

DISABILITY RIGHTS CENTER - NH

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July 12, 2022

[Via Electronic and Hand Delivery]

Bradford E. Cook, Co-Chair
Hon. Richard E. Swett, Co-Chair
Special Committee on Voter Confidence
State of New Hampshire
Department of State
The State House, Room 204
Concord, New Hampshire 03303

RE: Election Integrity for Voters with Disabilities

Dear Members of the Special Committee,

I am writing to provide further information to supplement my testimony to the Special Committee on July 12, 2022.

Disability Rights Center-NH is the federally designated Protection and Advocacy agency for New Hampshire authorized by federal statute to protect the civil rights, including protecting the voting rights of individuals with disabilities.

My comments to the committee are centered on two issues that impact the confidence of voters with disabilities: (1) the use of accessible voting technology in federal elections; and (2) Concerns about poll-worker training, competence, and etiquette when interacting with voters with disabilities.

General Background

For all voters, trust is an essential component to ensuring confidence in the electoral process. Historically, the experiences that voters with disabilities have faced are much different than the experiences of voters without disabilities. Being able to cast a ballot privately and independently was little more than an aspiration for many voters with disabilities. Until recently, people with physical disabilities faced difficulty simply making it inside of a polling place if the location was not physically accessible. People with intellectual, speech, or hearing disabilities faced discriminatory questions about their competency to vote simply because they had difficulty communicating in spoken English. And in order for blind voters to complete their ballots, they had to rely on someone else to physically mark it for them, and hope that it was marked accurately.

Two pieces of federal law, Help America Vote Act (“HAVA”) and the Americans with disabilities Act (“ADA”), were enacted to reduce and remove barriers for voters with disabilities. Both laws mandate that polling places and elections be made accessible to people with disabilities. HAVA specifically requires that voters with disabilities are provided a means to cast their ballot privately and independently, including at least one voting system accessible to voters who are blind or have visual impairments.¹ Similarly, Title II of the ADA mandates that voters with disabilities are provided equal access and opportunity to vote as people without disabilities.² Because of these laws, voters with disabilities are now able to physically access the polling place and, through the use of accessible voting technology, cast their ballot privately, independently, and confidently.³

1. Accessible Voting Technology

Since 2016, all polling places in New Hampshire use an accessible voting system (“AVS”) known as the One4All, in all federal elections. Although it is electronic, the One4All system produces a paper ballot and is not an online voting system. The One4All does not record or store votes electronically. The One4All system uses a tablet computer, keyboard, headset, and printer to allow people to select their choices on a tablet instead of directly onto a ballot. After making their selections, a printer marks a voter’s choices on the same paper ballot used by other voters. These paper ballots are tabulated along with all other ballots at that polling location. While there is still work to be done to make the One4All completely accessible, the One4All is essential to ensuring that people who are blind or who are unable to independently mark a paper ballot themselves, are able to vote independently and privately.

The implementation of the One4All has significantly improved the voting experience of people with disabilities and has brought NH into compliance with federal law.⁴ Since the implementation of the One4All, the Secretary of State’s office has worked cooperatively with blind voters and disability advocates to address concerns related to privacy and accessibility and we look forward to continuing this work.⁵ Thanks to their efforts, the paper ballots currently used by One4All voters are identical to the ballots used by the voters who complete their ballots manually.

¹ 52 U.S.C.A. §21081, et. al.

² 42 U.S.C.A. §12131, et. al.

³ DRC-NH routinely conduct accessibility surveys at polling places across the state. The vast majority of polling locations are, with minor exceptions, physically accessible to people with disabilities. When accessibility issues have been identified, local election officials generally act quickly to remove those barriers or find other ways to accommodate voters.

⁴ HAVA guarantees the right for people with disabilities to vote privately and independently, and mandates that all polling locations provide an accessible voting system for people with disabilities. 52.U.S.C.A. §21081(a)(3).

⁵ The Secretary of State’s office made significant improvements to the synthetic voice and the printed ballot based on feedback from blind and vision impaired voters.

The Impact of Removing Voting Technology From Polling Places

During these public comment sessions, there have been some commenters who have advocated for the elimination of all voting technology from the polling place. Presumably, this would include both the electronic tabulators as well as any accessible voting systems. Efforts to eliminate One4All accessible voting system, under the guise that the system poses a security risk, are not only misinformed but also pose clear violations of federal law.

Because it produces a paper ballot, the use of the One4All accessible voting system poses no risk to election integrity.⁶ In fact, the opposite is true: the One4All has enhanced the confidence of voters with disabilities, many of whom waited their entire lives for the opportunity to vote privately and independently.

DRC-NH strongly *discourages* the Special Committee from recommending the removal of the One4All during federal elections. As noted above, federal laws mandate that people with disabilities are able to vote privately and independently. Providing a means to do so is a legal requirement that cannot be met by reverting to a system of hand-marked paper ballots. It is worth emphasizing that the One4All produces a paper ballot that is identical to the paper ballots used by voters without disabilities.

Removing the One4All from polling places would make elections inaccessible to people who are blind or have a print disability. Instead of completing their ballot accurately and confidentially, voters with disabilities would once again be forced to rely on someone else to complete their ballot by hand and trust that their votes are accurately recorded. This would violate their legal rights and significantly erode the confidence that voters with disabilities have in the electoral process.

Accessible Absentee Voting

During the 2020 election cycle, the Secretary of State's office adopted an accessible absentee voting system which allows voters with print disabilities to complete an absentee ballot independently.⁷ This system, like the One4All, is not completely accessible, but it does allow voters with print disabilities to cast their ballot more privately and independently than they otherwise would. DRC-NH encourages the Special Committee to recommend maintaining and improving this system in order to sustain the confidence of voters with disabilities.

2. Training and Etiquette for Election Officials and Poll Workers.

After each election, DRC-NH receives feedback from voters about their experience at the polling place. A significant problem that voters consistently identify is the clear lack of training and etiquette of poll workers.⁸ This lack of training generally manifests itself in two ways. First, a

⁶ Concerns about election integrity regarding ballots cast using the One4All are almost certainly due to misunderstanding how the accessible voting system actually works and how the paper ballots produced by the One4All are tabulated.

⁷ "Print Disabilities" refers to voters who are blind, vision impaired or have a disability that prevents them from completing a paper ballot by hand.

⁸ "Poll Workers" in this context refers to both statutorily recognized election officials such as clerks and moderators, as well as citizens who volunteer their time to help administer elections.

lack of training concerning the set up and operation of the One4All accessible voting system. Second, a lack of knowledge of the right to accommodations at the polling place. This lack of training causes voters with disabilities to have poor experiences when voting. As a consequence, voters with disabilities may lose confidence in the election process and be less likely to vote again.

Problems Related to Setting Up the One4All on Election Day

The One4All is a relatively simple system to set up and run, and the Secretary of State provides detailed instructions on how to do so. However, based on reports from voters, it is clear that many poll workers do not take the time needed to get the system operational before the polls open.

DRC-NH often hears from voters that poll workers are not familiar with the system or how it operates. As a result, poll workers are not prepared to assist voters who request to use the One4All. It is not uncommon to hear that poll workers will actively try and dissuade voters from using the One4All, and instead encourage them to have a poll worker mark their ballot by hand. One voter recounted a previous election where a poll worker entered the accessible voting booth multiple times while the person was in the process of completing their ballot, which violates that voter's right to voting privately.

Delays in being able to use the One4All are also very common. Voters have reported waiting 20-30 minutes *after* checking in with the ballot clerk before being able to use the accessible voting system. On at least one occasion, a voter waited for over an hour because the election officials requested that staff from the Secretary of State's office drive to their town and troubleshoot the system in person, which took less than 5 minutes.

Such negative experiences sour voters who use the One4All from returning to vote in future elections. Voters without disabilities are not subjected to, nor would they tolerate, such delays or invasions of privacy.

Interactions With Poll Workers

We routinely hear from voters with disabilities about how they were treated by poll workers. It is clear that many poll workers are not aware that voters with disabilities have rights to accommodations when voting. For example, some poll workers are unfamiliar with a voter's right to have someone assist them mark their ballot.⁹ Other poll workers do not know which voters are allowed to use the One4All accessible voting system.¹⁰

Two recent experiences illustrate this problem:

- In 2020, a voter reported to our office that when asked for an accommodation, the ballot clerk responded to her request by shouting loudly across the crowded room to the

⁹ N.H. Rev. Stat. Ann. 659:20.

¹⁰ As its name implies, the One4all can be used by any eligible voter can cast their ballot, regardless of ability. During a recent election, a DRC-NH staff member who had requested to use the One4All and was asked by the moderator about the nature of their disability and whether they were "qualified" to use the accessible voting system.

moderator that “a disabled person is here!” Although she was able to cast her vote, the poll worker’s inappropriate behavior left the voter upset.

- In 2018, a young nonverbal voter had a difficult time accessing the polling place because the poll workers were not sure if he had competency to vote. After much persistence from the young man’s mother, he was able to vote. Despite using a wheelchair, the poll workers did not allow the young man to use the accessible voting booth. Although the Secretary of State’s office later made clear that the young man was unquestionably eligible to vote, the mother received a call from the New Hampshire Attorney General’s Election Fraud Unit. The voter’s mother summed up the experience by saying “I feel like my community is against me. I feel like I don’t belong. I feel heartbroken.”¹¹

These indignities are not uncommon for many voters with disabilities in New Hampshire. Regardless of the poll workers’ motivations, experiences like these give pause to voters with disabilities and their families and caretakers, and dissuade some from returning to vote in future elections.

This is a fixable problem. There are steps that this Special Committee could take to meaningfully improve the confidence of voters with disabilities, comply with federal accessibility requirements, and ensure that all voters are able to cast a ballot with dignity and respect.

Specific Recommendations for the Special Committee

In order to restore and maintain the confidence of voters with disabilities, DRC-NH respectfully requests that the Special Committee make the following recommendations:

- Encourage the Secretary of State’s office to continue to improve and maintain the One4All accessible voting system, in accordance with federal accessibility requirements.
- Ensure that any new tabulators considered for future elections are compatible with the state’s accessible voting system and are usable by people with disabilities.
- Maintain and improve the accessible absentee voting system used by people with print disabilities.
- Provide disability specific training and information to election officials regarding the rights of voters with disabilities at the polling place.
- Provide training to town clerks and moderators to ensure that at least several people at each polling location know how to operate the One4All accessible voting system.
- Provide training to all election officials, poll workers, and volunteers that encourages appropriate conduct and etiquette when interacting with voters with disabilities.

¹¹ <https://www.concordmonitor.com/Charlestown-Voting-26229282>

- Recommend against reinstating the signature-match requirement for absentee ballots, which disproportionately disenfranchises voters with disabilities.

Please feel free to contact me with any questions or if I can assist the Special Committee further. Thank you for allowing DRC-NH the opportunity to testify on this vital matter. I can be reached by phone at (603) 228-0432 or via email at jamesz@drcnh.org.

Sincerely,

James P. Ziegra, Esq.
Staff Attorney