

# WESTERN LAW CENTER FOR DISABILITY RIGHTS

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EVE L. HILL  
Executive Director

June 18, 2002

*Via Facsimile ((916) 653-3214) and U.S. Mail*

Hon. John A. Perez  
Chairman  
Voting Modernization Board  
c/o Office of the California Secretary of State  
Elections Division  
1500 11th Street, Room 590  
Sacramento, California 95814

**Re: Encouraging The Choice Of Voting Equipment That Enables Californians  
With Disabilities To Exercise Their Full Voting Rights**

Dear Chairman Perez and Honorable Members of the Voting Modernization Board:

We write on behalf of millions of Californians with disabilities to urge the Voting Modernization Board to utilize this unique opportunity to assure that the voting equipment adopted by California's counties over the coming years affords all voters equal access to the voting booth and the unfettered right to a secret ballot. The Fourteenth Amendment and a variety of federal statutes (including the Americans With Disabilities Act, the Voting Access For The Elderly And Handicapped Act, the Voting Rights Act of 1965, and the Rehabilitation Act) guarantee these voters the right to equal access to a secret ballot they can complete without assistance. These rights are particularly important in California where the State Constitution guarantees that "voting shall be secret." Cal. Const. Art. II, § 7.

Notwithstanding these clear rights, voters with disabilities have been disenfranchised over the years and repeatedly denied their right to a secret ballot by counties that have employed paper-based voting equipment that is difficult or impossible for persons with disabilities to use unassisted. The punch card and optical scan voting systems now used in nearly all California counties require voters to punch out small holes or to make precise marks with pencils or pens. These systems cannot be used without assistance by many blind and visually impaired voters or by voters with manual dexterity limitations (including many elderly voters). As a result of the counties' choices to use

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PROTECTING THE POSSIBILITIES  
*founded in 1975 in memory of A. Milton Miller*

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these paper-based voting systems, Californians with disabilities have been denied equal access to the voting booth and to a secret ballot. Worse, the continued use of these systems has discouraged many people with disabilities from voting at all -- thus totally disenfranchising them by reason of their disability.

In years past, it may have seemed impossible to find equipment that would provide voters with disabilities equal access to a secret ballot they could complete without assistance. There can no longer be any such excuses. Voting equipment exists today that can afford people with even severe disabilities the opportunity to vote secretly without assistance on the same basis as voters without disabilities. We are referring to direct recording electronic ("DRE") or touch-screen voting equipment. In addition to providing tremendous advantages in terms of preventing overvoting and undervoting and counting votes accurately and quickly, modern DRE systems also universally offer options designed to enable voters with disabilities to vote without assistance.

Five DRE voting systems are certified by the Secretary of State for use in California elections: Diebold's Accuvote-TS system (currently used in Plumas and (as of November 2002) Alameda counties); Election Systems & Software's Ivotronic system; Hart InterCivic's eSlate system; Sequoia's Edge system (currently used in Riverside County); and Unilect's Patriot system. Each of these systems is currently used in one or more jurisdictions in the United States. Moreover, each of them offers options that would enable voters with disabilities to vote secretly without assistance on the same basis as other voters. Specifically, all of these systems offer audio attachments that allow voters to listen to the choices on the ballot, enabling blind and visually impaired voters to vote without assistance. Some of these systems offer large screens and larger or gel pad controls that can be more easily operated by voters with manual dexterity limitations. Some even offer head movement or "sip and puff" control options that enable voters with severe disabilities to control the equipment and vote by turning their heads or using their breath.

As representatives of the millions of Californians with disabilities, we urge you to consider the long forgotten rights of these voters to equal access to the voting booth and to a secret ballot they can complete without assistance as you decide what new voting systems will be funded with Proposition 41 funds. We understand that some counties are considering converting to paper-based voting systems that will not afford voters with disabilities these basic rights. If these counties do so, they risk being found in violation of federal and state law. We urge you to condition Proposition 41 funding on the adoption of voting equipment that enables voters with disabilities to vote without assistance on the same basis as other voters. The best way to accomplish this goal would be to require all counties to adopt DRE voting systems, which, as noted above, provide a myriad of benefits to all voters. At a minimum, Proposition 41 funding should be provided only to those counties that permit voters with disabilities the opportunity to vote on specially designed DRE equipment that affords them the equal ability to exercise the

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rights afforded to all voters. The legal rights and basic dignity of these California voters demand nothing less.

Respectfully Submitted,

Eve L. Hill  
Executive Director, Western Law Center for Disability Rights

*Eve L. Hill*

Independent Living Services of Northern California

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California Council of the Blind

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Disability Resources Agency for Independent Living

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David Wilder  
Chairman Senior Affairs Commission  
of San Bernardino County

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Center for Law in the Public Interest

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Harold E. Goldsmith Sr.

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Mary Lou Breslin  
Disability Rights Education and Defense Fund (DREDF)

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cc: John Mott-Smith, Chief of the Elections Division