



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Testimony of Margaret Hart, Counsel
Washington Lawyers' Committee for Civil Rights and Urban Affairs¹
Before the Committee on the Judiciary & Public Safety,
District of Columbia Council

B23-0319, the "Vote by Mail Amendment Act of 2019"

November 12, 2019

Voting is a fundamental right that should be protected, promoted, and practiced and the Washington Lawyers' Committee applauds all efforts to expand voting options in the District, including this Act. However, the Vote by Mail Amendment Act of 2019 creates unnecessary and discriminatory barriers for people with disabilities who are unable to use paper ballots¹ to cast their vote privately and independently. We urge the District to authorize the use of an online ballot marking tool or other accessible option for voters with disabilities in the Vote by Mail program. Voters with disabilities must have an equal opportunity to securely exercise their right to vote privately and independently.

The Committee supports expanding voting options in the District. A vote by mail program will increase voter turnout and allow for greater democratic participation. Several studies have found a positive correlation between vote by mail programs and increased voter turnout.² For example, there is evidence that the Vote by Mail program in Utah has had a positive influence on voter turnout.³ Similarly, Colorado's universal Vote by Mail program likely

¹The Washington Lawyers' Committee was founded in 1968 to address civil rights violations, racial injustice and poverty-related issues in our community through litigation and other advocacy. The Committee has a long history of working to address discrimination in housing, employment, criminal justice, education, public accommodation and against persons with disabilities. We work closely with the private bar to bring litigation and pursue policy initiatives.

² Edelman, Gilad and Glastris, Paul, Letting People Vote at Home Increases Voter Turnout. Here's Proof. Jan. 26, 2018. Located at: https://www.washingtonpost.com/outlook/letting-people-vote-at-home-increases-voter-turnout-heres-proof/2018/01/26/d637b9d2-017a-11e8-bb03-722769454f82_story.html. Last visited Nov. 8, 2019.

³ Utah 2016: Evidence for the Positive Turnout Effects of "Vote at Home" (also known as Vote by Mail) in Participating Counties. Pantheon Analytics, May 3, 2018. Located at: https://docs.wixstatic.com/ugd/ef45f5_fcc651c4d4f1456b8340bb4c2cc0ca12.pdf. Last visited Nov. 8, 2019.

played a role in increasing turnout in the 2014 midterm elections.⁴ We expect that the Vote by Mail program will extend the ballot to District residents who face barriers to getting to the polls on Election Day or even during early voting. Nationally, Black and Latino voters are more likely than their white counterparts to experience barriers at the polls, including being asked for photo ID, being told they are not on the voter rolls, experience frequent changes to their polling locations, and face long lines and broken machines during in person voting.⁵ Black and Latino respondents were twice as likely as white respondents to have been unable to get time off work for voting.⁶ Low-wage workers, disproportionately Black and Latino, who cannot easily miss work will have another option to cast their vote. Black citizens who have historically been disenfranchised, including returning citizens, can use the Vote by Mail program to avoid potential discrimination at the polls. For these reasons, we encourage the District's creation of a vote by mail program.

However, this Act fails to address accessibility and does not comply with the Americans with Disabilities Act and the D.C. Human Rights Act. Voters with disabilities stand to benefit significantly from a vote by mail option, and comprise part of the group of voters who face discrimination and barriers at the polls.⁷ In the June 2018 District primary election, 45% of the

⁴ Colorado 2014: Comparisons of Predicted and Actual Turnout. Pantheon Analytics, Aug. 28, 2017. Located at: <https://washingtonmonthly.com/wp-content/uploads/2018/01/colorado2014voterfileanalysis.pdf>. Last visited Nov. 8, 2019.

⁵ See, e.g., Vann R. Newkirk, "Voter Suppression Is Warping Democracy" *The Atlantic* (July 17, 2018), available at <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>; Leadership Conference on Civil & Human Rights, Voting Rights, available at <https://civilrights.org/value/voting-rights/> (last accessed Nov. 12, 2019).

⁶ *Id.*

⁷ Disability Rights DC at University Legal Services, "DC Voting Access Report on The June 19, 2018 Primary Election." available at <http://uls-dc.org/media/1175/drdc-dc-voting-access-report-june-19-primary.pdf> (last accessed Nov. 12, 2019).

surveyed precincts (55 precincts) were operationally inaccessible, structurally inaccessible, or both.⁸ As written, this Act erects additional, new barriers for people with disabilities by failing to create an accessible mail-in ballot that will allow individuals with disabilities to vote privately and independently. Paper ballots are not accessible for individuals with disabilities, including individuals with visual and manual disabilities. To complete a paper ballot one is required to read standard text, physically write and/or fill in the ballot choices, seal and certify the ballot via a signature on the envelope, and mail the ballot back to the appropriate voting official to be counted. Each of these requirements is a barrier to accessibility for individuals with disabilities. Individuals who cannot complete the paper ballot on their own have to seek assistance from another person in order to vote, depriving them the right to cast their ballots privately and independently.⁹

By requiring voters to use paper ballots in order to cast a vote, the Act, as written, violates Title II of the Americans with Disabilities Act (ADA). Maryland also had a Vote by Mail program that required voters to use only paper ballots; the National Federation of the Blind sued Maryland for not providing an accessible ballot option to allow voters with disabilities to vote privately and independently.¹⁰ The Court in that case, *NFB v. Lamone*, held that Maryland had an obligation under the ADA to provide an online ballot marking tool to voters with disabilities as a reasonable accommodation.¹¹ Maryland has since implemented an online ballot marking tool for voters with disabilities and the source code for that ballot marking tool is

⁸ Id.

⁹ 52 U.S.C.S. §21041.

¹⁰ *National Federation of the Blind, et al. v. Lamone, et al.*, 813 F.3d (4th Cir. 2016).

¹¹ Id.

available to other states at no cost.¹² While some people have expressed concerns over the security of votes cast using an online ballot marking tool, these types of tools produce a paper record of the voters cast ballot which can be stored by the appropriate election official to be counted and audited. The Maryland OBMT and other tools are available for the District's use, and we encourage the District to evaluate its options and provide an accessible vote by mail ballot.

The Act also fails to contemplate accessibility for individuals with disabilities when requiring the establishment of "ballot deposit centers." Ballot deposit centers, as places of public accommodations, must be accessible under District and federal law. However, while this Act specifies that polling places to be compliant with the ADA, it fails to impose the same requirement for ballot deposit centers. We know that accessibility at polling places is currently a problem: according to Disability Rights DC's¹³ most recent surveys and testimony at the February 19, 2019 Board of Elections Oversight Hearing, approximately 14% of the District's polling places are structurally inaccessible and 34% are operationally inaccessible.¹⁴ This Act must specify the District's obligations to eliminate inaccessible polling places in the District and, create accessible ballot deposit centers. WLC urges the Council to revise the Act to include language requiring that all "ballot deposit centers" established pursuant to this Act comply with the ADA, are both structurally and operationally accessible, and that staff at the ballot deposit centers are trained to address the needs of voters with disabilities.

¹² *Hindel v. Husted*, 875 F.3d 344, 345 U.S. App. LEXIS 22651, 2017 FED App. 0257P (6th Cir.).

¹³ Disability Rights DC at University Legal Services is the federally-designated protection and advocacy program for people with disabilities in the District of Columbia

¹⁴ Testimony of Peter Stephan, Staff Attorney at Disability Rights DC at University Legal Services, D.C. Board of Elections Oversight Hearing, Feb. 19, 2019.

Finally, the Act fails to provide notice or appeal rights to voters with disabilities whose ballots are not verified because their signature on the ballot does not match their signature in the registration record.¹⁵ Section 302 of the Help America Vote Act (HAVA) of 2002 establishes the right for a voter to cast a provisional ballot if the voter's eligibility is challenged by an election official.¹⁶ There are various reasons that voters with disabilities' signatures may not match the signature in the registration record such as a tremor, fine motor delays, muscular degeneration, and reduced vision.¹⁷ If a voter's ballot is not verified because of a signature mismatch, HAVA requires that they be provided notice and allowed to vote a provisional ballot and appeal the decision to not verify their ballot. This Act should specify these rights for voters who use the vote by mail option.

We urge the District to be a leader in inclusive elections. We encourage the expansion of the ballot to a vote by mail program that is inclusive. We ask that the Council revise the Act to include the provision of accessible ballots to ensure that voters with disabilities have an equal opportunity to cast their ballots privately and independently as other voters utilizing the Vote by Mail program, to require that ballot deposit centers comply with the Americans with Disabilities Act, and to provide notice and appeal rights to voters whose ballots have not been verified due to a signature mismatch.

¹⁵ The cross section in line number 167 is incorrect. It appears there was a drafting error and the numbering is not contiguous and some of the paragraph designations are repeated. E.G., there is no paragraph (d) and there are two paragraphs (j)s and two paragraph (k)s. There is no paragraph (l).

¹⁶ 52 U.S.C.S. §21082.

¹⁷ *Saucedo v. Gardner*, 335 F. Supp 3d 202 (D.N.H. 2018).