked to provide proof of disability, and refusing voters assistance at the polls.[30]

The Self-Advocates Becoming Empowered (SABE) National Technical Assistance Center for Voting and Cognitive Access conducted Project Vote, partnering with self-advocacy groups, the Ohio University Center for Excellence in Developmental Disabilities , NDRN, and P&As in Arizona, Colorado, Georgia, Illinois, Ohio, Oklahoma, and 10 other states Surveying voters with disabilities regarding their experiences on Election Day, SABE found that while most voters with disabilities were able to vote successfully, problems were reported regarding entering the polling place, moving around the room once inside, and lack of privacy in casting a ballot owing to the location of the accessible voting equipment.[31]

Genesis of the Report

In the Fiscal Year 2012 Senate Labor–Health and Human Services Appropriations bill (S. 1599), the Administration on Developmental Disabilities (ADD)[32] (which was then part of the Administration on Children and Families (ACF) in the U.S. Department of Health and Human Services (HHS)) was encouraged to consult with NCD "to monitor the implementation of the Help America Vote Act for voters with disabilities during the 2012 general election cycle."[33] Although the bill passed the Senate, it was not included in the final appropriation bill. However, HHS wanted to meet the spirit of the Senate-passed bill. Accordingly, ACF responded to the Senate language by writing in its budget justification:

> The Administration on Developmental Disabilities (ADD) will work with the National Council on Disability (NCD) and other federal partners to assess the accessibility of the election process for people with disabilities during the 2012 general election.

To achieve this goal, ADD partnered with NCD to assess the accessibility of the election process for people with disabilities during the 2012 general election.

This report provides a snapshot of architectural, attitudinal, technological, legislative, and voting practice barriers that confronted voters with disabilities in the 2012 general election cycle, and provides an overview of the use of federal funds, activities, and

outcomes under HAVA for people with disabilities over the past decade. Incorporating data from the 2012 NCD Voter Experience Questionnaire and stories and anecdotes from the voters themselves around the country, the report documents experiences and offers concrete policy and procedural recommendations to improve voter participation and accessibility for citizens with disabilities now and in future elections.

The full participation of all citizens, including those with disabilities, in the electoral process is imperative. Voting is the very cornerstone of our great democracy. Registering to vote, accessing polling places, and casting a ballot are all part of a civil right that may not be compromised. Since 2002, HAVA has helped make voting an act of civic participation for people with disabilities; however, as this report demonstrates, much work remains to be done.

The questionnaire responses demonstrate that while much has improved on the national voting stage since the grim hanging chad debacle of 2000, the 2012 election cycle reflected continuing challenges. So much so that, during his 2013 State of the Union address, President Barak Obama spoke about the long lines and wait time and announced the formation of a nonpartisan Presidential Commission on Election Administration to improve voting in America by emphasizing “our most fundamental right as citizens: the right to vote. When any Americans...are denied that right...we are betraying our ideals.”[34]

Moreover, the President recognized the impact on voters with disabilities. A fact sheet issued by the White House describing the new commission lists physical barriers and voters with disabilities among the issues to be addressed.

NCD agrees with, and appreciates, the express inclusion of the barriers faced by voters with disabilities as a part of the presidential commission’s work. In a 2009 report, the GAO stated that, as recently as 2008, only 27 percent of polling places were barrier-free.[35]

The Federal Election Commission confirmed that, in violation of state and federal laws,

more than 20,000 polling places across the nation are inaccessible, depriving Americans with disabilities of their fundamental right to vote. People with disabilities and senior citizens are particularly disenfranchised by long lines at polling places and by constraints on—and in some places the discontinuation of—early voting.

To address this persistent disparity, NCD—in coordination and collaboration with NDRN and EIN SOF Communications—has collected the experiences of voters with disabilities across the nation in the November 2012 general election. This report summarizes the findings from the NCD Voter Experience Questionnaire and its HAVA Policy Forum in April 2013, and offers recommendations to remove barriers to the voting experience for citizens with disabilities.

NCD urges the Presidential Commission on Election Administration to consider the findings in this report to address not only physical barriers but also technological and attitudinal barriers.

The report provides a baseline of the current state of voting for citizens with disabilities and can serve as a blueprint for improvements, barrier removal, and procedural changes that can be measured between now and the 2016 primary and general elections.

CHAPTER 1. METHODOLOGY AND SCOPE OF THE REPORT

Researchers at NDRN and EIN SOF developed, tested, promoted, and disseminated a questionnaire with eight open-ended questions to collect information on the experiences of voters with disabilities during the 2012 general election cycle, including Election Day 2012.

The goal of this project was to assess the architectural, technological, attitudinal, legislative, and voting practice barriers that confronted voters with disabilities in the 2012 general election cycle and provide an overview of the use of federal funds, activities, and outcomes under HAVA for people with disabilities over the past decade.

The questionnaire was broadly distributed before and after the 2012 general election through P&As, Developmental Disability Councils, Centers for Independent Living, and University Centers of Excellence in Developmental Disabilities, as well as self-advocacy, ally, and grassroots organizations that are disability-specific and cross-disability in nature. Other disability-related nongovernment organizations (NGOs) also received the questionnaire, including service providers; local, state, and national entities; and allied organizations. It was distributed in both accessible electronic and hardcopy formats for collection, analysis, and reporting immediately following the 2012 election.

The dissemination plan and communications strategy also included dissemination at disability-related events; to listservs and Web sites; and through social media such as Facebook, Twitter, and LinkedIn. The questionnaire was launched with an editorial by NCD member Clyde Terry on the disability.gov blog, which boasts a 65,000-person distribution list and participation by 27 federal agencies.

Process for Developing, Testing, and Distributing the Questionnaire

The eight open-ended questions were targeted to collect information regarding physical and cognitive accessibility, privacy, voting technologies, intellectual disability issues, and attitudinal and other barriers. The questionnaire included a section for comments. The

questions were developed on the basis of a number of factors, including the past experience of voters with disabilities and challenges identified in previous voting cycles; the issues identified across the country by P&As through their PAVA programs; issues raised at the 2012 National Forum on Disability Issues held in Columbus, Ohio, on September 28, 2012; and input from self-advocates, including Self-Advocates Becoming Empowered (SABE), a nonprofit advocacy organization operated by and for the benefit of people with intellectual and developmental disabilities. SABE was instrumental in field testing the draft NCD questionnaire.

The questionnaire was distributed in both electronic and hardcopy formats via listservs, Web sites, community gatherings, and social media before and then again immediately following the 2012 general election. Electronic and hard copy responses were submitted by voters for collection and analysis by researchers. Input was also sought through a postelection conference call with the National Disability Leadership Alliance (NDLA), a national cross-disability and disability-specific organizational membership coalition led by 14 national self-advocacy organizations with identifiable grassroots constituencies around the country.

The questionnaire asked voters with disabilities to describe their experiences during the 2012 election cycle related to the following:

- Requesting assistance with the registration process.
- Entering polling sites (e.g., availability of accessible parking, curb cuts, doorways and steps).
- Access inside the polling sites (e.g., steps, paths of travel, narrow hallways, space to maneuver wheelchairs).
- Casting a ballot (e.g., access to voting machines, availability of alternative formats, and privacy and independence during the voting experience).

- Proving eligibility to polling place personnel.
- Receiving voter education and training.
- Meeting requirements of state voter photo identification laws.

The Additional Comments option anticipated the collection of additional data of significance that might not have been addressed in the questions, including the impact of any temporary poll relocation resulting from Hurricane Sandy and emergency changes in the standard voting procedures that might have precluded voters with disabilities from exercising their fundamental right to vote.

The research team also monitored “live time” on Election Day through all the U.S. time zones and noted irregularities, comments, barriers, and issues faced by voters, such as faulty voting technology and physical, architectural, and attitudinal barriers, including poll workers who were not responsive to citizens with disabilities who participated in curbside voting.

Some of these situations were also reported to DOJ representatives who were in the field monitoring voting sites.

Response from Voters

Responses from nearly 900 voters with disabilities were submitted to NDRN, online (784), by email (37), or via the U.S. Postal Service (27). If comments were posted online through social media, the research team forwarded the details to each other and encouraged voters with disabilities to complete the questionnaire immediately while issues were still fresh in their minds. In some situations, DOJ representatives were onsite at polling places to document the experiences of voters with disabilities. Data was also collected immediately following the November 2012 general election. Questionnaires were received from voters in 46 states and the District of Columbia.[36]

Analysis of Data

In evaluating the responses to measure the participation of people with disabilities in the voting process and the ongoing challenges, the following preliminary issues were taken into consideration:

1. Specific states, territories, and cities responding to the questionnaire.

2. Number of disability organizations and entities participating in outreach.

3. Number of voters with disabilities completing the questionnaire.

4. Number and kinds of barriers identified, for example,

    - Architectural,

    - Technological,

    - Attitudinal, and

    - Transportation.

The effect of Hurricane Sandy on voters with disabilities in impacted states was also considered.

The methodology included a desk review of recent articles in traditional print and electronic and social media, editorials, op-eds, blogs, GAO reports, research papers, and other postelection polls and questionnaires.

Scope of the Report

This report describes the use of federal funds, activities, and outcomes under HAVA for people with disabilities over the past decade and makes recommendations to improve voter participation and accessibility in the future. The report incorporates data from the Voter Experience Questionnaire and the NCD HAVA Policy Forum regarding accessibility during the 2012 general election; considers the past experiences of voters with disabilities and the challenges identified in previous voting cycles; considers issues identified across the country by P&As pursuant to their PAVA programs; and describes P&A and SOS activities under HAVA.

The report also provides an overview of federal laws that affect participation of people with disabilities in the voting process; a description of the HAVA statute and its requirements; and HAVA and PAVA funding and reporting requirements. It identifies examples of SOS activities related to voting administration and P&A advocacy activities in fulfillment of the PAVA mandates; provides an analysis of the data collected from the Voter Experience Questionnaire; includes voter experiences on Election Day 2012; and makes recommendations for moving forward.

CHAPTER 2. THE HELP AMERICA VOTE ACT[37]

The Help America Vote Act (HAVA),[38] the most recent federal voting rights legislation, was signed into law on October 29, 2002. HAVA seeks to improve voting access for people with disabilities by:

- Making accessibility grants available to states and local units of government to improve the accessibility of polling places and the voting process.[39]
- Creating minimum standards for the accessibility of voting systems.[40]
- Requiring states to include people with disabilities on the committee that creates the state plan for compliance with HAVA's requirements.[41]
- Providing funds for research on accessible voting technology.[42]
- Establishing the Protection and Advocacy for Voting Access (PAVA) program.[43]
- Establishing a state-based administrative complaint procedure to remedy any grievances covered by the provisions of HAVA.[44]

HAVA requires each polling place to have at least one voting system for use in federal elections that is accessible and usable for voters with disabilities. This accessible voting system is required to provide the same opportunity for people with disabilities to vote privately and independently as afforded by the systems available to other voters.[45]

Other important provisions of HAVA include establishing the Election Assistance Commission (EAC) to serve as a clearinghouse for election administration information, among other responsibilities;[46] providing funds to states to improve election administration and to replace punchcard and lever-style voting systems;[47] and creating minimum standards for states to follow in several key areas of election administration.

The EAC, in its FY 2012 Activities Report to Congress, explained that its focus was on "building upon its core mission work: developing guidance to meet HAVA requirements, adopting voluntary voting system guidelines, serving as a national clearinghouse of information and finalizing human capital and records management handbooks."[48] However, the EAC had been without a quorum of commissioners since December 10, 2010, and has had no commissioners since December 2011. Nor does the commission have an executive director or general counsel.[49] With no commissioners, the EAC cannot issue advisory opinions to states on the use of HAVA funds or adopt any policies. In written testimony to the NCD Policy Forum on April 23, 2013, Congressman Steny Hoyer stated:

> The biggest immediate challenge I believe voters face today, whether or not they are disabled, is the absence of a working Election Assistance Commission. HAVA established the EAC to help state and local election officials learn what works and what does not work when it comes to running elections and making sure every vote is counted. For reasons that frustrate me and every citizen who believes in HAVA, House and Senate Republican leaders have refused to recommend EAC nominees to the President and have blocked confirmation of nominations for the two Democratic seats on the Commission. I believe a fully functioning EAC can have a significant impact in helping states make their polling places accessible to all voters.[50]

Former Senator Christopher Dodd (author of HAVA), testifying at the Policy Forum, shared Congressman Hoyer's concerns regarding the lack of commissioners:

> HAVA established a new commission to assist states in this process. The Election Assistance Commission, conceived and championed by my former colleague, Mitch McConnell, was a resource for election officials, a place to turn to for professional advice and counseling on topics from resources to systems in their states to guidelines for administering an election. Unfortunately, they are without any commissioners. One of the recommendations I would make to this group is that you insist these jobs be filled.[51]

States that receive funds under HAVA must establish an administrative grievance procedure for voting complaints. States that do not accept funds under the Act must either establish a grievance procedure or submit a compliance plan with the U.S. Department of Justice (DOJ).[52] DOJ is authorized to seek injunctive or declaratory relief for HAVA violations.[53]

Administration of the law's disability provisions (Sections 261 and 291) was assigned to the secretary of the U.S. Department of Health and Human Services,[54] who delegated the responsibility to the Administration for Children and Families (ACF), who in turn delegated the responsibility to the Administration on Developmental Disabilities (ADD). In 2012, ADD was transferred into the newly organized Administration for Community Living (ACL), and ADD became the Administration on Intellectual and Developmental Disabilities (AIDD), retaining jurisdiction over Sections 261 and 291. The EAC administers the other relevant HAVA sections, including Sections 101,[55] 102,[56] and 251[57] requirements.

HAVA programs are expressly designated to establish and improve participation in the election process for individuals within the full range of disabilities. HAVA state grantees make polling places accessible for people with disabilities (including paths of travel, entrances, exits, and voting areas); provide information on the location of accessible polling places; and adopt voting procedures that enable these people to vote privately and independently. Grantees also educate election officials, poll workers, and election volunteers on the rights of voters with disabilities and best practices in working with them.[58]

HAVA Voting Systems and Accessibility Requirements

HAVA requires that "a voting system shall be accessible to people with disabilities, including non-visual accessibility for blind and low vision voters, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."[59]

All voting systems must permit the voter to verify (in a private and independent manner) the votes selected on the ballot before the ballot is cast and counted; provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted; and notify the voter of any votes for more than the maximum number of selections allowed in a contest ("over votes") and give the voter a chance to correct these errors.[60]

A voting system is defined as the "total combination of mechanical, electromechanical, or electronic equipment and documentation required to program control and support equipment that is used (A) to define ballots; (B) to cast and count votes; (C) to report or display election results; and (D) to maintain and produce any audit trail information."[61] Many people are familiar with mechanical voting machines but, since the passage of HAVA, electronic voting machines are gradually becoming more prevalent. These machines give rise to concerns about a verifiable paper trail.

This also includes the procedures and documents "used (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors or defects; (D) to determine specific changes made after initial certification; and (E) to make available any materials to the voter…."[62]

As a result of the passage of HAVA, all states and localities are provided with funding to upgrade their voting systems, including machines, the process for voter registration, and training for poll workers. Each state oversees the implementation of the upgrade of its voting system, which results in various interpretations of the federal requirements under HAVA.[63] At least 39 states have voting systems that are certified using the 2005 Voluntary Voting System Guidelines.[64]

The infusion of federal dollars has been crucial to the ability of states and localities to meet HAVA requirements to improve voting processes and systems. Cost is cited most frequently as a factor in election officials' decisions with regard to voting system technology.[65]

In 2010, the EAC announced the availability of $7 million in federal funds to support research and development to advance voting accessibility technology to enable citizens with disabilities to vote privately and independently pursuant to HAVA. This competitive Accessible Voting Technology Initiative awarded two 3-year grants in 2011, one to the Information Technology Innovation Foundation (ITIF) and the other to Clemson University, working in collaboration with the National Institute of Standards and Technology (NIST).[66] In its FY 2012 Activities Report, EAC reported that Clemson—working with an extensive group of partners, including the Election Center, Rutgers University, and a diverse group of organizations from the elections community—had test-piloted a prototype voting machine.

ITIF is also working with several organizations, including the National Federation of the Blind, to develop innovative voting system technologies and processes to improve the voting experience for people with disabilities.[67]

HAVA Section 261 and SOS Offices

Initially, under Section 261 of HAVA, funds were provided to the chief election officials in each state; namely, the office of the secretary of state (SOS). The funds were to be used to make polling places accessible, to inform people with disabilities about the location of accessible polling places, to train election officials and volunteers in how to interact appropriately with people with disabilities, and to acquire and adopt voting procedures that permit people with disabilities to vote privately and independently.

Since 2002, the states and territories that have received Section 261 funding have made great strides in assisting voters with a full range of disabilities and improving accessibility. Approximately $94,197,018 has been awarded to the SOS programs (see table in appendix B for details). Awards are made through AIDD to each state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands. For examples of activities carried out by the SOS offices with Section 261 funds, see appendix C.

Despite the improvements, there has been controversy regarding how states have used (or failed to use) HAVA appropriations. A June 27, 2011, report from the Congressional Research Service explains:

> Altogether, more than $3.5 billion of federal funds was appropriated through FY2010 under HAVA: about $3.3 billion in election reform payments to states; $130 million for the EAC and its various programs; and another $130 million in accessibility payments to states, administered by the Department of Health and Human Services. For FY2011, the President's budget request included $16.8 million for the EAC but no funding for election reform payments to the states. The Senate Appropriations Committee (S.Rept. 111-238) and the House Financial Services and General Government Appropriations Subcommittee recommended similar amounts. However, the EAC has been operating at FY2010 funding levels since September 30, 2010, under a series of continuing resolutions. For FY2012, the Administration requested $13.7 million for the EAC, with no funding for election reform payments because large sums that were previously appropriated remain unexpended.[68]

The difficulty some states have had in spending HAVA funds has negatively affected the overall program. Some HAVA money has been returned to the U.S. Department of the Treasury, because grant funds had not been expended by the end of the five-year time frame. In recent years, Congress has questioned the use of SOS HAVA funds, the rationale behind the spending trends for the grantees, and the viability of the program.

Moreover, as reported by AIDD, grantees' spending records have often differed from those of the federal grantor. The National Association of Secretaries of State (NASS) has raised concerns over what it describes as "misperceptions" about SOS use of HAVA funds; the association makes a case that the funds received thus far have been used to successfully implement HAVA and improve the electoral process.[69]

In March 2010, NASS—joined by state and local election officials, civil and disability rights advocates, and voter advocacy organizations—issued an open letter to Congress

urging its continued support for full funding for HAVA to "[fulfill] the promise of election reform and to [provide] resources that will help state and local governments meet their long-term challenges."[70] In FY 2012, no funds were appropriated to support the efforts of the SOS offices; funding had not been restored as of the publication date of this report (see appendix B).

One challenge is that the employee turnover rate in SOS offices is high—the same staff members responsible for HAVA efforts and reports may not work with the program from one fiscal year to the next, which affects continuity and effectiveness. This has proved to be a challenge in obtaining sufficient information to include in annual HAVA Section 261 reports (see the reporting requirements below). AIDD puts a great deal of effort into providing technical assistance to SOS grantee staff who are new to the program and following up with SOS grantees who have not submitted their annual reports.[71]

In testimony at the NCD Policy Forum in April 2013, AIDD Commissioner Sharon Lewis cited as shortcomings of HAVA the lack of enforceability and accountability and the lack of resources available for training and technical assistance to the SOS grantees. Lewis said:

> We at HHS have very few monitoring opportunities [for] following up after the resources have been provided to the states. The states are required to report back to us under the statute, but we cannot withhold their funds should they not choose to provide a report. So our monitoring and enforcement really comes through our Network. The Protection and Advocacy agencies really are the on-the-ground eyes and ears that pay attention to whether or not states are doing the work of HAVA and utilizing the resources as intended…. [O]ne of the shortcomings of the current process is that while there is technical assistance available to the P&As, there are no resources available through our programs related to technical assistance to the states.[72]

HAVA Section 291: Protection and Advocacy Systems

HAVA Section 291[73] provides payments to the P&A of each state and territory as defined under the Developmental Disabilities Assistance and Bill of Rights Act of 2000.[74] Under Section 291 funding, $42,135,941 has been awarded to the P&As since the inception of the HAVA program (see table in appendix B).

Awards to the P&As are made through AIDD to each eligible state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands. For examples of activities carried out by the P&As with Section 291 funds, see appendix D.

Section 291 provides that funds be made available to the P&A system of each state and territory to ensure full participation in the electoral process for voters with disabilities, including registering to vote, casting a private and independent vote, and accessing polling places. Grant funds are expressly for the purpose of providing services to people with disabilities within the state, as well as education and advocacy to ensure the full participation of people with disabilities in the electoral process.[75]

According to Section 292(a),[76] none of the HAVA funds granted to a P&A system may be used to initiate or otherwise participate in any litigation connected to election-related disability access, notwithstanding the general authorities that the P&As are otherwise afforded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. P&A systems have conducted a wide range of advocacy activities to build awareness and ensure the voting rights of people with disabilities.

P&As use their PAVA funds to provide education, training, and assistance to people with disabilities that will promote and encourage their participation in the electoral process. Activities include education about voter registration and their legal rights pertaining to voting, assistance with registering to vote, and assistance in accessing the polls on Election Day.[77] Education materials are made available in various formats and in languages other than English. P&As also help people with disabilities file complaints

under the state-based administrative grievance procedure required by HAVA[78] and represent them in any hearings regarding the complaint.

Grant funds allow P&As to participate in advocacy and education efforts revolving around HAVA implementation efforts in their state and local jurisdictions, including participation on the HAVA state planning committee or any subcommittees; participation in coalition efforts regarding the state plan; reviewing the work of the committee and providing comments on the state plan; and participating in review, advocacy, and education with regard to the enactment of state HAVA legislation.

P&As play an active role in the development of training materials and the training and education of election officials, poll workers, and volunteers regarding the rights of voters with disabilities and best practices in working with people with disabilities.

P&As also provide assistance to states and other government entities regarding the physical accessibility of polling places; for example, surveying polling places, identifying potential modifications to make a polling place accessible, and developing criteria to identify accessible polling places. For examples of all these P&A activities, see appendix D.[79]

Finally, in each eligible state and territory, Section 291 of HAVA authorizes that 7 percent of HAVA funds be set aside for training and technical assistance to P&As related to PAVA activities.[80] Eligible nonprofit organizations receive discretionary grants to help P&As develop proficiency in the use of voting systems and technologies for people with disabilities and to demonstrate and evaluate the use of such systems and technologies.[81] NDRN and NFB currently provide training and technical assistance to the P&As through a competitive one-year award process.

Reporting Requirements

According to the requirements set forth under Section 265,[82] each eligible state is required to submit a report no later than six months after the end of each fiscal year. The

SOS offices submit an annual narrative report describing the use of funds with regard to the mandated areas of activities authorized under 42 U.S.C. 15421 of HAVA.

The narrative report is written as a detailed summary of the HAVA activities, barriers, best practices, collaborations, and funds spent to carry out the activities during the fiscal year. The emphasis in the narrative report is on the state's progress in addressing the four mandated areas: (1) making polling places accessible to people with disabilities; (2) providing them with an equal opportunity for access and participation in the electoral process; (3) training election officials, poll workers, and volunteers on how best to promote access and participation of voters with disabilities; and (4) providing information to people with disabilities about the accessibility of polling places.

Similarly, the annual narrative reports for the P&A systems describe activities carried out to address their seven mandated areas: (1) full participation of people with disabilities in the electoral process; (2) education, training, and assistance; (3) advocacy and education around HAVA implementation efforts; (4) training and education of election officials, poll workers and volunteers regarding best practices and the rights of voters with disabilities; (5) assistance to voters with disabilities in filing complaints under state-based administrative grievance procedures required by HAVA; (6) assistance to state and other government entities regarding the physical accessibility of polling places; and (7) obtaining training and technical assistance on voting issues.

AIDD program staff work closely with SOS and P&A grantees on the annual reports. They recommend that grantees consider a range of questions and statements to summarize the status of their efforts, including the activities completed during the fiscal year; the barriers hindering completion of activities; collaboration with other organizations, including the P&A system; and feedback from citizens regarding improvements or changes in voter accessibility. AIDD submits the format for the annual report to the Office of Management and Budget (OMB) for clearance and takes appropriate steps to maintain the OMB clearance on the format. The annual reports are due to AIDD no later than December 31 of each year.

The data obtained through the submission of the annual narrative reports for the SOS and P&As is compiled to create a biannual report from the HHS secretary to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate, as required by the statute.[83]

The EAC is required by HAVA to submit an annual report to the same committees. The report should include a detailed description of activities conducted under each program carried out by the commission (including Sections 101, 102, and 251); a copy of the reports submitted to the EAC by recipient SOS offices; and information on voluntary voting system guidelines adopted or modified pursuant to HAVA.[84]

Challenges and Barriers

Many accomplishments can be attributed to HAVA, but challenges and significant barriers to voting for citizens with disabilities remain. A concentrated effort is needed to ensure accountability for and enforcement of HAVA. At the NCD Policy Forum, several panelists—including Barbara Bovbjerg from GAO—emphasized the necessity for increased accountability for and oversight of HAVA. Bovbjerg urged DOJ to "look for opportunities to expand its oversight [of HAVA] in cost-effective ways."[85] In written testimony, she noted that "Justice's limited oversight of HAVA voting system requirements and polling place accessibility, by 2009, left gaps in ensuring voting accessibility for people with disabilities"[86] and that increased oversight "could build upon Justice's efforts to date in potentially reducing voting impediments and other challenges for voters with disabilities.[87]

CHAPTER 3. OTHER FEDERAL LAWS THAT AFFECT VOTING RIGHTS OF PEOPLE WITH DISABILITIES

When Congress passed HAVA in 2002, it recognized the barriers to vote for people with disabilities and provided funding to "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a private and independent vote, and accessing polling places."[88]

To the disability community, HAVA is more than an election reform statute; it is a civil rights law, providing people with disabilities what no other previous civil rights statute had given before: the right to participate equally in elections and to cast a private, verifiable, independent ballot. HAVA is one of five federal statutes enacted over the past 48 years to enable the full participation in the electoral process for disenfranchised Americans with and without disabilities.

While the right to vote is the very cornerstone of our democratic society, elections are generally administered pursuant to state laws and policies, with primary responsibility for planning and conducting elections typically residing at the local jurisdiction level. This state and local control has often led to legislation, rules, and practices that interfere with people's exercise of the right to vote through outright discrimination against an individual or the creation of deterrents that suppress, inhibit, or prevent voting.

Congress has recognized the importance of voting in a free society and enacted federal laws to ensure that states are conducting elections free of discrimination, intimidation, or fraud; that all voters have access to the process; and that the process itself is accessible and usable. These enactments include:

- Voting Rights Act of 1965[89]
- Voting Accessibility for the Elderly and Handicapped Act of 1984[90]
- Americans with Disabilities Act of 1990[91]

- National Voter Registration Act of 1993[92]

- Help America Vote Act of 2002[93]

These voting rights laws prohibit discrimination on the basis of race or membership in a minority language group; prohibit intimidation of voters; provide that voters who need assistance in voting because of disability, age, or illiteracy can obtain assistance from a person of their choice; require minority language election materials and assistance in certain jurisdictions; provide for accessible voting machines for voters with disabilities; require provisional ballots for voters who say they are eligible but whose names do not appear on poll books; require states to ensure that citizens can register at state Departments of Motor Vehicles (DMVs), public assistance offices, other state agencies, and through the U.S. mail; and include requirements regarding maintaining voter registration lists. The U.S. Department of Justice (DOJ) Civil Rights Division, Voting Section enforces civil provisions of federal laws that protect the right to vote.[94] Representatives of the DOJ Civil Rights Division monitored select polling sites on the 2012 general Election Day.

Voting Rights Act

Enacted in 1965, the Voting Rights Act (VRA) outlaws discriminatory election procedures, requiring that any standard or test for determining whether someone is qualified to vote must be applied to all voters equally. Coupled with the Civil Rights Act of 1964, the VRA allowed millions of African American citizens who were formerly disenfranchised to exercise their right to vote and established federal oversight of elections administration to enforce voting rights. The VRA (as amended) also guarantees the right of people with disabilities to have voting assistance from a person of their choosing, as long as that person is not their employer or an agent of their employer or union.[95]

Since its 1965 enactment, the VRA has been reauthorized, most recently in 2006. However, the statute has not gone unchallenged. Specifically, Section 5 of the Act is

under attack. Section 5 requires 16 states with a history of voting discrimination (primarily in the South), to have any proposed changes to election procedures cleared by the Department of Justice before they can be implemented. Shelby County, Alabama, challenged the constitutionality of this provision as being outdated and intruding on state sovereignty. On June 25, 2013, the U.S. Supreme Court ruled by a 5-to-4 vote that Section 4(b) is unconstitutional because the coverage formula is based on data over 40 years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states. The Court did not strike down Section 5, but without Section 4(b), no jurisdiction will be subject to Section 5 preclearance unless Congress enacts a new coverage formula.

Voting Accessibility for the Elderly and Handicapped Act

The 1984 Voting Accessibility for the Elderly and Handicapped Act (VAEHA) requires that political subdivisions responsible for conducting elections ensure that all polling places for federal elections are accessible to elderly voters and voters with disabilities.[96] The only two exceptions are (1) when an emergency is determined by the chief election officer of the state (e.g., Hurricane Sandy) and (2) when the chief election officer determines that all potential polling places have been surveyed and no such accessible place is available, nor is the political subdivision able to make one temporarily accessible in the area involved.

This statute provides that any voter who is elderly or has a disability and is assigned to an inaccessible polling place must, upon their advance request, be assigned to an accessible polling place or be provided with an alternative means for casting a ballot on Election Day.[97] The definition of “accessible” is determined under guidelines established by the state’s chief election officer, but the law does not specify what those guidelines should contain or the form they should take. The VAEHA also contains provisions to make absentee voting more accessible and provides for voting aids at polling places.[98]

Americans with Disabilities Act

Rightly heralded as the civil rights act for people with disabilities, the Americans with Disabilities Act of 1990 (ADA) gives civil rights protections to people with disabilities similar to those provided to people on the basis of race, color, sex, national origin, age, and religion, guaranteeing nondiscrimination on the basis of disability and equal opportunity in employment, state and local government services, transportation, public accommodations, and telecommunications.[99] The ADA also applies to voting.

Of the federal laws addressing voting rights for people with disabilities, the ADA is the broadest in its intent. Its protections are intended to strike down discriminatory practices in all aspects of state and local government. In contrast, the other federal voting rights statutes are narrower in intent and effect—they affect only federal elections, specifically address only the manner by which people register to vote, or apply only to people with particular kinds of disabilities. Title II of the ADA requires that all state and local government entities make "reasonable modifications to rules, policies, or practices" to ensure nondiscrimination in the programs, services, and activities of state and local governments.[100]

Unlike the other voting laws, which apply only to federal elections, the ADA applies to both state and federal elections; however, it does not strictly require that all polling place sites be accessible. Court decisions interpreting the ADA in the context of voting have found that Title II does not necessarily require every polling place be accessible to persons with mobility disabilities (architectural accessibility);[101] guarantee privacy to voters with disabilities;[102] or guarantee voters who are blind the right to vote independently (program accessibility).[103]

Title III of the ADA covers commercial facilities and places of “public accommodation,” such as restaurants, parks, libraries, apartment complexes, hotels, private schools, shopping malls, and privately operated recreation centers.[104] Such facilities may also be used as polling places, and reasonable modifications in policies, practices, or procedures must be made to facilitate access for people with disabilities.[105] They are also required to

remove physical barriers in existing buildings when it is “readily achievable” to do so; that is, when it can be done without much difficulty, undue hardship, burden, or expense, given the public accommodation’s resources.

The DOJ Civil Rights Division, Voting Section enforces civil provisions of federal laws that protect the right to vote. Although DOJ will take individual complaints, to leverage resources it is more likely to investigate systemic complaints that can have a broader impact on compliance. DOJ’s Disability Rights Section (DRS) enforces, among other things, accessible polling places and voting under Title II and Title III of the ADA. Its enforcement mechanism is primarily through the complaint process and a Project Civil Access (PCA) agreement.

The DRS has an investigative unit that conducts onsite compliance reviews of all facilities and polling places identified by its PCA Review program. PCA ensures that people with disabilities have an equal opportunity to participate in civic life. As part of the PCA initiative, DOJ investigators, attorneys, and architects survey state and local government facilities, services, and programs in communities across the country to identify the modifications needed for compliance with ADA requirements to eliminate physical and communication barriers that prevent people with disabilities from participating fully in community life.[106]

National Voter Registration Act

The National Voter Registration Act of 1993 (NVRA) was enacted to increase the number of eligible citizens who register to vote in elections for federal office.[107] Commonly known as the “Motor Voter Act,” the NVRA became effective nationwide on January 1, 1995. Section 7(a) of the NVRA requires each state to designate certain agencies to assist with the registration of voters.[108] The NVRA also expressly encourages all entities of the executive branch of the federal government and all nongovernment entities to voluntarily provide these services.

NVRA applies to all states and the District of Columbia but not to territories or the Commonwealth of Puerto Rico. States that have "no voter registration requirements for any voter in the state with respect to an election for federal office [and where]...all voters in the state may register to vote at the polling place at the time of voting in a general election for federal office" are excluded from NVRA coverage.[109]

Each state is required to designate certain agencies to assist with the registration of voters, including "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities."[110] The NVRA's legislative history specifically states that this provision should apply to all P&As and client assistance programs (CAPs) that are housed in state government and receive state funds. Under the NVRA, states are also directed to designate additional federal, state, local, and private sector agencies as voter registration agencies; each state may decide which additional agencies will be designated. In general, the law requires each state designee to provide voter registration application forms in standard and alternative formats and to distribute the forms with each application for assistance, recertification, renewal, or change of address;[111] provide assistance to applicants in completing forms at the same level provided to applicants in filling out other similar forms;[112] accept and transmit the forms to appropriate election officials not more than 10 days after acceptance;[113] and, if an agency representative delivers services and assistance to a person in their home, voter registration forms and assistance with registration must be provided in the home to the same extent as with other agency forms.[114]

Despite the promise of the NVRA to increase voter registration and ultimately voter participation at the polls, a number of states have proposed and enacted restrictive voting legislation—including early voting restrictions, voter ID requirements, and restrictions on voter registration drives—that will make voter registration harder and defeat the promise of expanding citizen access to voter registration.[115]

CHAPTER 4. EXPERIENCES OF VOTERS WITH DISABILITIES DURING THE 2012 GENERAL ELECTION

The nearly 900 voters with disabilities who responded to NCD's Voter Experience Questionnaire provided very personal accounts of the barriers they encountered in exercising their right to vote. Voters described physical, architectural, technological, and attitudinal barriers, including barriers and experiences related to requesting assistance with registration; architectural and physical barriers to entering polling sites; architectural and physical barriers to accessing the polling room; physical, technological, and attitudinal barriers to casting a ballot; problems related to proving eligibility and competency to polling place personnel; the availability of voter education and training; and problems related to meeting photo ID requirements. Their stories and experiences follow.

Assistance with Voter Registration

In Missouri, a voter with a disability telephoned the election board to find out whether an election worker would be available to help him cast his ballot. He was told "no."

Another voter in Missouri was told by the elections commissioner that because she had a disability she could not vote unless she brought someone to the polls with her.

Over a third of all respondents reported the need for assistance with registration. Of those needing assistance, close to half identified assistance as coming from family members or friends, closely followed by election staff or volunteers. Assistance was also provided by personal care attendants or service provider staff.

Overall, among voters who required assistance, the comments suggested that the majority received the assistance they needed to complete voter registration. The Voting Rights Act of 1965 guarantees the right of people with disabilities to have voting assistance from a person of their choosing.

Approximately 37 percent of respondents reported the need for assistance. Close to 47 percent were assisted by family members or friends; 38 percent by poll personnel or volunteers; and 15 percent by a personal care attendant (PCA) or provider staff.

Several respondents commented on the ease of using an absentee ballot. However, one New York voter reported that he confirmed that his voter registration ID was on file and requested an absentee ballot. He was told that the ballot had been mailed to his home, but he never received it and no one was willing to help him resolve the issue. His right to vote was lost.

Physical and Architectural Barriers to Entering the Polling Place

A voter in Indiana arrived at the poll—a fire station—to find no accessible parking. He was forced to park in a badly paved lot down a narrow street with no sidewalk; to get to the polling place, he had to maneuver his wheelchair along the street, dodging cars. When he finally arrived at the entrance, there was a step to get in the door. The voter pointed out to poll personnel that the step was a barrier to his entering the building; the poll workers offered to carry him into the building, which he refused. He was finally able to convince fire station personnel to open an overhead door, which created an accessible entry.

Close to 40 percent of respondents to NCD's Voter Experience Questionnaire encountered physical barriers at into their polling places, including a wide range of physical and architectural barriers. The following were the most common barriers:

- No or limited accessible parking.
- Inaccessible, locked, or separate entrances to the polling place.
- Long lines and excessive wait times with no chairs.
- Stairs.

- Poor signage and no or unclear directions to accessible entrances and elevators.

- Doors that were heavy or hard to open, or had no automatic door openers.

- No curb cuts, poorly maintained sidewalks, and unimproved walkways.

- Narrow doorways.

- No ramp or a ramp that was too steep.

Fifty-five percent of respondents reported encountering no physical barriers leading into the polling place, while 38 percent reported that they encountered barriers. Another 7 percent reported that they voted by mail.

The following were other barriers to entering a polling place:

- In Arizona, a voter who was unable to find accessible parking had to park illegally in front of the polling place. There was no curb cut or ramp, so she had to use a handrail to get down the stairs, dragging her walker.

- In Massachusetts, voters reported that there was little or no accessible van parking.

- Connecticut voters reported long lines crowding the accessible entrances. Also, if there was only one accessible door in the polling station, people with disabilities who needed to use this door had to go against the flow of voters to exit.

- Respondents in the District of Columbia described separate, locked, unmanned accessible entrances that required polling station staff to come

to the entrance and let the voter in. Voters using these entrances had to ring a bell or knock and then wait for someone to let them into the poll.

- In Indiana, a voter reported that the doors did not open automatically and were extremely heavy. After making several attempts to enter, the voter called for help, but no one was available to assist. The voter waited until another voter arrived and opened the door.

- In Florida, Indiana, Maryland, Michigan, and Oklahoma, voters with disabilities complained of having to wait outside in long lines with no seating available.

Physical, Architectural, Technological, and Attitudinal Barriers Inside the Polling Place

In Massachusetts, poll workers did not notice that a voter had a visual disability, despite the fact that she was accompanied by a guide dog. A poll worker responded irritably when the voter did not take a sheet of paper that was being handed to her. When the voter explained that she was blind, the poll worker became “very confused and overwhelmed”; she offered to complete the voter’s ballot and suggested that the voting machine would not be helpful, unaware that it should be accessible.

In Idaho, a poll worker interrupted a voter twice while she was voting, assuming that she needed help. The poll worker would not take no for an answer.

Nearly 54 percent of respondents encountered barriers inside the polling place. The primary barriers were inaccessible voting machines, a lack of training and awareness among poll workers on how to assist voters with disabilities, and limitations to the right to vote privately and independently.

Various barriers were encountered with accessible voting machines. Machines were broken, malfunctioning, or unavailable for use; the precinct had failed to set up the machines; or the poll workers did not know how to operate them. For example:

- In California, an accessible voting machine had not been set up when the voter arrived 30 minutes after the polls opened. It took about 30 minutes to make the voting machine available.

- In San Francisco, all the initiatives had not been loaded onto an accessible voting machine, denying a voter who is blind the ability to vote on the entire ballot.

- In the District of Columbia, a voter reported that she told the poll worker that she had a visually disability and needed to vote electronically. The worker found the headset to allow auditory output but did not know how to load the auditory ballot.

- In Georgia, a voter reported that the accessible voting machines had not been set up.

- Also in Georgia, a voter reported that the voting machine was difficult to use because part of the screen was too high to reach. A poll volunteer held the screen forward for the voter. The volunteer assured the voter that he was not watching, but the voter said he was uncomfortable giving up the privacy of his voting experience.

- In Kentucky, five voters with visual disabilities reported going to the poll and finding that the accessible voting machine was not working. At first, the poll workers tried to deny these people the opportunity to vote, then they were asked to use paper ballots, which they refused to do. Eventually the poll workers called a technician; he arrived in 20 minutes and repaired the machine.

- In Maryland, a respondent described the electronic voting machine system as being too complicated to understand.

- In Minnesota, a respondent found that the print on the ballot was too small to read, and poll workers could not adjust the print size.

- In Pennsylvania, a voter reported that the poll workers refused to take her to the accessible voting machine.

Another significant barrier reported in the polling place involved the lack of poll worker training and awareness regarding how to help voters with disabilities, which prevents people with disabilities from voting privately and independently. For example:

- An Illinois voter who is blind was greeted at the check-in table by a poll worker who exclaimed, ”How is she going to vote?” The voter was accompanied by her husband, and the poll worker was directing questions to him, assuming that he would be assisting his wife. Another poll worker stepped in and directed the voter to an accessible voting machine, “pushing” her toward the machine. She sat down at the machine and the poll workers found the headphones, but they did not know how to make the audio work.

- In Minnesota, poll workers approached and attempted to distract a voter’s service dog.

- A voter in Nebraska described his voting experience as “well supervised,” because two poll workers stayed nearby and within his line of sight as he voted.

Other problems identified by the respondents included rooms that were too small, cluttered floors along paths of travel, and narrow hallways that interfered with maneuvering chairs and walkers; voting machines, booths, and tables that could not be

adjusted for height; failure to provide American Sign Language (ASL) interpreters; and inaccessible restrooms.

Forty-five percent of the reported barriers inside the polling place involved voting machines. Untrained poll personnel were identified as a barrier by 25 percent of respondents. Lack of training resulted in poll workers being unfamiliar with the operation of accessible voting machines, unable to troubleshoot malfunctions, or unwilling to set up an accessible machine or demonstrate its use. There were also numerous reports of poll personnel making assumptions that a voter with a disability required help in voting even if help was not requested, thus intruding on the privacy of voting.

Twenty percent of responding voters with disabilities said they were prevented from exercising a private and independent vote. Problems identified by these voters included lack of seating at the polling booths; long waits and lack of seating in line; polling sites that were crowded, cramped, chaotic, and noisy; stations and paths of travel to voting booths and exits that were cluttered with bags and boxes, interfering with maneuvering both manual and power wheelchairs; lack of poll workers to manage and assist voters; lack of signage inside the building; inaccessible restrooms; and improper training regarding service animals.

Challenges to Competency and Eligibility of Voters with Disabilities

A Texas voter took a friend along to the polls to help her with voting. As the friend filled out a required form, the voter attempted to ask a question of the poll worker, but the worker could not understand her. The poll worker then said, “I have to prove that she’s competent.” The voter was ultimately able to cast her ballot.

Eligibility or competency to vote was not questioned for the majority of respondents. However, it is not uncommon for election officials and poll workers to impose their own requirements on people with disabilities, whom they perceive as lacking competency to vote. Two voters reported that their competency was challenged, and the assistance of family members with voting was also challenged for some voters. Three voters reported

that they were denied the opportunity to vote but did not describe the circumstances of the denial.

Ninety-three percent of respondents to the NCD questionnaire reported that neither their eligibility nor their competency was questioned. However, a small number reported some challenges at the polls. Challenges involving discrepancies in addresses, status as an absentee voter, precinct assignments, and registration were largely resolved by poll personnel checking registration sheets, voter rolls, or other election board records and updating addresses or registration status where appropriate. Voters were allowed to cast provisional ballots in most cases, which suggests the potential for overuse of provisional ballots without any guarantee that they will be honored and counted.

Voters had more complaints regarding poll personnel; 20 percent of respondents described poll workers as poorly trained on the voting process, especially in assisting voters with disabilities. Respondents said some poll workers were condescending or rude, or demonstrated pejorative attitudes toward them as voters with disabilities.

The following challenges were described by responding voters:

- A California voter changed her voting status from absentee to in-person. At the polling place she was not able to vote until a senior poll worker was able to clarify her status. Similar situations were reported in Florida, Illinois, Massachusetts, and Ohio.

- A Colorado voter described a poll worker who spoke in a very condescending manner and made her repeat everything that was said, to make sure that she “understood” everything. The voter described the encounter as “unpleasant.”

- A voter in Florida and one in the District of Columbia reported that a poll worker initially challenged their right to have someone of their choice assist with voting.

- In New York, a voter was turned away from her regular voting precinct and sent to another site. The second location was inaccessible and the voter was told to return to her regular precinct. When she returned to the original precinct, poll workers proceeded to check her in under the wrong name. She was ultimately able to vote.

Voter Education and Training

More than half of the responding voters reported participating in formal or informal education and training activities. The remaining respondents (nearly 40 percent) indicated that they had received no formal voter education or training.

A Connecticut voter said, “I remember learning about the structure of government and how to use a voting booth in the sixth grade. Ever since high school, I have tried to become knowledgeable about government and to vote intelligently…. I have not had any formal voter training as an adult.” A voter from Massachusetts commented that he learned about voting “from my parents and from the staff at my day support program.”

Approximately 20 percent of the respondents had participated in formal voter education and training activities, including presentations on voting rights and the voting process by service providers, Independent Living Centers, local and national disability advocacy organizations, P&As, the State Developmental Disability Council, and local boards of elections. Another 5 percent identified high school civics and government classes as influencing their understanding of the voting process.

Informal activities identified by another 20 percent of respondents included reading candidate materials and materials developed by the local board of elections; using the Internet to research voting laws and requirements, download sample ballots, find polling sites and hours of operation, and access other electoral process information; and being exposed to public service announcements (PSAs) and other media, including print, radio, television, and social media such as Facebook. Another 15 percent indicated that voter education was provided by parents and other family members or through education and

training received as a voter advocate, poll worker, elections judge, observer, or other voting precinct officer.

Voter Photo Identification

In Illinois, a state with no voter ID law, a voter was told by a judge that his ID was not sufficient to establish identify, but another judge intervened and overruled that decision.

A number of states have enacted laws requiring different kinds of identification at the polls, including photo IDs, but many of these laws were overturned or put on hold right before the November 2012 election, postponing their enforcement. Pennsylvania, Wisconsin, Texas, and South Carolina were among those states.[116] This created confusion and frustration for voters and poll workers alike. A few people with disabilities reported problems related to photo ID requirements; however, none of them were denied the right to vote.

In Pennsylvania, a voter was told over the telephone that a photo ID would be necessary, but the state did not enforce that requirement in 2012, so a photo ID was not requested at the poll.

Similarly, a Texas voter said he was concerned about having to schedule time off from work to procure a photo ID so he could vote in the general election. However, the Texas law was not enforced in the November 2012 election.

Voters in Arizona, Illinois, Missouri, and New York experienced challenges because the address on their ID did not match the address in the registration rolls. These voters were allowed to cast provisional ballots.

As noted in chapter 3, a number of states have proposed or enacted restrictive voting legislation—including restrictions on early voting, new voter ID requirements, and restrictions on voter registration drives—that will make voter registration and voting more difficult and will work against the promise of expanding citizen access.

NCD was relieved that few respondents to the questionnaire encountered problems having to do with photo IDs, but these laws, coupled with other laws and practices designed to restrict citizen access to voting, are likely to have a disparate impact on people with disabilities who are trying to vote in future elections.

Additional Comments

In the comment section of the questionnaire, responding voters covered a wide range of topics, issues, concerns, and voting experiences, including the following:

- A number of respondents underscored the need for better trained poll personnel and elections staff.

- Some voters expressed concerns about the pejorative attitudes of poll staff and volunteers toward people with disabilities, as well as unwarranted assumptions made by poll workers.

- A few voters praised the ease and convenience of absentee voting.

- Some respondents reported improvements in accessibility at their polling sites.

- A Massachusetts voter wrote, “This was one of the most demoralizing and humiliating experiences I’ve had surrounding my disability in a few years. I was terribly ashamed to be American and in fact felt ostracized by my own country.”

- Another Massachusetts voter, said, “People were very nice to us and were happy we were voting. We all felt very proud.”

- A voter from North Carolina commented, “I know this [questionnaire] is looking for problems, but you should be aware of persons with disabilities who did not encounter any accessibility problems.”

- In Indiana, a respondent commented that “voter ID is very important and should be the law of the land.” Similar opinions were expressed by voters from Georgia, Nebraska, North Carolina, and Virginia.

- On the other hand, a voter in Massachusetts stated that “it would be hard for some people to vote if they are made to show an ID.”

- Another voter in Massachusetts commented that voter ID laws would create “more problems for the aging, ill, disabled, and those with low economic status.”

- From Arkansas a voter commented, “This was my very first time casting my vote [and] it was awesome!”

Impact of Hurricane Sandy

When Hurricane Sandy hit the eastern seaboard in the last week of October 2012, it was anticipated that the destruction would be devastating to voters and the voting process. Even before the storm hit, its potential impact on voting was being debated.[117] Boards of elections in many states posted emergency plans and special hours of operation on their Web sites to keep the public informed.[118] Precincts in hard-hit areas of New Jersey, New York, and Connecticut were severely affected. Election officials had to quickly swing into action to move polling places; they resorted to makeshift tents, generators, and new locations, creating confusion for voters. The governors of New York and New Jersey exercised Executive Orders allowing residents to vote provisionally at any polling site in their state it they could make their way to a poll.[119]

Our researchers anticipated comments from respondents on the impact of this devastating storm on voters with disabilities. However, of the nearly 900 questionnaires returned, only one respondent from New York mentioned it. This voter with disabilities said that he had requested that his registration be moved to an accessible polling site, but he received no response to his request. When he followed up, before the storm hit, he was told that it was his responsibility to identify an accessible site and then inform the

elections board where he wanted to vote. After the hurricane, he was not able to leave his home to choose a site, so he was resigned to the fact that “voting day will come and I won’t get to vote!”

The devastation of this storm and its impact on Election Day 2012, as well as on early voting, spurred the National Association of Secretaries of State to create a Task Force on Emergency Preparedness for Elections to “identify the strategies that worked well for election officials who dealt with the fallout from Hurricane Sandy…and find some cost-effective ways in which states can better prepare for such emergency scenarios in the future…that will improve the collective capabilities of the states.”[120] We should all look at the flexibility that was demonstrated by state and local boards of elections in the aftermath of Sandy to identify promising practices that can create alternative processes for casting a ballot

What Does This All Mean?

The introduction to this report included a brief summary of other surveys of voters with disabilities conducted following the November 6, 2012, election, including those by New Jersey Community Access Unlimited, the New York State ILC, the Lawyers Committee for Civil Rights Under the Law, the National Federation of the Blind (NFB), Rutgers University, and Self-Advocates Becoming Empowered (SABE). Despite different methodologies, these six surveys came up with very similar findings.

The reports from these surveys, combined with this report, reflect the experiences of more than 2,000 voters with disabilities across the country, many of whom encountered physical, architectural, technological, and attitudinal barriers to voting. These discriminatory barriers must be removed. Federal, state, and local resources must be committed now to eliminating this unacceptable and chronic injustice. The recommendations in chapter 6 offer practical strategies to help end voter discrimination for citizens with disabilities in the United States.

CHAPTER 5. POSTELECTION UNDERTAKINGS AT THE FEDERAL AND STATE LEVELS

In addition to reports chronicling the experiences of voters with disabilities deduced through various surveys and studies, such as those discussed in the introduction, the months since the November 2012 election have seen much activity at both the state and national levels with regard to voting. We look at some of these undertakings here.

Presidential Commission on Election Administration

In his 2013 State of the Union address, President Barak Obama spoke about the long lines and wait times during the November 2012 general election and announced the formation of a nonpartisan Presidential Commission on Election Administration to improve voting in America by emphasizing "our most fundamental right as citizens: the right to vote." As the President said, "When any Americans...are denied that right...we are betraying our ideals."[121]

The President recognized the impact on voters with disabilities. A fact sheet issued by the White House, describing the new commission, lists voters with disabilities and physical barriers among the issues to be addressed. In the Executive Order establishing the commission, issued on March 28, 2013, the President set forth 11 areas for consideration:

i. the number, location, management, operation, and design of polling places;

ii. the training, recruitment, and number of poll workers;

iii. voting accessibility for uniformed and overseas voters;

iv. the efficient management of voter rolls and poll books;

v. voting machine capacity and technology;

vi. ballot simplicity and voter education;

vii. voting accessibility for individuals with disabilities, limited English proficiency, and other special needs;

viii. management of issuing and processing provisional ballots in the polling place on Election Day;

ix. the issues presented by the administration of absentee ballot programs;

x. the adequacy of contingency plans for natural disasters and other emergencies that may disrupt elections; and

xi. other issues related to the efficient administration of elections that the Co-Chairs agree are necessary and appropriate to the Commission's work.[122]

The commission is advisory in nature and is mandated to hold public meetings and engage with federal, state, and local officials; technical advisors; and nongovernment organizations to carry out its mission. The commission is to submit a final report to the President within six months of the date of its first public meeting, which was held June 21, 2013, after which the commission will terminate. In carrying out its mission, the commission must avoid duplicating the efforts of other government entities.[123] On May 21, 2013, the President announced 10 appointees to the commission.[124]

NCD Policy Forum[125]

On April 23, 2013, NCD, exercising its statutory authority to convene hearings and receive testimony, held a Policy Forum: “The Help America Vote Act, Ten Years Later: Has the Law Accomplished Its Aim?” Held at the Dirksen Senate Office Building in Washington, D.C., the forum brought together distinguished panelists to explore what HAVA was intended to do; what it has accomplished; what work remains; and what

policy measures would help address the persistent barriers experienced by people with disabilities when they attempt to exercise their right to vote.

Three panels were convened. Prior to the first panel, former Senator Christopher Dodd (D-CT), author of HAVA, testified as to the congressional intent and legislative purposes of HAVA. The first panel that followed further discussed its history. Panelists were Lee Perselay, disability counsel, Senator Tom Harkin (D-IA), though testifying in his individual capacity; Mark Richert, director of public policy, American Foundation for the Blind; and Chai Feldblum**,** commissioner, Equal Employment Opportunity Commission.

The second panel, on assessing HAVA's impact, included Barbara Bovbjerg, managing director, education, workforce, and income security, GAO; and Sharon Lewis, acting principal deputy administrator, Administration for Community Living, and commissioner, AIDD.

The third panel, addressing the firsthand experiences of voters with disabilities, included Lou Ann Blake, director of outreach, Jernigan Institute, NFB; Denise Ann McQuade, board member, United Spinal Association; Kathy Hoell, executive director, Nebraska Statewide Independent Living Council; and Nancy Ward, co-director, SABE National Technical Assistance Center for Voting and Cognitive Access.

Mr. Perselay and Mr. Richert described highlights of their experiences as disability advocates to advance the voting rights of people with disabilities in the 1980s and 1990s, leading up to the enactment of HAVA. Senator Dodd recounted the turmoil following the 2000 presidential election. He noted:

> A series of hearings were held to examine not only the problems with the 2000 election, but the problems that were systemic to our nation's electoral procedures, processes and laws…in the course of those hearings we focused on the difficulties of those with physical disabilities. We learned that 21 million people with disabilities did not vote. That made the disabled communities the single largest demographic group of nonvoters in the United States of America. At that

> time only 16 percent of polling places were physically accessible. And not one, not one of the nearly 500 polling locations which the General Accounting Office visited on Election Day in 2000, had special ballots adapted for blind voters.[126]

Senator Dodd set forth four purposes of HAVA: (1) to establish a legal right to cast a provisional ballot; (2) to create statutory authority to establish national minimum standards for accessibility at all polling places, as well as standards for voting equipment and systems to ensure that all voters can vote independently and privately; (3) to appropriate funding to states to train poll workers, get equipment, upgrade voter lists, make polling places more accessible, and for other purposes; and (4) to establish the Election Assistance Commission as a resource for election officials for professional advice and counseling on topics from resources to systems in their states to guidelines for administering an election.[127]

The Senator said, "HAVA is not a perfect law…clearly changes need to be made, [but] it changed a lot in ten years to make a difference…. It helped make our democracy work for many previously disenfranchised Americans, and most importantly, it treats all Americans equally with respect to carrying out their first amendment rights….but it's clear there's still an awful lot of work to be done…. The work started by HAVA will and must continue…. I look forward to seeing the next chapter of HAVA. We need one."[128]

During the question-and-answer period, NCD members asked Senator Dodd how NCD could work with the Presidential Commission on Election Administration to ensure greater access for people with disabilities. Senator Dodd responded that one of the first priorities must be for disability advocates to be "in the room and have a seat at the table"; in fact, he recommended that they have more than one seat, so they can bring their wealth of knowledge to the process.[129] He also suggested working with the Administration and Congress in a bipartisan effort to ensure enforcement of existing laws and to create a sense of accountability, and examining the 2004, 2008, and 2012 elections to determine what actually occurred in these elections.[130]

Responding to a question about applying technological advances to the electoral process, Senator Dodd responded that sophisticated technology firms should be asked to improve voting technology, and we should look at the effective use of voting technology in other countries.

Following Senator Dodd's testimony, Chai Feldblum of the Equal Employment Opportunity Commission focused on the enforcement mechanisms in HAVA. Commissioner Feldblum said, "It's clear that the EAC could use some additional power and authority." She recommended that requirements be added to HAVA to ensure that commissioners are appointed.[131] Under HAVA, the EAC has no authority to issue rules, promulgate regulations, or take any action that imposes any requirement on any state or local government.[132]

Commissioner Feldblum noted that the ADA and Section 504 of the Rehabilitation Act play an important role in ensuring state compliance. She recommended that the Federal Election Commission might need to be given more power until the EAC is revived.

On the second panel, GAO's Barbara Bovbjerg addressed the progress made between 2000 and 2008 to improve accessibility for voters with disabilities and the steps the Department of Justice has taken to enforce the provisions of HAVA. GAO's data suggests that polling places have become more accessible for voters with disabilities and that accessible voting systems were available to "nearly everyone…yet polling places continue to have impediments and almost half haven't thought through how to place the system so that voters can use it privately and independently."[133]

Ms. Bovbjerg noted that DOJ has "taken certain measures, such as providing guidance on the accessible voting system requirements in 2006 and conducting polling place observations themselves in 2008 and 2012. They have also initiated civil access assessments which involve onsite inspections of public buildings, which may include buildings designated as polling places….The inspections are few, infrequent, and rarely done on Election Day, so are not really indicative of accessibility when voters are

present. We [GAO] have recommended that they look for opportunities to expand their oversight in cost-effective ways."[134]

While not blatantly critical of DOJ enforcement, Ms. Bovbjerg noted that "Justice's limited oversight of HAVA voting system requirements and polling place accessibility, by 2009, left gaps in ensuring voting accessibility for people with disabilities."[135] GAO's 2009 report on polling place accessibility made the following recommendations to DOJ for expanding its monitoring and oversight of the accessibility of polling places in a cost-effective manner:

- Working with states to use existing state oversight mechanisms and using other resources, such as organizations representing election officials and disability advocacy organizations, to help assess and monitor states' progress in ensuring polling place accessibility, similar to the effort used to determine state compliance with HAVA voting system requirements by the 2006 deadline.

- Expanding the scope of Election Day observations to include an assessment of the physical access to the voting area and the level of privacy and independence being offered to voters with disabilities by accessible voting systems.

- Expanding DOJ's *Americans with Disabilities Act: ADA Checklist for Polling Places* to include additional information on the accessibility of the voting area and guidance on the configuration of the accessible voting system to provide voters with disabilities with the same level of privacy and independence as is afforded to other voters.

In response to these recommendations, Ms. Bovbjerg wrote that DOJ "generally agreed…and when we [GAO] reached out for an update in preparation of this testimony, DOJ indicated it had taken steps toward addressing the recommendation. For example,

Justice noted that it has entered into settlements—with Philadelphia, Pennsylvania, in 2009 and Flint, Michigan, in 2012—to resolve allegations of inaccessible polling places."[136]

It was further reported by GAO that DOJ "had expanded the scope of Election Day observations to include an assessment of the physical accessibility of polling places, citing its monitoring of 240 polling places in about 28 jurisdictions for the 2012 General Election. However, Justice did not indicate whether its expanded Election Day observations include assessing privacy and independence provided by accessible voting systems." GAO saw no indication that DOJ had taken action to expand the scope of the *ADA Checklist for Polling Places.* [137]

AIDD Commissioner Sharon Lewis, in her testimony, noted that "there have been tremendous accomplishments through HAVA," but "there have been difficulties in particular in the utilization of Part Two funds by the states." Nonetheless, "HAVA efforts and related activities have increased awareness and improved opportunities for people with disabilities to more easily exercise their right to vote…. HAVA has definitely changed the landscape since the 2000 election, and HAVA programs and related efforts must continue to play a key role to ensure that all people with disabilities are able to exercise the right to vote."[138]

Commissioner Lewis was asked to describe the efforts AIDD has been making to monitor state expenditures to ensure that polling places are accessible and that voting equipment meets the needs of voters with disabilities. She said, "One of the shortcomings of the Act is enforceability and accountability" and acknowledged that AIDD's monitoring and enforcement comes through the P&A agencies that "really are the on-the-ground eyes and ears that pay attention to whether or not states are doing the work of HAVA and utilizing the resources as intended…."[139]

Finally, asked about the advice she would offer to facilitate more effective enforcement and field monitoring of expenditures, Commissioner Lewis responded, "When you look at the reporting that's been done by GAO, by our annual reporting, [and] by the survey that

you have done, some of the glaring errors and omissions and gaps in the law are apparent."[140] She concluded her written statement by saying, "We anticipate that improvement in the election process will continue to include better voting experiences for people with disabilities, and for all voters…. HAVA has definitely changed the landscape since the 2000 election, and…must continue to play a key role in…ensuring that all people with disabilities are able to exercise their right to vote without delay or duress."[141]

The third panel offered testimony of firsthand experiences from voters with disabilities that mirror many of the experiences shared by the almost 900 voters who responded to NCD's Voter Experience Questionnaire.

Lou Ann Blake of the Jernigan Institute introduced the NFB data from its 2012 election survey (discussed in the introduction to this report).

Kathy Hoell of the Nebraska Statewide Independent Living Council offered her perspective as a member of both the Nebraska HAVA Planning Committee and the Nebraska Disability Vote Project. She noted that "HAVA has changed voting tremendously, but problems remain in how different states interpret the law's requirements in diverse ways…the degree of success has varied from state to state, [depending]… on what equipment was purchased, how it was positioned in the polling place, the thoroughness of poll worker training, and whether the polling place meets accessibility guidelines."[142] In testimony Ms. Hoell offered her personal experience:

> [T]he passage of HAVA has made things better, but I have been shown stairs, I have been questioned by the poll workers [to determine whether] I am intelligent enough to vote, and they have told me that I am being unreasonable for asking them to move the machine out of the front door of the polling place. But the one good thing that has happened since the passage of HAVA is that I get to vote on my own. I don't have to wait for somebody else to be available to go with me.[143]

Nancy Ward of the National Technical Assistance Center for Voting and Cognitive Access introduced a training video on accessible voting equipment and discussed the

SABE data results from its 2012 Election Project Vote Checklist, which was used in five states. Ms. Ward noted that "clearly, poll workers need more training."[144]

Denise McQuade of the United Spinal Association related her experiences and her participation in a lawsuit in New York City, where the board of elections was sued under ADA Title II and Section 504 of the Rehabilitation Act for inaccessible polling sites. In *United Spinal Ass'n v. Board of Elections in City of New York*,[145] the court held that the plaintiff organization's members were denied meaningful opportunity to participate in or benefit from the city board of election's voting program by reason of their disabilities and were, therefore, subject to discrimination as defined under the ADA and the Rehabilitation Act.

The powerful and thoughtful statements made by all these panelists and their recommendations for moving forward have helped to inform the recommendations in this report.

2013 Legislative Efforts That Promote Voter Disenfranchisement

A number of state legislatures are introducing and enacting laws that create restrictive state requirements and have the potential to disenfranchise voters with disabilities. Moreover, these state laws may be in direct conflict with federal laws. As noted by Senator Dodd in testimony before NCD, these bills often refer to voter fraud prevention, but "in fact statistics show over and over and over again that [voter fraud] is virtually nonexistent…proponents are peddling falsehoods in order to disenfranchise their political adversaries. In the process, they deny people who are disproportionately poor and elderly their rights."[146]

These restrictive requirements include voter photo identification, repeal of same-day registration, proof of citizenship, reduction in early voting sites and early voting schedules, and limits on restoring voting rights.

The *Voting Laws Roundup Report* issued by the Brennan Center for Justice in October 2012 reported that at least 180 restrictive bills had been introduced since the beginning of 2011 in 41 states.[147]

Since the November 2012 general election, this trend has not abated; states have continued to propose restrictive voting requirements, with mixed results. Brennan reports that as of April 29, 2013:

- At least 82 restrictive bills have been introduced in 31 states.
- Of those, 50 restrictive bills are still pending in 18 states.
- Of those, 14 restrictive bills are currently active in eight states, meaning that there has been legislative activity beyond introduction and referral to committee (e.g., hearings, committee activity, or votes).
- Seven states have already passed eight restrictive bills this session.

At the same time, across the country, politicians on both sides of the aisle have introduced and supported bills that expand access to registration and voting. At least 204 bills that would expand access to voting have been introduced in 45 states.[148]

- Of those, 142 expansive bills are still pending in 29 states.
- Of those, 30 bills are currently active in 16 states, meaning that there has been legislative activity beyond introduction and referral to committee (e.g., such as hearings, committee activity, or votes).
- Seven states have passed eight bills that expand opportunities for eligible citizens to register and to vote.

Despite the success of restrictive bills in some states, we have reports that other states—including Colorado, Florida, and Maryland—have expanded voter access this year.

In Florida, lawmakers passed an election reform bill that adds early voting days and locations. It also limits the length of ballot descriptions of constitutional amendments, which many considered to be one of the causes of long lines in the November 2012 election.[149]

Maryland enacted a law that expands registration opportunities during early voting, extends polling place hours, and increases access to absentee ballots. The governor said the measure was passed in response to long lines and voting restrictions.[150]

Colorado passed a bill to modernize and improve the state's voting system; it includes Election Day registration and portable registration, eliminates "failure to vote" status, and crates a bipartisan voting modernization task force.[151]

Nonetheless, Dēmos (a public policy organization) reports that opponents of same-day registration are moving to counter this reform in several states, including Montana and North Carolina, where a number of voting measures are pending that will restrict access to the polls, including a strict voter ID requirement and shortening of the state's early voting periods.[152]

Voter competency requirements imposed by state laws or by election officials or service providers also present challenges for voters with disabilities.[153] Bazelon Center for Mental Health Law reports that about 15 states and the District of Columbia have laws that bar voting by people who are "under guardianship" or adjudged "mentally incompetent" or "mentally incapacitated." These laws require a court determination of incompetence or incapacity before removing a person's right to vote. Twenty states have laws that bar voting solely on the basis of a court determination that a person lacks the capacity to vote, while 11 states place no disability-related restrictions on the right to vote.

However, election officials frequently impose their own voter competence requirements and prevent voters with disabilities from casting a ballot. One example is denying people who live in institutions the right to register and vote or to obtain absentee ballots.

Poll workers and volunteers turn away people at the polls on the basis of their personal prejudices and judgments that people with mental disabilities should not be permitted to vote. It is imperative that people with cognitive and psychiatric disabilities use existing processes to retain or restore their right to vote. The publication *Vote. It's Your Right: A Guide to the Voting Rights of People with Mental Disabilities* states, "[I]t is unnecessary to impose any limitation on the fundamental right to vote of people with mental disabilities, because there is no indication that the election system has been compromised in any states that have no voter competence requirements.[154]

CHAPTER 6. FINDINGS AND RECOMMENDATIONS

The foregoing chapters examined the experiences of voters with a wide variety of disabilities during the 2012 general election cycle. Through this study, NCD hopes to articulate the fundamental right to vote and raise awareness of the challenges and barriers to voting faced by people with disabilities.

This chapter sets forth major findings and recommendations flowing from the study and charts a strategy for the future. If these recommendations are followed, people with disabilities will be able to participate in the electoral process by registering to vote, accessing polling places, developing proficiency in using voting systems as they affect people with disabilities, and casting a vote that is private and independent.

FINDING 1: People with disabilities continue to face barriers in exercising their voting rights because of architectural and physical barriers at registration and polling sites.

States and localities have not invested adequate resources, planning, or training to meet architectural and physical access compliance standards required to increase participation and improve the experience of voters with disabilities.

In written testimony submitted to NCD for its April 23, 2013, Policy Forum, Congressman Steny Hoyer (D-MD), who was the lead sponsor in the U.S. House of Representatives of the 1990 Americans with Disabilities Act (ADA) and the 2008 ADA Amendments Act, stated, “Congress has a responsibility to continue funding HAVA programs, including the grant program to make polling places accessible to all Americans…. We must approve a budget and appropriations bills that provide the resources to fund HAVA at levels that will treat all voters the same. To that end, I requested that the Labor, Health and Human Services, and Education Appropriations Subcommittee include $17 million toward the implementation of HAVA programs in next year’s [FY 2014] budget.”[155]

Other witnesses at the NCD Policy Forum also expressed the belief that adequate funding is crucial to improving access for voters with disabilities and that improvement in making polling places accessible is the result in large part to the power of federal grants.

Recommendations

- ***States and localities must ensure that all voter service centers and polling precincts be fully accessible, in compliance with the ADA, Section 504 of the Rehabilitation Act, and the Help America Vote Act (HAVA).***
  NCD recommends that state and local election officials ensure the architectural accessibility of all Voter Service Centers and polling precincts—in compliance with the ADA, Section 504 of the Rehabilitation Act, and HAVA—by conducting accessibility compliance reviews before the primary and general elections and making appropriate modifications. States and localities should use existing federal resources, including U.S. Election Assistance Committee (EAC) election management resources.

  If the state is facing accessibility complaints, the Department of Justice Project Civic Access (PCA) compliance reviews should be used to facilitate and benchmark real change and address accessibility concerns across all areas to promote civic participation of people with disabilities. Additionally, state and local election boards should collaborate with Protection and Advocacy systems (P&As), the ADA National Network, disability rights groups, and self-advocates to survey registration and polling sites, using the Department of Justice (DOJ) ADA Checklist for Polling Places and other similar resources for accessible parking, curb cuts, sidewalk maintenance, accessible doors and entrances, paths of travel, restroom accessibility, and any other physical barriers, and to identify potential modifications. Accessibility should be determined before any new site is designated for voter registration or voting.

- ***Local boards of elections must be provided with the fiscal resources to make modifications necessary to meet accessibility requirements under the***

ADA.

NCD recommends that state election entities, including secretary of state offices, help localities maximize the availability of adequate funding to provide the necessary planning, training, materials, and resources to make modifications necessary to meet accessibility requirements under the ADA and HAVA.

- ***The Department of Justice must increase its enforcement of ADA compliance and pursue complaints raised by voters with disabilities.***
  NCD recommends that DOJ commit increasing resources, staff, and focus to ensure the physical, technological, and architectural accessibility of the voting process for people with disabilities through its enforcement of the ADA and Section 504 compliance. NCD further recommends that DOJ support enforcement actions brought by P&As and private litigators as enforcement partners.

- ***States and localities must be flexible in modifying Election Day procedures to help voters waiting in line to exercise their right to vote.***
  NCD recommends that state and local election officials be flexible in modifying Election Day procedures to allow, particularly, voters with disabilities and elderly voters to sit inside the polling place while they wait to exercise their right to vote. It was widely reported during the 2012 general election that voters across the country faced long lines and hours of waiting at the polls before being able to vote. For voters with disabilities and older voters, the lengthy standing created a physical strain that caused some voters to leave the poll without voting. Flexibility in accommodating the needs of these voters to sit will help ensure the participation of all voters, and protect and preserve this sacred right.

FINDING 2: Voters with disabilities do not have equal access to voting systems because states and localities have not invested adequate resources, planning, and training to provide reliable, accessible voting technology.

Although all state jurisdictions have received HAVA funding to upgrade voting systems, including accessible voting machines, voters with disabilities were disenfranchised during the 2012 elections because of voting machines that malfunctioned, were broken, were unavailable for use, or that poll personnel were unable to demonstrate or operate. Voters with disabilities were denied an equal opportunity for voting access and the opportunity to cast a private and independent ballot.

At the NCD Policy Forum on April 23, 2013, a number of distinguished panelists testified about the need for continued HAVA funding to the states for voting technology. Mark Richert, director of public policy, American Federation for the Blind (AFB), noted, "I hope that over the course of this afternoon, we'll make the connections to the extent we do not invest as adequately as I believe we need to in protecting/managing the most sacred right that we have in this country."[156] Mr. Richert said, "The funds that have been made available to make the equipment available have been effective," but there is a lack of training on the part of polling officials. He added, "If our polling workers are not prepared to use the equipment, it's worthless."[157]

Recommendations

- ***The Presidential Commission on Election Administration should recommend and the Election Assistance Commission should encourage state and local jurisdictions to ensure that universally designed, accessible voting machines are available, functioning, and situated to provide complete privacy for voters with disabilities.***
  NCD recommends that the Presidential Commission on Election Administration and the EAC encourage state and local jurisdictions to maintain universally designed, accessible voting machines that are available, functioning, and situated to provide complete privacy for voters with disabilities.

- ***Congress in its oversight capacity should direct and ensure continued research and create incentives for the development of universally designed electronic/digital voting technology and processes that preserve the privacy of the ballot and the independence of the voter while allowing verification of the vote and system reliability.***

  NCD recommends that Congress direct further research and create incentives for the development of universally designed electronic/digital voting technology to meet HAVA's specific requirements for voting systems to be accessible to people with disabilities and to permit a voter to verify his or her vote on the ballot in a private and independent manner before the ballot is cast and counted. Many of the voting technologies currently in use, including direct recording electronic (DRE) and optical scan systems, have been fraught with problems as identified by voters; these problems undermine voter confidence. HAVA expressly mandates research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

- ***Congress must appropriate funding for state secretary of state (SOS) offices to support the purchase, upgrading, and maintenance of electronic voting systems.***

  NCD recommends that Congress appropriate funding for SOS offices to support the purchase, upgrading, and maintenance of electronic voting systems. In the current world of technological advances and ever-changing electronic business methods, updating and improvement in voting systems is perhaps the most costly of HAVA's innovation goals, but it holds the most promise for providing a barrier-free voting experience for voters with disabilities.

- ***The DOJ Civil Rights Division's Voting Rights, Disability Rights, and Federal Coordination and Compliance sections should work closely together to identify state and local jurisdictions that are failing to meet their legal obligations to provide accessible voting systems for voters with disabilities,***

and should provide targeted monitoring and require remediation.
NCD recommends that the DOJ Civil Rights Division's Voting Rights, Disability Rights, and Federal Coordination and Compliance sections work together to identify state and local jurisdictions that are failing to meet HAVA mandates.

These DOJ sections can leverage their expertise and fortify their influence to ensure consistency and effective enforcement of voting rights statutes and the ADA across all federally mandated programs that may affect voting access for people with disabilities.

NCD further recommends that DOJ, in conjunction with the Presidential Commission on Election Administration and the EAC, update and reissue guidance to the states on the legal obligation to provide accessible voting systems for voters with disabilities. The guidance should address requirements under HAVA, other relevant voting rights laws, and accessibility compliance under the ADA.

FINDING 3: Voters with disabilities face discrimination at voter registration and polling sites resulting from poorly trained election personnel and volunteers.

Voters with disabilities continue to encounter election system personnel who are condescending or rude or who demonstrate pejorative attitudes toward voters with disabilities, owing to lack of training and personal bias. State and local election personnel, including Election Day officials and volunteers, require extensive training on the voting rights of people with disabilities, the local voting system, and the requirement to provide all presenting voters with the opportunity to cast a private, independent ballot.

Recommendations

- ***State and local election officials must invest in adequate training for all election personnel and volunteers.***
  NCD recommends that state and local election officials invest in adequate training

for all election personnel and volunteers. Such comprehensive training should include (1) the obligations and requirements of HAVA and other relevant federal and state statutes regarding the voting rights of people with disabilities, including the right of voters to receive voting assistance from a person of their choosing; (2) the state and local voting process and election system; (3) how to set up, operate, and demonstrate the use of accessible voting machines; and (4) disability awareness and etiquette training. Elections personnel, particularly election judges and supervisors, should employ heightened scrutiny during hours of operation to make sure that voters with a full spectrum of disabilities receive assistance, effective communication, and respect. NCD further recommends that, to achieve this training goal, states and localities collaborate with trusted local sources as well as national disability organizations and disability-related entities, such as the National Council on Independent Living, the National Disability Rights Network, and the ADA National Network.

- ***State and local election officials must increase their efforts to hire people with disabilities for all election personnel and volunteer positions.***
  NCD recommends that state and local election officials increase their efforts to recruit and hire people with disabilities for all election personnel and volunteer positions. Such efforts will require focused outreach to the disability community.

FINDING 4: People with disabilities have limited access to voter education, despite its importance to understanding the election process and voting rights.

People with disabilities, particularly those who reside in institutional settings and other isolated communities, have limited, if any, access to voter education and training.

Recommendations

- ***State and local election officials should identify rural, remote, and isolated communities to enhance outreach and voter education activities.***
  NCD recommends that state and local election officials use available data and

knowledge to identify rural, remote, and isolated communities, including institutional settings, and develop a plan to enhance outreach and voter education activities to people with disabilities. Local disability rights organizations, Protection & Advocacy agencies, Developmental Disabilities Councils, University Centers for Excellence in Developmental Disabilities, and Centers for Independent Living, as well as self-advocates can be effective partners in identifying these voters. Information can be gleaned from available national, state, and local population, geographical, anecdotal, and descriptive data.

- ***The PAVA program should be extended to provide funding to the Native American Consortium.***
  Although all other P&As in the states and territories receive funding under the PAVA program to advocate for voter accessibility, the Native American Consortium P&A does not, because it is not a "state-designated" P&A as defined under HAVA pursuant to the Developmental Disabilities Assistance Act.

- ***States and localities must educate community and institutional care providers regarding the voting rights of people with disabilities who live in institutional settings.***
  NCD recommends that state and local boards of election, in partnership with local disability rights advocates, develop training and voter education opportunities for people who live in institutional settings, including group homes, foster homes, psychiatric facilities, and nursing and intermediate care facilities. NCD also recommends that any voter outreach and education plan emphasize training for community and institutional facilities staff to raise awareness of every person's right to cast a private and independent ballot.

  During election cycles, NCD recommends that state administering agencies ensure that all state facilities are trained to provide opportunities for residents to register to vote and to cast a private and independent ballot. Well in advance of primary and general elections, service providers in both community and

institutional facilities should coordinate with local advocacy organizations to avoid potential barriers to residents exercising their voting rights and to ensure that qualified voters are not prohibited from voting.

- ***Voters with disabilities, advocates, and voting rights organizations should be actively involved in legislative and rulemaking activities.***
  NCD recommends that, as part of voter education and training, voters with disabilities, advocates, and voting rights organizations be engaged in state and local legislative and rulemaking activities that have the potential to eliminate or reduce barriers to voting. These civic engagement activities can include writing comments, testifying at hearings, creating and circulating petitions, and visiting lawmakers to advocate for change.

- ***Through community partnerships, voter education materials should be broadly disseminated in schools and included as a service delivery goal.***
  NCD recommends that community partnerships broadly disseminate voter education materials in accessible formats in schools to transitioning youth to raise awareness of voting rights for people with disabilities. NCD also recommends that voter education be included as a service delivery goal for transitioning youth, either in the Individualized Education Program or other individual service plan.

- ***State and local election officials should ensure that all voter materials are available in accessible alternative formats.***
  NCD recommends that state and local election officials ensure the availability of alternative format ballots in braille, large print, and electronic formats at each polling place and that they are available upon request to meet the needs of voters.

  Relatedly, NCD recommends that poll personnel, including volunteers, be trained to explain to the voter that choosing an alternative format may affect the privacy of the ballot, if it is duplicated for counting.

NCD further recommends that all voter education materials be available in accessible alternative formats and minority languages.

FINDING 5: The Federal Government plays a vital role in ensuring the integrity of the election process in the United States.

While federal elections are administered under state laws and policies, Congress has enacted laws to ensure that every U.S. citizen has equal access to exercising the right to vote. The executive, legislative, and judicial branches of the Federal Government play important roles in protecting the election process and enforcing the right of all citizens to cast private and independent ballots.

Recommendations

- ***The independent Election Assistance Commission established under HAVA must be fully reconstituted so it can meet its statutory mandates.***
  The EAC was established under HAVA to serve as a national clearinghouse and resource for election administration information; provide funds to states to improve election administration; and create minimum standards for states in key areas of election administration. This four-member commission was without a quorum beginning December 2010; since December 2011, the EAC has had no commissioners, and both the executive director and general counsel resigned in late 2011. Without commissioners or a staff, the EAC cannot perform its mandated functions under HAVA. In a memo issued in early 2011, the general counsel and acting executive director suspended activity by the EAC-mandated advisory boards because there was no designated federal official appointed to conduct official business.

  Without commissioners, there can be no actions by the important EAC boards, including the 37-member Board of Advisors and the 110-member Standards Board, as well as the Technical Guidelines Development Committee. It is critical that these seats be filled and that the EAC be staffed immediately. The lack of

commissioners was noted by panelists at the NCD Policy Forum. Former Senator Christopher Dodd (D-CT) said:

> HAVA established a new commission to assist states in [meeting HAVA requirements]. The EAC, conceived and championed by my former colleague, Mitch McConnell, was a resource for election officials, a place to turn to for professional advice and counseling on topics from resources to systems in their states to guidelines for administering an election. Unfortunately, they are without any commissioners. One of the recommendations I would make to this group is that you insist these jobs be filled.[158]

- ***The Presidential Commission on Election Administration should draw on the reported experiences of voters with disabilities to improve the experience of all voters.***

  NCD recommends that the Presidential Commission on Election Administration use this and other recent reports that capture the experiences of voters with disabilities, along with a concerted effort to focus on disability voting concerns at their public meetings, to identify the challenges related to physical, architectural, technological, and attitudinal barriers to voting and to develop solutions to improve the experience, and protect and ensure the rights of voters with disabilities and all voters.

  Support for this recommendation was offered by former Senator Dodd at the NCD Policy Forum. When he was asked what specific advice NCD could give the presidential commission, he said, "Well, start with the basics. You have to be in the room and at the table…that ought to be fundamental. To talk about this and not be at the table…. I'm not suggesting one seat either. You can become advocates not only for your own community but for everyone else as well. So it ought not to be a seat physically designated for disability, but because you bring a wealth of knowledge for all Americans. So I would begin there."[159]

- ***The Presidential Commission on Election Administration should identify and recommend promising practices related to voting processes that can enhance the experience of voters with disabilities while protecting their rights.***

  NCD recommends that the Presidential Commission on Election Administration identify, investigate, and report on promising practices related to voting processes that can be made available to protect the rights and enhance the experience of voters with disabilities, and eliminate barriers to the electoral process. Such practices might include vote-by-mail systems such as that currently used in Oregon and the permanent absentee ballot voter status recently introduced in Connecticut.

  Hurricane Sandy dealt a devastating blow to a number of precincts in the northeast corridor right before the 2012 general election, severely challenging the resources of state and local election officials and the ability of voters (including first responders) to get to the polls. NCD recommends that the commission work with state and local election officials and the National Association of Secretaries of State's Task Force on Emergency Preparedness for Elections to devise effective emergency response procedures for elections to ensure that the requirements of voters with disabilities are considered as preparedness protocols are developed. Both the National Disability Rights Network (NDRN) and the National Council on Independent Living (NCIL) have memorandums of understanding with the Federal Emergency Management Agency (FEMA), and those two entities should take an active leadership role in this process.

- ***Congress should restore and maintain full HAVA funding for the secretary of state offices and the P&As.***

  NCD recommends that Congress restore FY 2014 HAVA funding to the secretary of state (SOS) offices to help states comply with minimum HAVA provisions. Funding and oversight are crucial to ongoing improvement of the electoral

process and its systems. Similarly, funding should be maintained for the P&A systems pursuant to Section 291.

NCD further recommends that Congress require SOS offices to file their mandatory annual reports with the EAC and with the Administration on Intellectual and Developmental Disabilities of the Department of Health and Human Services (AIDD-HHS) so that AIDD-HHS can monitor state spending to ensure compliance with the HAVA disability goals.

In a similar vein, NCD recommends that Congress request that the Government Accountability Office (GAO) conduct a field study during the 2016 general election to chart progress and establish a further point of comparison since their "Voters with Disabilities: Challenges to Voting Accessibility" surveys and reports in 2000 and 2008. Additionally, Congress should request that GAO investigate the experiences of SOS offices in their use of HAVA funds to improve and reform voting systems for voters with disabilities. GAO witness Barbara Bovbjerg commented at the NCD Policy Forum, "Our work suggests that polling places have become somewhat more accessible…and, amazingly, that accessible voting systems were available to nearly everyone…. [Y]et polling places continue to have impediments and almost half haven't thought through how to place the system so that voters can use it privately and independently."[160]

- ***Congress should expand allowable voting formats under the Federal Uniformed and Overseas Citizens Absentee Voting Act and extend these formats to voters with disabilities.***
  NCD recommends to Congress that the allowable voting methods under the Federal Uniformed and Overseas Citizens Absentee Voting Act—including electronic formats, email, and fax—be extended to voters with disabilities.[161] NCD also recommends that the experiences of voters with disabilities in states that have introduced alternative voting processes—such as Oregon's vote-by-mail

process and the Connecticut permanent absentee ballot—be examined to identify effective voting methods for increasing participation of voters with disabilities.

FINDING 6: The enforcement role of the Department of Justice is critical to compliance with federal statutes by states and localities.

DOJ has heightened its monitoring and enforcement of the voting rights statutes and the ADA. During the 2012 general election cycle, DOJ was a more visible, active enforcement partner with nonpartisan voter protection coalitions such as the P&A system and the Election Protection coalition led by the Lawyers Committee for Civil Rights Under Law.

However, testimony at the NCD Policy Forum on HAVA suggested the need for more vigorous enforcement. DOJ must continue to increase its presence through monitoring and rigorous enforcement in states and localities where the rights of voters with disabilities have been abridged and voters disenfranchised. As discussed in this report, DOJ must use enforcement actions under HAVA, the ADA, and Section 504 of the Rehabilitation Act.

Recommendations

- ***DOJ must increase and expand its monitoring of polling sites for compliance with the ADA and Section 504 of the Rehabilitation Act.*** NCD recommends that DOJ increase and expand its monitoring of polling sites for compliance with ADA Title II and Title III, and bring enforcement actions as necessary. NCD recommends the use of DOJ's Project Civic Access to identify areas of noncompliance and required remediation. DOJ should include Project Civic Access compliance reviews in response to all voting access complaints under review. NCD also recommends that DOJ broadly publicize its voter complaint process and vigorously pursue all complaints received.

Further, NCD recommends that DOJ use the local expertise of Protection and Advocacy for Voting Access (PAVA) programs and other voting advocacy entities in monitoring, identifying, and addressing noncompliance. This targeted attention on voting access compliance, particularly on Election Day, will continue to send a strong message to state and local jurisdictions that they can no longer discriminate against voters with disabilities.

- ***DOJ must be vigilant in enforcing the Voting Rights Act and remediating any violations of federal voting laws.***
  NCD recommends that DOJ remain vigilant in enforcing Voting Rights Act of 1965 related to any discriminatory election procedures, including voter identification laws that have the potential to disenfranchise voters with disabilities. It is an important enforcement tool, as has been proven with proposed voter photo ID requirements in Texas.

  NCD similarly recommends that DOJ intervene and pursue complaints to remediate any violations of federal voting laws, proposals, and practices that impinge on voter rights.

- ***DOJ must expand its monitoring and oversight of the accessibility of polling places for people with disabilities.***
  NCD recommends that DOJ expand its monitoring and oversight of the accessibility of polling places for people with disabilities, using the following suggestions offered by GAO in its 2009 report:

  > Working with states to use existing state oversight mechanisms and using other resources, such as organizations representing election officials and disability advocacy organizations, to help assess and monitor states' progress in ensuring polling place accessibility, similar to the effort used to determine state compliance with HAVA voting system requirements.

Expanding the scope of Election Day observations to include an assessment of the physical and technological access to the voting area and the level of privacy and independence being offered to voters with disabilities by accessible voting systems.

Expanding the ADA Checklist for Polling Places to include additional information on the accessibility of the voting area and guidance on the configuration of the accessible voting system to provide voters with disabilities with the same level of privacy and independence as is afforded other voters.

FINDING 7: The enactment of laws requiring stricter identification at the polls, including voter photo IDs, will increase barriers to the voting process and further disenfranchise voters with disabilities.

A number of state legislatures proposed and passed voter photo ID laws in advance of the 2012 primary and general election cycle. As a result of advocacy by a broad disability and voting rights coalition, a few of these laws were postponed until the next election cycle, while others were found unconstitutional. Similar proposals in other states across the nation have the potential to create barriers to voting for eligible voters with disabilities and suppress citizen participation in voting. Restrictive voter registration practices, inappropriate purging of voter rolls, and restrictive requirements at the polls are just some of the proposals that suppress voting under the guise of preventing voter fraud. State legislatures must consider the potential for disenfranchisement and oppose election laws, policies, and practices that can create barriers to voting for people with disabilities.

Former Senator Christopher Dodd, testifying at the NCD Policy Forum, noted that proponents of restrictive voting laws “would have you believe that one of the largest problems in our federal elections is people voting who aren’t eligible to vote, when in fact statistics show over and over and over again that problem is virtually nonexistent.”[162]

Recommendations

- ***Before they propose new laws and policies, state legislatures and local rulemaking authorities have a responsibility to consider the potential for inadvertently creating new barriers to voting.***
  NCD recommends that state legislatures and local rulemaking authorities thoroughly research, analyze, and consider the potential for creating new barriers to people with disabilities before proposing new laws and policies.

  State legislatures and rulemaking authorities should avail themselves of the expertise developed by local voting advocates to understand the needs and concerns of voters with disabilities and the potential impact of any changes to the voting process that might create new barriers to voting. NCD recommends that voters with disabilities be engaged at every step of the information gathering, analysis, and recommendation process with the state and local boards of elections as active partners in all voting process decision making.

  The involvement of voters with disabilities will help jurisdictions understand the nuance and impact of laws such as the voter photo ID. In states that have enacted voter photo ID requirements, the state legislature or board of elections should initiate a review to determine whether these laws create any impediments to voting or further disenfranchise of voters with disabilities.

FINDING 8: People with disabilities who are under guardianship face increasing barriers to voting owing to state laws.

Increasing numbers of state laws are being passed that bar voting by people who are under guardianship or adjudged mentally incompetent or mentally incapacitated.

Recommendation

- ***State legislatures and local rulemaking authorities must ensure that people with disabilities are afforded their fundamental right to vote.***
  NCD recommends that state legislatures and local rulemaking authorities conduct a review of state guardianship laws and modify them where necessary to ensure that all people with intellectual, developmental, or psychiatric disabilities have full access to the right to vote, independent of their legal capacity.

CONCLUSION

The voices of the nearly 900 voters with disabilities who shared their experiences during the 2012 general election cycle provide a snapshot of the improvements propelled by HAVA and highlight areas in which work remains to be done.

HAVA is improving access to the electoral process for millions of voters with the full spectrum of disabilities. A voter in Illinois commented, “I have been voting since age 18 and am now 54. Because of the accessible voting machines, voting for me as a blind person has not ever felt more liberating!”

Yet, despite the many gains reported through NCD’s Voting Experience Questionnaire and testimony at the Policy Forum on HAVA, it is clear that much work remains. A voter from Massachusetts described the voting experience as “one of the most demoralizing and humiliating experiences I’ve had surrounding my disability in a few years. I was terribly ashamed to be American and in fact felt ostracized by my own country.”

Discrimination and disenfranchisement of voters with disabilities is an intolerable blot on the U.S. election process. America must rid itself of the bias and barriers to voting, which is a fundamental right of all Americans and the very foundation of our democracy.

At the NCD Policy Forum, Nancy Ward succinctly summed up the issue when she said, “Having a disability is not the problem with voting, it is having accessible equipment, accessible locations, and the respect to vote.”

NCD is committed to ensuring complete access to the electoral process for all Americans with disabilities, including registering to vote, accessing polling places, and casting a private and independent ballot. The integrity of the voting process for all Americans—including those with disabilities—is critical to our future as a nation. NCD is committed to working at the federal, state, and local levels to pursue equality in voting for people with disabilities, now and for generations to come.

The right to vote is perhaps the single most important indicator of citizenship in the United States and around the free world. For too long, citizens with disabilities have been in the shadows in exercising this basic civil right.

Together, we must meet the challenge to eliminate the barriers. We must protect and enforce the right to vote for all Americans, with and without disabilities.

It is our hope that the voter experiences, activities, proven strategies, and recommended practices detailed in this report will guide stakeholders as they work together to increase the vibrant engagement of citizens with disabilities in the voting process. This act of civic duty and responsibility is the cornerstone in making the voices of citizens with disabilities heard at the local, state, and national levels, now and for generations to come.

In 10 years, HAVA clearly has made an important difference in removing barriers that once precluded the participation of many voters with disabilities. Significant strides have been made to ensure full participation in the electoral process, but much more needs to be done. We must not lose ground.

APPENDIX A. **2012 VOTER EXPERIENCE QUESTIONNAIRE**

The National Council on Disability, in collaboration with the National Disability Rights Network and EIN SOF Communications, Inc., wants to hear from you about your voting experiences during the 2012 General Election!

Please complete this questionnaire and email it to Voting.Questionnaire@ndrn.org or mail it to NDRN, 900 Second Street, NE, Suite 211, Washington, DC 20002.

You can also complete the questionnaire online at http://www.surveygizmo.com/s3/1053447/Voting.

If you have any questions, please contact NDRN at 202.408.9514, ext. 130.

1. If you needed any assistance in completing your voter registration, who assisted you?

2. Please describe any physical barriers you encountered at your polling place (for example, no accessible parking, no curb cuts, separate entrance, stairs, narrow doorways, etc.).

3. Describe any barriers you encountered inside your polling place (for example, inaccessible voting machine, attitudes of poll workers, etc.) that prevented you from voting privately and independently.

4. If your eligibility to vote was questioned, how did the poll worker handle the situation?

5. What, if any, voter education or training have you received?

6. Please describe any difficulty you had voting because of your state's photo ID requirement.

7. What are your city and state?

8. How many times have you voted in the past?

Additional Comments

Thank you for your feedback!

APPENDIX B. HAVA APPROPRIATIONS, 2003–2012

The following tables, provided by the Administration on Intellectual and Developmental Disabilities of the U.S. Department of Health and Human Services, show the funding amounts appropriated to the secretary of state offices and Protection & Advocacy systems under Sections 261 and 291 of the Help America Vote Act of 2002 (HAVA).

Secretary of State Offices (SOSs)	Amount Appropriated	Unspent amount returned to the U.S. Department of the Treasury
FY2003	$ 11,301,889	
FY2004	$ 9,019,128	
FY2005	$ 9,919,338	
FY2006	$ 10,879,201	
FY2007	$ 10,885,040	
FY2008	$ 11,918,164	Funds will expire 9/29/13
FY2009	$ 12,054,000	Funds will expire 9/29/14
FY2010	$ 12,054,000	Funds will expire 9/29/15
FY2011	$ 6,166,258	Funds will expire 9/29/16
FY2012	0	No money appropriated

Protection & Advocacy Systems (P&As)	Amount Appropriated	Unspent amount returned to the U.S. Department of the Treasury
FY2003	$ 1,858,371	
FY2004	$ 4,615,146	
FY2005	$ 4,612,493	
FY2006	$ 4,492,095	
FY2007	$ 4,386,900	
FY2008	$ 4,818,201	Funds will expire 9/29/13
FY2009	$ 4,888,080	Funds will expire 9/29/14
FY2010	$ 4,888,080	Funds will expire 9/29/15
FY2011	$ 2,707,645	Funds will expire 9/29/16
FY2012	$ 4,868,930	Funds will expire 9/29/17

APPENDIX C. HAVA-FUNDED SECRETARY OF STATE OFFICE 261 ACTIVITIES, 2003–2010

Awards of HAVA funds to the secretary of state offices are made through the Administration on Intellectual and Developmental Disabilities (AIDD) to each state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands. AIDD has provided the following examples of activities carried out by the secretary of state offices with Section 261 funds.

Secretary of State Offices – Section 261	
Fiscal Year	**Accomplishment**
2003	• Arizona awarded grants to county partnerships to purchase accessible voting booths, clip-on lights, parking signs, ramps, door handle adapters, embosser and translation software, and audio voting materials. • Puerto Rico improved instructions for blind voters using braille, purchased equipment and software necessary to make voting materials in the election office library accessible to voters with a variety of disabilities, and equipped four mobile offices to provide voter registration opportunities and voting opportunities to people with disabilities who are hospitalized, homebound, or reside in remote areas.
2004	• Hawaii worked with the Disability and Communication Access Board to train county election clerks and state election officials on best practices for assisting voters with disabilities and to engage in informational outreach promoting the accessible features and use of the direct recording electronic voting system selected by Hawaii to provide accessible voting. • Minnesota, with the active involvement of the American Council of the Blind and the Minnesota State Council on Disabilities, developed the 2004 Election Judge Training Video Project, a

	segment of which concentrates on assisting voters with disabilities. • Connecticut, in collaboration with its Protection & Advocacy system, its Board of Education for Services of the Blind, and several national and local advocacy organizations, conducted conferences and prepared written materials for local municipal officials and registrars of voters to educate them about polling place accessibility.
2005	• The Virgin Islands Election System created a poll worker category—facilitator—from a pool of community members who work in the service industry (e.g., bankers, attorneys, school principals). In addition to the regular orientation, these poll workers met with the director of the Disability Rights Center to receive instructions on how to deal with challenged individuals. On Election Day, they were assigned to polling places to facilitate the process and the voting experience of electors. • The office of the Idaho secretary of state produced audio files for the visually impaired and posted them on the Idahovotes.gov Web site, along with instructions on how to use the ballot-marking device. They also posted the full text of measures, amendments, and propositions on the ballot.
2006	• The Vermont State Election Office implemented a v ote-by-phone system that proved to be successful during the 2006 election. • The Maryland State Board of Elections purchased items for the 2006 elections that can be transported to polling locations to create temporary solutions to barriers.
2007	• In a collaborative effort with the Iowa Department of the Blind, the office of the secretary of state created voting registration forms in braille that are accessible to the visually impaired and

	blind citizens of Iowa. • Two training videos were developed by the office of the Rhode Island secretary of state. The first is a 10-minute training for election officials and poll workers, to prepare them to meet the needs of voters with a full range of disabilities. The second is a 5-minute training on the Automark machine; it is mandatory for all election officials and poll workers. The two videos were collaboratively developed by the Rhode Island Disability Law Center and the state board of elections.
2008	• The state of Alaska trains election officials and poll workers to promote the access and participation of individuals with the full range of disabilities in elections for federal office. In collaboration with the state ADA coordinator, the four regional election supervisors continue to refine their training curriculum to include disability awareness education. Training has been available in all of Alaska's 439 voting precincts. The state also worked with disability organizations and Independent Living Centers to address the needs of disabled voters and make resources available to them. • The Ohio secretary of state regional liaisons (field representatives) have been trained extensively on accessibility laws affecting Ohio and how to evaluate polling places for accessibility. The field representatives used their skills and voting training to perform polling place accessibility spot checks during the November general election. The secretary of state's office conducted five regional training seminars for board of election staff and board members, with 51 of 88 counties represented. Updated voting materials and accessibility resources were provided.
2009	• The Virginia State Board of Elections partnered with the Center for Independent Living to audit polling places in the state. By

	year's end, 700 polling place audits in 75 localities had been completed. The removal of polling place barriers has been accomplished by 134 localities in Virginia to ensure accessible voting for people with disabilities. • The American Samoa Territorial Election Office provided training to voters with disabilities to ensure proper use of assistive technology equipment and additional voting aids, including the ES&S Automark machines.
2010	• The office of the Maine secretary of state used HAVA funds to continue maintenance of the software for the Accessible Voting System (AVS). More than 500 municipalities were provided with accessible earphone covers for use with the AVS, the Access to Voting Pocket guides, and a new chapter devoted to accessibility for the election officials training manual. • The office of the North Dakota secretary of state and the ND Protection & Advocacy project cooperated on the development, creation, and distribution of an educational video and booklet on voters with disabilities. The media aids and materials were advertised on the Internet and distributed to more than 1,200 people statewide.

APPENDIX D. HAVA-FUNDED P&A ACTIVITIES, 2003–2010

Awards of HAVA funds to P&As are made through the Administration on Intellectual and Developmental Disabilities (AIDD) to each eligible state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands. AIDD has provided the following examples of activities carried out by the P&As with Section 291 funds.

Protection and Advocacy Systems– Section 291	
Fiscal Year	**Accomplishment**
2003	• Protection & Advocacy, Inc., of California trained approximately 600 people on topics related to ensuring full participation in elections for voters with the full range of disabilities; served on the secretary of state's task force to develop uniform poll worker training standards; and participated in the development of these standards. • South Dakota Advocacy Services published a series of articles on the Help America Vote Act covering topics relevant to voters with disabilities, provided training to county auditors, conducted eight outreach events to distribute HAVA information, and participated in seven public listening sessions addressing voting issues and concerns.
2004	• Michigan Protection & Advocacy Services organized individuals knowledgeable about the Americans with Disabilities Act to assist local clerks in surveying the physical accessibility of polling places throughout Michigan. • The Disability Law Center of Alaska provided outreach to more than 100 assisted living homes, offered voter registration assistance to residents, and provided voters with information regarding their voting rights.

2005	• Missouri Protection & Advocacy used HAVA grant funds to create the Vote at Home project. The project used a little-known law that enables Missouri voters with disabilities to register with their local election authority as permanently disabled, so they can vote in every election via absentee ballot by mail. P&A legal staff also collaborated with advocacy and disability rights organizations to challenge a restrictive Missouri voting law that required all voters to show a state-approved photo ID. Ultimately, the Missouri Supreme Court overturned the law. • The Louisiana Protection & Advocacy Center set up a conference to train and educate officials, poll workers, and election volunteers regarding the rights of voters with disabilities and best practices for working with people with disabilities (450 served).
2006	• University Legal Services, Inc. (a P&A agency) conducted voter registration drives in July 2006 at nursing homes, residential buildings for the elderly and people with disabilities, and the local psychiatric hospital. The agency helped more than 130 residents submit new voter registrations or update their information. • The Connecticut Office of Protection and Advocacy for Persons with Disabilities collaborates with the office of the secretary of state on Every 1 Counts, a project that addresses the rights of voters with disabilities in Connecticut through outreach, advocacy, education, and assistance.
2007	• The Disability Rights Center (DRC) of Kansas has been extensively involved in efforts to implement HAVA and ensure the rights of voters with disabilities. DRC advocated with the Kansas secretary of state to ensure that Kansas law was followed regarding polling place accessibility. DRC was able to get the law amended in 2004, which has enhanced polling

	places and accessibility to Kansans with disabilities. Although the law is on the books, constant monitoring and vigilance are required to ensure that the promise of the law becomes the reality. • The Alabama Disabilities Advocacy Program provided two trainings on the primary voting concerns of people with developmental disabilities. The training focused on transportation to and from the polls, decreasing the number of absentee ballots, and pre-voting activities in nursing homes. The training affected a total of 104,785 people in the state.
2008	• The Nevada Disability Advocacy Law Center provided research and technical assistance for the drafting of the final regulations for the Signature Stamp law (Senate Bill 23). The law allows the use of a rubber signature stamp for people with a physical disability who are unable to write their names. The project coordinator was able to share information on how to obtain and use the stamp during the voting process with more than 20 consumers. • The New York State Commission on Quality of Care and Advocacy for Persons with Disabilities created a voting public service announcement for the radio and television media markets in conjunction with the NYS Independent Living Council and Association. The PSA was distributed throughout the 52 upstate counties served by the upstate P&A office.
2009	• The Indiana Protection and Advocacy Services (IPAS) Commission disseminated voting and accessibility information to 64,633 people through trainings, speaking engagements, and publications. IPAS worked in collaboration with the secretary of state's office to train county clerks on voting topics, including allowable accommodations, physical access requirements, the

	grievance process, and provisional balloting. • Disability Rights Mississippi initiated a four-month "A Time to Share" listening tour across the state with a mission of hearing from Mississippians with disabilities, family members, and service providers regarding voting needs and ac cessibility concerns. There were a total of 41 out reach opportunities and events in 28 different communities across the state for outreach and input. The listening tour resulted in increased connections and services to underserved and unserved demographics, and provided an opportunity to educate families, community partners, and other advocates about voting rights for upcoming elections.
2010	• West Virginia Advocates provided voter education kits to numerous individuals at conferences, provider locations, psychiatric hospitals, nursing homes, and senior centers. The kits included outreach information, voter registration forms, absentee ballots, polling site information, hotline numbers, and frequently asked questions. • Disability Rights New Mexico worked with the Native American liaison in the office of the New Mexico secretary of state to provide intensive training and accessibly voting materials to tribal group leaders and officials throughout the state, to ensure that polling sites on t ribal lands met accessibility requirements for disabled voters.

ENDNOTES

[1] CalTech Voting Technology Project and MIT, "Voting: What Is, What Could Be," July 2001, at http://vote.caltech.edu/content/voting-what-what-could-be.

[2] Written testimony of Representative Steny H. Hoyer, Democratic Whip, NCD Policy Forum, April 23, 2013, available at http://www.ncd.gov/events/OtherEvents/04232013.

[3] Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 10.

[4] *Id*. at 25.

[5] Transcript of the oral testimony of the Honorable Christopher Dodd, NCD Policy Forum, April 23, 2013.

[6] *Id*.

[7] Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 30.

[8] 42 U.S.C. § 1973.

[9] *Id*.. § 1973ee

[10] *Id*. § 12101.

[11] *Id*. § 1973gg.

[12] *Id*. § 15301.

[13] See U.S. Department of Justice website at http://www.justice.gov/crt/about/vot (last visited 1/7/2013).

[14] 42 U.S.C. § 15301.

[15] *Supra* at note 2.

[16] U.S. Gov't Accountability Office, GAO-09-685, *Voters With Disabilities: More Polling Places Had No Potential Impediments Than in 2000, But Challenges Remain* (2009), http://www.gao.gov/cgi-bin/getrpt?GAO-09-685.

[17] Testimony of Barbara Bovbjerg, GAO, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 33.

[18] See Americans With Disabilities 2010, U.S. Census Bureau, July 2012 at http://www.census.gov/prod/2012pubs/p70-131.pdf.

[19] Lisa Schur and Douglas Krause, "Fact Sheet, Disability and Voter Turnout in the 2008 Election," Rutgers University School of Management and Labor Relations (2009) at http://smlr.rutgers.edu/research-centers/disability-and-voter-turnout.

[20] *Id*.

[21] Lisa Schur and Douglas Krause, *supra*, "Fact Sheet, Disability and Voter Turnout in the 2010 Election" at http://smlr.rutgers.edu/research-centers/disability-and-voter-turnout.

[22] Lisa Schur, Douglas Kruse, and Meera Adya, *Survey Results of Polling Place Accessibility in the 2012 Elections, Presentation to the Election Assistance Commission*, Washington, D.C., May 9, 2013.

[23] See "Members of Community Access Unlimited in Elizabeth Vote in Great Numbers," *The Jersey Journal*, January 12, 2013 at http://www.nj.com/suburbannews/index.ssf/2013/01/post_35.html.

[24] *Id*.

[25] NYSILC 2012 Post Election Voter Poll at http://www.nysilc.org/voter_edu.htm.

[26] *The Blind Voter Experience: A Comparison of the 2008 and 2012 Elections*, National Federation of the Blind (February 2013).

[27] Testimony of Lou Ann Blake, NFB, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, pp. 36-37.

[28] The 2012 Election Protection Report, Lawyers Committee for Civil Rights Under Law, February 13, 2013 at http://www.866ourvote.org/newsroom/publications/document/EP-2012-Full-Report.pdf.

[29] *Id*., p. 40.

[30] *Id*., pp. 40-41.

[31] Post 2012 Election Day Report, SABE National Technical Assistance Center for Voting and Cognitive Access, April 1, 2013.

[32] In early 2012, the Administration on Developmental Disabilities (ADD) became the Administration on Intellectual and Developmental Disabilities (AIDD). Previously a division of the U.S. Department of Health and Human Services (HHS) Administration on Children and Families (ACF), on April 16, 2012, HHS combined AIDD, the Administration

on Aging, and the Office on Disability into a new agency called the Administration for Community Living.

[33] Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 2012, to accompany S. 1599, Report 112-84, September 22, 2012, p. 144.

[34] The White House Fact Sheet on the Presidential Commission on Election Administration at http://electionlawblog.org/wp-content/uploads/SOTU-factsheet-Elections-FINAL.pdf; Executive Order: Establishment of the Presidential Commission of Election Administration (3/28/2013) at http://www.whitehouse.gov/the-press-office/2013/03/28/executive-order-establishment-presidential-commission-election-administr.

[35] *Supra* at note 15.

[36] Researchers did not receive responses from voters in Hawaii, South Dakota, Vermont, or Wyoming.

[37] The information on funding, expenditures, reporting requirements, and challenges and barriers was provided by the PAVA administering office at AIDD.

[38] 42 U.S.C. § 15301 et seq.

[39] *Id.* § 15421.

[40] *Id.* § 15481.

[41] *Id.* § 15405.

[42] *Id*. § 15451.

[43] *Id.* § 15461.

[44] *Id.* § 15512.

[45] *Id*. § 15481(a)(3).

[46] *Id*. §§ 15321–15346.

[47] *Id*. § 15401 et seq.

[48] FY 2012 Activities Report, Election Assistance Commission website at http://www.eac.gov/assets/1/Documents/FY-2012-EAC-Activities-Report-Website-Scanned.pdf.

[49] *Id*.

[50] Written testimony of Rep. Steny H. Hoyer, *supra,* note 2.

[51] Testimony of Sen. Christopher Dodd, *supra,* note 5.

[52] 42 U.S.C. § 15512.

[53] *Id*. § 15511.

[54] *Id*. § 15421 and § 15461

[55] *Id*. § 15301.

[56] *Id*. § 15302.

[57] *Id*. § 15401.

[58] *Id*. § 15301.

[59] *Id*. §15481(a)(3)(A).

[60] §15481(b)

[61] *Id.* § 15481(b)(1).

[62] *Id*. § 15481(b)(2).

[63] *Id*. § 15481(b)(2).

[64] Voluntary Voting System Guidelines, U.S. Election Assistance Commission, http://www.eac.gov/testing_and_certification/2005_vvsg.aspx (last visited Feb. 3, 2012).

[65] *How States Are Using Federal Funds to Carry Out the Help America Vote Act (HAVA)*, National Association of Secretaries of State, April 2010. See also *The Machinery of Democracy: Voting System Security, Accessibility, Usability, and Cost*, Brennan Center for Justice at NYU School of Law, Fall, 2006, pp. 9, 127-150.

[66] See "EAC: $7 Million Federal Grand Available to Make Voting More Accessible to People With Disabilities" at http://idevmail.americaneagle.com/message.aspx?d=237&m=596&e. See also "Clemson University Research Team to Lead Accessible Voting Technology Project," June 7, 2011,

Clemson University at http://www.clemson.edu/ces/computing/news-stories/PrimeIII.html; and National Institute of Standards and Technology Accessible Voting Workshop at http://www.nist.gov/itl/iad/avt-research-workshop.cfm; and FY 2012 Activities Report, Election Assistance Commission Web site at http://www.eac.gov/assets/1/Documents/FY-2012-EAC-Activities-Report-Website-Scanned.pdf.

[67] *Id*.

[68] "The Help American Vote Act and Elections Reform: Overview and Issues," CRS Report for Congress, Congressional Research Service, RS20898, June 27, 2011 available at http://www.fas.org/sgp/crs/misc/RS20898.pdf.

[69] *How States are Using Federal Funds to Carry Out the Help America Vote Act (HAVA)*, National Association of Secretaries of State, April 2010. See also *GAO Decision, Matter of Election Assistance Commission-Availability of Funds for Purchase of Replacement Voting Equipment*, File B316107, March 19, 2008, approving EAC's proposed policy to permit states to fund the replacement of HAVA-compliant voting systems, purchased with HAVA funds, with a different kind of HAVA-compliant voting system; *An Agenda for Election Reform*, Brennan Center for Justice at NYU School of Law, 2007, p. 10; *The Machinery of Democracy: Voting System Security, Accessibility, Usability, and Cost*, Brennan Center for Justice at NYU School of Law, Fall, 2006, pp. 9, 127-150.

[70] Coalition for Full Funding of HAVA, *Open Letter to Congress: Honor Commitment to Election Reform*, March 2, 2010.

[71] See generally written testimony of Sharon Lewis, Commissioner AIDD-ACL, HHS, before the NCD Forum, April 23, 2013, available at http://www.ncd.gov/events/OtherEvents/04232013.

[72] Oral testimony of Sharon Lewis, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 35.

[73] 42 U.S.C. § 15461.

[74] *Id*.

[75] *Id.*

[76] *Id. § 15462.*

[77] See, for example, the AIDD HAVA webpage at http://www.acf.hhs.gov/programs/aidd/programs/hava/about (last visited 1/3/2013), the AIDD HAVA Fact Sheet at https://www.acf.hhs.gov/sites/default/files/aidd/hava_factsheet.pdf?nocache=134946742

7, and AIDD Performance Reports at http://www.acf.hhs.gov/programs/aidd/resource/help-america-vote-act-fy-2007-2008-performance-highlights.

[78] 42 U.S.C. § 15511.

[79] See generally written testimony of Sharon Lewis, Commissioner AIDD-ACL, HHS, before the NCD Forum, April 23, 2013, available at http://www.ncd.gov/events/OtherEvents/04232013, and oral testimony of Sharon Lewis, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 35.

[80] 42 U.S.C. §15461(c).

[81] *Id*.

[82] *Id* § 15425.

[83] *Id*. § 15425. The AIDD annual reports can be viewed at http://www.acf.hhs.gov/programs/aidd/programs/hava.

[84] 42 U.S.C. § 15327. EAC annual reports can be viewed at http://www.eac.gov/payments_and_grants/reporting.aspx.

[85] See Americans with Disabilities 2010, U.S. Census Bureau, July 2012 at http://www.census.gov/prod/2012pubs/p70-131.pdf, p. 30.

[86] Written testimony of Barbara Bovbjerg, GAO, NCD Policy Forum, April 23, 2013, p. 15, available at http://www.ncd.gov/events/OtherEvents/04232013.

[87] *Id*., p. 17.

[88] 42 U.S.C. § 15461.

[89] *Id*. § 1973.

[90] *Id.* § 1973ee.

[91] *Id*. § 12101.

[92] *Id*. § 1973gg.

[93] *Id*. § 15301.

[94] See U.S. Department of Justice Web site at http://www.justice.gov/crt/about/vot (last visited 1/7/2013).

[95] 42 U.S.C. § 1973aa-6.

[96] 42 U.S.C. § 1973ee.

[97] *Id.*

[98] *Id.* § 1973ee-3(a) & (c). Specifically, under the VAEHA, no notarization or medical certification shall be required of a voter with a disability with respect to an absentee ballot or an application for such ballot, except that a state may require medical certification to establish eligibility for a permanent absentee application or ballot, or to apply for an absentee ballot after the deadline has passed.

[99] 42 U.S.C. § 12101 et seq.

[100] *Id.* §§ 12131–12165.

[101] See, for example, *United Spinal Association v. Bd. of Elections in the City of New York*, 2012 WL 3222663 (S.D.N.Y. August 8, 2012)(Plaintiff brought claims under Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act against the NYC Board of Elections alleging that polling places were in many cases inaccessible and failed to provide meaningful access to persons with disabilities with respect to voting. The District Court agreed and granted plaintiff's summary judgment); *Kerrigan, et al. v. Philadelphia Bd. of Elections, et al*., #07-687, Slip Copy, 2008 WG 3562521, (U.S.D.C.E.D.Pa, August 14, 2008)(Six Philadelphia voters with mobility disabilities filed suit against the Philadelphia Board of Elections challenging the inaccessibility of several hundred of Philadelphia's more than 1,600 polling places. The court determined that the ADA encompassed voting and that it could provide for broader protections than the VAEHA, which permits elections boards to rely on alternative voting procedures to address accessibility issues, and HAVA, which addresses accessible voting machines. The board eventually settled the case.); but see *AAPD v. Harris,* 643 F.3d 1093 (11th Cir. 2011) (The court held in an *en banc* decision that voting machines were not "facilities" under the ADA that needed to be accessible.)

[102] *Nelson v. Miller*, 170 F.3d 641(6th Cir.)(Plaintiffs who were blind brought claims under the ADA, pre-HAVA, and the court held that there was no right to a "private or secret" vote under the ADA or Rehabilitation Act; it was not a violation of the ADA to have voting processes that entailed use of assistance). Another pre-HAVA case, *Lightbourn v. County of El Paso, Texas*, 118 F.3d 421 (5th Cir 1997), found that Texas did not violate the ADA, as there were no facts alleged by the plaintiffs that the county refused to approve an accessible voting machine.

[103] *Troiano v. Supervisors of Elections in Palm Beach County,* 382 F.3d 1276 (11th Cir. 2004) (Held that the plaintiffs' claims were moot because the elections officials had implemented voting equipment with audio output at all precincts.); *AAPD v. Shelley*, 324 F.Supp. 1120, (C.D. Calif. 2004) (Plaintiffs sought a temporary restraining order to stop elections officials from decertifying certain direct recording electronic voting machines

that were accessible to people who are blind. The court ruled that the plaintiffs failed to show a likelihood of success on the merits because decertifying the machines did not deprive voters who were blind with the fundamental right to vote. The case was dismissed).

[104] Exempted from these requirements generally are private clubs and religious organizations, including places of worship.

[105] 28 C.F.R. § 36.302(a).

[106] See Project Civic Access webpage at http://www.ada.gov/civicac.htm.

[107] 42 U.S.C. § 1973gg.

[108] *Id.* § 1973gg–7.

[109] *Id* .§ 1973gg-2.

[110] *Id.* § 1973gg-5(a)(2)(B).

[111] *Id.* § 1973gg-3, -gg-4, - gg-5.

[112] *Id.* § 1973gg-5.

[113] *Id.*

[114] *Id.*

[115] See, generally, *Voting Law Changes in 2012*, Brennan Center for Justice at NYU School of Law (2011), and *Election 2012: Voting Laws Roundup Analysis*, Brennan Center for Justice (10/16/2012).

[116] For a detailed description of the current voter identification requirements, see the Brennan Center for Justice, *Election 2012: Voting Laws Roundup and Analysis* at http://www.brennancenter.org/content/resource/voter_id_laws_passed_in_2011. Also see the National Conference of State Legislatures Web site at http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx.

[117] "How Hurricane Sandy Could Affect the Election," *Washington Post* (10/26/2012), available at http://www.washingtonpost.com/blogs/post-politics/wp/2012/10/26/how-hurricane-sandy-could-affect-the-election.

[118] Examples of such postings can be found for the board of elections for the city of New York at http://vote.nyc.ny.us/html/temp_hours/temp_hours.shtml, and the Disability Power & Pride (Virginia) Web site at http://mypowerandpride.org/news/2012/10/hurricane-sandy-information-voters-virginia.

[119] See generally "Hurricane Sandy Aftermath Presents Difficulties For Voters In New York, New Jersey," Huffington Post (11/6/2012), available at http://www.huffingtonpost.com/2012/11/06/hurricane-sandy-aftermath-voters-new-york-new-jersey_n_2084358.html; "Hurricane Sandy Victims Vote, Then Evacuate As Weather Continues To Impact Election 2012," *Washington Post* (11/6/2012), available at http://articles.washingtonpost.com/2012-11-06/politics/35506148_1_hurricane-sandy-paper-ballot-vote-by-provisional-ballot; "Hurricane Sandy Election Plans: Officials Prepare To Hold Election In Storm-Ravaged Sections Of New York, New Jersey," Huffington Post (11/04/2012), available at http://www.huffingtonpost.com/2012/11/04/hurricane-sandy-election-plans_n_2073731.html; "Disruption From Storm May Be Felt at the Polls," *New York Times* (11/2/2012), available at http://www.nytimes.com/2012/11/03/us/politics/hurricane-sandy-threatens-to-disrupt-voting-on-election-day.html.

[120] "Secretaries of State Announce National Task Force on Emergency Preparedness for Election," foxreno.com, March 4, 2013, available at Election Protection Newsroom at http://www.866vote.org/newsroom or http://www.foxreno.com/news/news/national/secretaries-state-announce-national-task-force-eme/nWgWr.

[121] The White House Fact Sheet on the Presidential Commission on Election Administration at http://electionlawblog.org/wp-content/uploads/SOTU-factsheet-Elections-FINAL.pdf; Executive Order: Establishment of the Presidential Commission of Election Administration (3/28/2013) at http://www.whitehouse.gov/the-press-office/2013/03/28/executive-order-establishment-presidential-commission-election-administr.

[122] *Id.*

[123] *Id*.

[124] White House Press Release, President Obama Announces His Intent to Appoint Individuals to the Presidential Commission on Election Administration, May 21, 2013, available at http://www.whitehouse.gov/the-press-office/2013/05/21/president-obama-announces-his-intent-appoint-individuals-presidential-co.

[125] See generally NCD Web site for the Notice of Forum, agenda, and links to written testimony at http://www.ncd.gov/events/OtherEvents/04232013.

[126] Transcript of the oral testimony of the Honorable Christopher Dodd, NCD Policy Forum, April 23, 2013.

[127] *Id*.

[128] *Id.*

[129] *Id*.

[130] *Id*.

[131] Oral testimony of Commissioner Chai Feldblum, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 20.

[132] 42 U.S.C. § 15329.

[133] See Americans with Disabilities 2010, U.S. Census Bureau, July 2012 at http://www.census.gov/prod/2012pubs/p70-131.pdf, p. 30.

[134] *Id*., p. 32.

[135] Written statement of Barbara Bovbjerg, NCD Public Forum, April 23, 2013, GAO-13-538SP, p. 15.

[136] *Id., p.* 16.

[137] *Id.*

[138] Testimony of Commissioner Sharon Lewis, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 32.

[139] *Id*., p. 35.

[140] *Id*.

[141] Written testimony of Commissioner Sharon Lewis, NCD HAVA Policy Forum, April 23, 2013, p. 12, available at http://www.ncd.gov/events/OtherEvents/04232013.

[142] Written testimony of Kathy Hoell, NCD HAVA Policy Forum, April 23, 2013 at 1, available at http://www.ncd.gov/events/OtherEvents/04232013.

[143] Testimony of Kathy Howell, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 40.

[144] Testimony of Nancy Ward, Rough Draft Transcript, NCD Policy Forum, April 23, 2013, pp. 41-42.

[145] 882 F. Supp. 2d 615 (S.D.N.Y. 2012).

[146] Transcript of the oral testimony of the Honorable Christopher Dodd, NCD Policy Forum, April 23, 2013.

[147] *Election 2012: Voting Laws Roundup*, Brennan Center for Justice at New York University School of Law, October 16, 2012, available at http://www.brennancenter.org/content/resource/2012_summary .

[148] *Id*.

[149] HB 7013 (Fla. 2013) passed by the Florida Legislature on May 4 and signed by the governor on May 21, 2013. For the final bill analysis, go to http://www.flsenate.gov/Session/Bill/2013/7013/Analyses/d/mB65yRQ12h4tkO0XaLyLBIPH8=%7C14/Public/Bills/7000-7099/7013/Analysis/h7013z1.EES.PDF.

[150] HB 224 (Md. 2013) passed by the legislature on April 8, 2013 and signed by the governor on May 2, 2013. For a copy of the bill, go to http://mgaleg.maryland.gov/2013RS/chapters_noln/Ch_158_hb0224E.pdf.

[151] *Voting Law Roundup 2013*, Brennan Center for Justice at New York University School of Law, May 10, 2013, available at http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup.

[152] Dēmos Updates, Same Day Registration, May 17, 2013.

[153] See generally *Vote: It's Your Right, A Guide to the Voting Rights of People with Mental Disabilities*, Bazelon Center for Mental Health Law and National Disability Rights Network, 2008 and 2012 Addendum, available at http://www.bazelon.org/LinkClick.aspx?fileticket=8GRTfqaH_Qc%3d&tabid=543.

[154] *Id.,* pp. 14-15.

[155] Written testimony of Representative Steny H. Hoyer, Democratic Whip, NCD Policy Forum, April 23, 2013, available at http://www.ncd.gov/events/OtherEvents/04232013.

[156] Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 10.

[157] *Id*. at 25.

[158] Transcript of the oral testimony of the Honorable Christopher Dodd, NCD Policy Forum, April 23, 2013.

[159] *Id*.

[160] Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 30.

[161] 42 U.S.C. §1973ff.

[162] *Supra,* note 21.