



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Via Email

March 30, 2020

Michael Bennett
Chair, D.C. Board of Elections
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Terrica Jennings
ADA Coordinator, Board of Elections
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Dear Mr. Bennett and Ms. Jennings,

We write in response to the March 27 announcement from the DC Board of Elections regarding voting safely during the coronavirus pandemic. We applaud the steps the Board of Elections is taking to increase the availability of mail-in voting and expand early voting. At this time, especially, an expanded vote by mail program will increase voter turnout and allow for greater democratic participation. We are concerned, however, that these voting methods exclude voters with disabilities from voting privately and independently.

As you know, some voters with disabilities, including those visual and manual disabilities, are unable to privately and independently exercise their right to vote absentee because paper ballots are inaccessible. In order to cast a vote using a paper ballot a voter is required to, at the least, 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. Individuals who cannot complete the paper ballot on their own have to seek assistance from another person in order to vote. During the COVID-19 crisis, voters with disabilities across the country will be forced to choose between voting at early voting centers that are hopefully accessible and exposing themselves and family members to the virus, or voting absentee and losing their federally protected right to vote privately and independently.¹

This reliance on exclusively paper ballots in the absentee voting program violates Title II of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973,² and the D.C. Human Rights Act.³

¹ 52 U.S.C.S. §21041 (*Help American Vote Act* (“HAVA”)).

² *Nat'l Fedn. of the Blind, Inc. v. Lamone* 813 F.3d 494, 509-510 (4th Cir. 2016).

³ *See generally* D.C. Code §2-1402.01.

It is our understanding that the District is working to ensuring an accessible balloting option for voters with disabilities when casting an absentee ballot, such as an online ballot marking tools (“OBMT”) or a mobile voting via an app.⁴ An OBMT can be used in a voter’s own home with text to talk software, improving accessibility for voters with disabilities. Mobile voting apps can also be used by voters with disabilities who are displaced by COVID-19. We support these options to ensure accessible voting and do not believe either of these options would fundamentally alter the District’s absentee voting program or be unduly burdensome to implement District-wide, as both have been tested by voters and implemented without disruption to absentee voting programs.

Expanding absentee voting to ensure equal access for voters with disabilities will reduce the strain on early voting centers, allow more people to remain at home during the pandemic, and, importantly, guarantee that voters with disabilities are able to vote absentee privately and independently.

We are available at your convenience to discuss reasonable accommodations to the District of Columbia’s absentee voting program and ask that you recommit to ensuring accessible absentee voting options are available for the June 2019 primary and information about these options is provided to District residents.

Sincerely,

/s/ Margaret Hart

Maggie Hart, Counsel
Washington Lawyers’ Committee for Civil Rights
and Urban Affairs

/s/ Kaitlin Banner

Kaitlin Banner, Deputy Legal Director
Washington Lawyers’ Committee for Civil Rights
and Urban Affairs

CC: Council Chair, Phil Mendelson
Councilmember Charles Allen,
Chair, Committee on the Judiciary & Public Safety

⁴ Maryland, Ohio, New Mexico, Vermont, and Colorado each allow voters with disabilities to use online ballot marking tools when voting absentee. West Virginia and counties in Utah and Washington state allow voters with disabilities to cast a ballot using a mobile app.