

# DISABILITY RIGHTS CENTER - NH

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Bradford E. Cook, Chairman  
Select Committee on 2020 Emergency Election Support  
State of New Hampshire  
Department of State  
The State House, Room 204  
Concord, New Hampshire 03301

## **Sent by Electronic Mail Only**

May 13, 2020

### ***RE: Ensuring Accessible Voting for People with Disabilities***

Dear Chairman Cook and Members of the Committee,

I am writing to provide further information to supplement my testimony to the Select Committee on May 13, 2020.

Disability Rights Center-NH is the federally designated Protection and Advocacy agency for New Hampshire authorized by federal statute to protect the civil rights of individuals with disabilities. As part of our federal mandate, we receive funds from the Help America Vote Act (HAVA) in order to protect the voting rights of individuals with disabilities.

HAVA and the Americans with Disabilities Act (ADA) are still in effect during the pandemic and need to be accounted for when making decisions related to accessibility for voters with disabilities. Title II of the ADA requires that local and state governments provide programmatic access to people with disabilities. HAVA requires that voters with disabilities be able to cast their ballot privately and independently.

My comments to the committee covered three issues that the pandemic has created for voters with disabilities: (1) preparation for voting, (2) absentee voting barriers, (3) barriers to voting in person.

## **1. Preparation For Voting**

### **Voter Registration<sup>1</sup>**

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<sup>1</sup> While New Hampshire allows for same-day registration at the polling place, many people with disabilities, especially those who are immunocompromised, may try to avoid a polling place, even if that means not being able to vote. Rather than risk infection, many of these residents would prefer to register to vote prior to the election and request an absentee ballot.

The COVID-19 pandemic has caused municipal government offices to close throughout the state. Consequently, routine tasks such as registering to vote have become a significant challenge for all NH residents. This problem is even more acute for individuals with disabilities, especially those who lack their own transportation.

Some cities and towns are allowing residents to make an appointment with the town clerk to register to vote but relying solely on individual in-person appointments is not a viable option. Many people with disabilities rely on private transportation providers or volunteers for travel. Many of these providers have curtailed operations due to the pandemic. As a result, even in the towns where clerks are willing to meet with individual residents, barriers to transportation make this impossible.

There are two potential solutions to this problem. One solution is online voter registration. Online registration is a process that has been conducted throughout the country without affecting the integrity of the voting process.<sup>2</sup> The second option would be for clerks to conduct meetings outside of the residences of voters who are unable to travel. This “front porch” option presents some logistical problems, but if proper infection prevention measures are taken, it would allow for a voter to complete the registration process in compliance with RSA 654.

### Requesting an Absentee Ballot

The process for requesting an absentee ballot is currently not accessible to many people with disabilities. The application process requires accessing a printed form, filling it out, signing it, and then mailing it to the town or city clerk. This is a problem for people who are blind or are unable to fill out a form independently. This process can be simplified so that it is accessible to voters with disabilities. One way to do so is to allow voters to request an absentee ballot electronically via an electronic signature.

Electronic absentee ballot requests could be provided if digital signatures are deemed acceptable. The absentee voting statute only requires that an absentee ballot request form be “filled out” and “sent” to the town clerk. NH RSA 657:6. The law does not specify the permissible ways that an application may be “sent.” The statute does not prohibit the form to be sent electronically. The only hurdle to this process is the signature requirements in RSA 657. However, digital signatures are becoming commonplace; even the New Hampshire court system accepts digital signatures for legal documents filed electronically. Allowing people with disabilities to electronically sign and submit an absentee ballot application would make the process more accessible.

## **2. Absentee Voting**

Paper absentee ballots are not accessible to individuals who are blind or have visual impairments because they cannot read the printed text that appears on them. Thus, to vote absentee, blind voters must rely on the assistance of another person to read and mark their paper absentee ballots for them. Such assistance strips the voter of the privacy of their ballot.

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<sup>2</sup> Currently, 39 states plus the District of Colombia allow for online voter registration.

Accessible absentee ballots are required by federal law. Title II of the ADA requires that state and local governments provide voters with disabilities full and equal access to the same absentee voting opportunities that non-disabled voters enjoy. HAVA requires that all voters be able to vote privately and independently, but for many voters with disabilities to do so, their only current option is to vote in person. This is particularly troubling when voting in person means potential exposure to a deadly virus.

Absentee voting can be made accessible to those who are blind and visually impaired while still meeting the statutory obligation that a vote be cast on a paper ballot. Accessible absentee voting is already being done in a number of states.<sup>3</sup> In most of those states, anyone requesting an accessible absentee ballot must submit an additional document or a sworn statement that they have a qualifying disability under the ADA that necessitates an accessible absentee ballot. The voter is then emailed a digital, screen readable copy of their ballot which they can independently fill out and review for errors. If the digital ballot is drafted so that it is screen readable and markable via computer, the blind voter would be able to complete their ballot with assistive technology already in their possession. The state would not need to procure additional assistive technology.<sup>4</sup> The voter can then print and mail the paper ballot back using an official return envelope. This process is similar to how Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) ballots are currently processed in New Hampshire.

It is important to understand that this type of accessible absentee voting is *not online voting*.<sup>5</sup> In this process, the voter's completed paper ballot is sent back to the town clerk. The electronic ballot does not need to be sent back. The only ballot that is counted in the election is the paper ballot printed and mailed by the voter. This type of ballot would require a voter to affirmatively state that they require an accessible absentee ballot because of their disability. Like UOCAVA ballots, accessible absentee ballots would need to be hand counted, but since widespread use of this type of ballot is not expected, hand counting should not be viewed as an impediment to implementation.

Now, more than ever, people with disabilities must have the full range of voting options, including absentee voting. Accessible ballots are affordable, ensure compliance with all federal accessibility requirements and allow voters with disabilities to vote privately and independently. With careful planning and foresight, the state can make absentee ballots accessible for people with disabilities.<sup>6</sup> Investments in accessibility now will benefit the state for years to come.

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<sup>3</sup> States that offer accessible absentee voting include Washington, New Mexico, Florida, California, Ohio, Maryland, Vermont and Oregon.

<sup>4</sup> Some states have developed online ballot marking tools specifically for accessible absentee ballots. For example, Maryland uses an online ballot marking tool software that allows voters to mark their ballots digitally. More information about Maryland's ballot marking tool is available here: <https://elections.maryland.gov/voting/accessibility.html>

<sup>5</sup> Some states use an electronic absentee ballot that can be completed and transmitted back using the voter's computer.

<sup>6</sup> Though not ideal, it is possible to provide accessible absentee ballots quickly. On April 25, 2020, blind voters in Michigan filed a suit against the State alleging violations of Title II of the ADA because accessible absentee ballots were not being made available for the local elections scheduled for May 5, 2020. The Michigan Secretary of State

### **3. Voting In Person**

The COVID-19 pandemic raises several new concerns for voters with disabilities who vote in person.

#### Physical Access

Social distancing may require that the physical layout of polling places be significantly altered and the location of some polling places will need to change. HAVA and the ADA will continue to require that polling locations be physically accessible. In essence, a polling place is physically accessible if a voter has an accessible place to park, can move from the parking place to the accessible entrance, the accessible entrance is well-marked, and the voter can travel from the accessible entrance to the voting booth without barriers. An accessible path of travel to allow large wheelchairs to maneuver throughout the polling place is also required. The state should assess the accessibility of any temporary or alternative voting locations well in advance of each election and put measures in place to temporarily or permanently address any barriers to accessibility prior to the election.

Our state's election officials have done a good job with physical accessibility in the past. It is commendable that most, if not all, of the polling places used for the 2020 presidential primary were physically accessible. Further, the Secretary of State's most recent "Election Procedures Manual" includes a comprehensive guide detailing the requirements for physical accessibility. The manual is a valuable resource for state and local election officials and should be relied upon when new polling places are selected.

#### Infection Prevention

Some voters are immunocompromised and may require additional personal protective equipment (PPE) in order to enter a voting booth safely. Polling places should be prepared to supply PPE, especially masks and disposable gloves, to those who need it to vote safely.

For people who vote in person and use the One4all Accessible Voting System (AVS), there is significant potential for COVID-19 spread. This is because the AVS uses not only a tablet and keyboard, but also a headset and microphone. This equipment must be sanitized between uses to ensure that voters using the AVS are not at increased risk of infection. For locations that see regular use of the AVS, purchasing additional headsets and microphones may be necessary.

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agreed to allow blind voters the option of receiving a UOCAVA ballot. This voting option was made available to qualifying voters in less than two weeks. Like other states, voters needed to specifically request an accessible absentee ballot ahead of time and to submit a statement that the person requesting the ballot was blind or otherwise disabled.

Putting hand sanitizer in locations that allow voters to use it before and after using the AVS will also be helpful.

The Election Assistance Commission (EAC) has posted guidance for cleaning and sanitizing voting machines and equipment on its website. This guidance is provided by many voting equipment manufacturers and vendors.<sup>7</sup>

If the EAC does not list the specific vendor or manufacturer's recommendations, the CDC has guidelines that should be followed.<sup>8</sup>

The tables and surfaces used by voters with mobility restrictions must also be disinfected after use. The ADA and HAVA mandate accessibility for all voters, which includes providing waist-level voting spaces for people unable to use a regular voting booth. However, since the lowered tables and AVS equipment are used less frequently than the regular voting booths, routine cleaning of these areas should not take up much time.

### Social Distancing

In order to be properly prepared for the primary and presidential elections, it must be assumed that social distancing guidelines will still be in place during the primary and general election. We should also assume that the number of volunteers and poll workers might be less than normal due to individual concerns, forcing cities and towns to consolidate multiple polling locations. These assumptions raise several issues that need to be addressed:

Even if a significant number of people choose to vote by mail, a reduction in polling places and staff may lead to long lines for voters. These lines are a barrier for people with mobility impairments. Even if they are willing to wait in line, they may not be physically able to do so. No one should be denied the right to vote because they are physically unable to wait in line for long periods of time.

There are several potential solutions to this problem:

- (a) Increase curbside voting. NH already allows for voters unable to access the polling place because of a disability to declare their inability to vote to the moderator and cast an absentee ballot from the curb. NH RSA 659:20-a. This could be expanded. Each polling location could have a designated election worker or volunteer near the accessible parking spaces to inform the voter about this option.
- (b) If curbside voting is not expanded, then an accommodation should be made to allow voters with mobility impairments to move to the head of the line. This could be done by placing an election worker or volunteer near the accessible parking spaces to communicate this to the voter as they exit their vehicle.

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<sup>7</sup> <https://www.eac.gov/election-officials/vendor-and-manufacturer-guidance-cleaning-voting-machines-and-other-election>.

<sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

Some voters require assistance to mark their ballot. NH law permits a voter that requires assistance to bring someone into the voting booth to help fill out their ballot. RSA 659:20. The assistance may be provided by either a person of the voter's choice or by an inspector appointed to that duty by the moderator. It is critical that this legal right remains intact and that voters who need assistance are allowed to have someone they trust assist them. Additional PPE should be available in these circumstances.

### Conclusion

Both HAVA and the ADA are still in effect during the pandemic and must be considered when making recommendations to the Secretary. I am confident that with care and proper planning, the entire voting process can be made accessible so that voters with disabilities are provided appropriate and safe access to the ballot.

Please feel free to contact me with any questions or if I can assist the Select Committee further. Thank you for inviting Disability Rights Center-NH to testify. I can be reached by phone at (603) 228-0432 or via email at [jamesz@drcnh.org](mailto:jamesz@drcnh.org).

Sincerely,

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Staff Attorney