

From: Disability Rights California

July 9, 2010

Secretary of State
Attn: Chris Reynolds
1500 11th St., 6th Floor
Sacramento, CA 95814

Via Email to: havapubliccomments@sos.ca.gov

RE: HAVA State Plan Comments

Dear Secretary of State Bowen:

Disability Rights California is an independent, non-profit, statewide organization mandated by the federal government to provide legal services to individuals with disabilities in California regarding their disability, civil and service rights. Disability Rights California is authorized under various federal statutes to ensure the protection and advocacy of all individuals with disabilities in the state and is the protection and advocacy system in California. Under the Help America Vote Act of 2002 (HAVA), Disability Rights California is charged with ensuring "the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places." 42 U.S.C. §15461.

Thank you for the opportunity to provide comments on the HAVA State Plan. Overall, Disability Rights California is pleased with the Plan, as it addresses many issues that people with disabilities have with voting systems in California. However, there are some areas of concern we wish to call your attention to.

Overview and Introduction

No comments.

Section One

No comments.

Section Two

According to the current HAVA plan description under Section Two [§254(a)(2)], the Secretary of State executes contracts with counties to engage in and be reimbursed for HAVA activities. Counties are only reimbursed for those activities which are authorized by HAVA, and thus can be effectively monitored for compliance with HAVA.

Unfortunately, even if a county's spending is in compliance with HAVA, the county might be prevented from the use of their purchases. In particular, we are concerned that counties will be prevented from using more than one accessible machine per polling

place, even where such purchases were authorized by HAVA. For example, we understand that Santa Cruz County was able to purchase several Section 301 (a)(3)(a) compliant voting machines, but when the Secretary of State decide, as part of the "Top-to-Bottom Review" process that only one of these systems can be in each polling place, they had to use their allotted funds to pay for storing the machines instead.

We believe voters with disabilities would be best served by increased availability of (and decreased stigmatization of) voting machines that are accessible to individuals with disabilities, i.e., voting machines which would meet the requirements of HAVA §301(a)(3).

We believe this can be best achieved if there is the option at the county level to obtain increased numbers of accessible voting machines, so that the local decision makers can arrange for increased accessible voting machines proportional to local need.

We therefore recommend that the Secretary of State encourage counties to evaluate whether additional accessible voting machines could be used in a particular polling place. If additional machines are needed, the Secretary of State should provide the county support in acquiring additional HAVA compliant machines with available HAVA or Maintenance of Effort (MOE) funding.

RESPONSE

The withdrawals of approval and re-approvals issued for two of the voting systems subjected to the top-to-bottom review, Sequoia and Diebold/Premier, specified that one direct recording electronic (DRE) voting unit shall be deployed per precinct. The re-approvals do allow counties to have a second DRE voting unit per precinct so a back-up unit is available in the event a DRE voting unit is taken out of service for any reason. The reapproval condition allowing one DRE voting per voting precinct does not apply to one of the voting systems subjected to the top-to-bottom review – the Hart Intercivic voting system. There is also no restriction on the number of ES&S Automark ballot-marking devices that can be deployed per voting precinct.

These conditions of voting system use are in place because the Secretary of State's top-to-bottom review detailed a number of security vulnerabilities in all of the voting systems tested. Based on these findings, the Secretary of State has limited the use of certain DRE voting machines. It was also determined that some of the problems discovered in the review can be mitigated if appropriate security and auditing procedures are in place. Therefore, the Secretary of State placed new conditions that will enhance the security of these voting systems. For these reasons, this condition of use for these voting systems will remain in place.

Section Two also addresses Secretary of State Bowen's 2010 expansion of the 2006 poll worker training guidelines. We strongly support the portion of these guidelines that covers the following topics:

- How to operate the DRE, or other voting machines accessible to individuals with disabilities. At such time as poll workers are trained on how to set up the

accessible voting machines, they should also be trained on how to cast a vote using the machine so they can instruct the voter.

- Disability sensitivity.
- Information on the legal rights of people with disabilities to vote. For example, people with disabilities have the right to vote unless a judge has ruled the person incapable of casting a vote.
- Ensuring that the entire polling place is accessible to persons with disabilities, including monitoring the location to check that the building remains accessible, and making sure that any signs directing voters to the accessible entrance are accurate.

However, in the course of observing poll worker trainings in four counties in California, we have noticed that not all of these issues are covered in every poll worker training, with some issues not covered in my of the trainings we observed.

Therefore, we would like; to see increased oversight by the Secretary of State to ensure that the guidelines are actually applied in practice.

RESPONSE

Although accessibility is one of the dominant themes in HAVA, the specific Title III requirement for accessibility is found in voting system standards in Section 301. And as indicated in responses to other comments on the State Plan update, poll worker training is not a requirement of Title III. Again, EAC guidance (FAO 08-011) limits the ability to use HAVA funds for these purposes. However, the Secretary of State has taken a number of steps, especially recently, on her own and under the grant program found in HAVA Section 261. As the comment indicates, the Secretary of State recently took the initiative to expand the standards for poll worker training. The guidelines used to assess the accessibility of polling places, which were last issued in 2001, were updated this year also. An earlier \$3.345 million grant program allocated funds to all counties to improve physical access to polling places, and \$2.6 million in competitive grants have been awarded to 21 counties in the last two years. In the past six months, the Secretary of State allocated \$176,000 in grants to counties, so county surveyors could be trained on the new guidelines, as well as conduct surveys and purchase mitigation supplies to improve accessibility. A DVD of the training classes conducted by the California Department of Rehabilitation is being produced that will be provided to all counties in the coming months.

These steps were accomplished with the resources available to the Secretary of State and it is hoped county elections officials, which have statutory authority and responsibility for training poll workers have benefited from these efforts.

Section Three

Leading up to the November 2004 General Election, the Secretary of State earmarked \$9.9 million in HAVA Section 101 funding to counties for poll worker training and voter education grants.

California's initial State Plan and 2084 update contemplated the creation of an Election Academy to train prospective election officials. A significant amount of funding- \$25 million-was earmarked for this purpose, but there is no indication that an actual curriculum or program design was initiated.

As stated above, Disability Rights California staff observed poll worker training in four counties. In spite of the existence of the poll worker training guidance on the Secretary of State web site, the trainings were strikingly dissimilar, especially as they related to voters with disabilities. We encourage you to consider developing an "Election Academy". Were there an academy - there could be uniformity in instructors who travel from county to county giving uniform, comprehensive instruction to poll workers.

RESPONSE

As indicated in responses to other comments on the State Plan update, this issue is subject to the limitation placed on the use of the Title II funds budgeted in the State Plan update. As indicated previously (see response to Los Angeles County and CACEO comments), at this time these funds are to be used exclusively for the purpose of meeting Title III requirements. Those Title III requirements, as noted earlier, are purchasing voting systems that meet HAVA Section 301 standards; providing voter information at polling places and providing provisional voting rights under HAVA Section 302; and creation of a statewide voter registration system as described by HAVA Section 303. An Election Academy as described in California's initial 2003 HAVA State Plan is not a Title III requirement and is therefore not an allowable expense. The Secretary of State has, in the absence of the creation of an Election Academy taken other allowable steps to inform and educate elections officials about HAVA. Those steps include maintaining continual contact to serve as a liaison with federal agencies and clarify HAVA administrative and policy matters; issuing memos on an as needed basis for those same purposes; developing a HAVA compliance manual in collaboration with counties; and providing Title I funding, which can be used for this purpose, to help fund the most recent California Association of Clerks and Election Officials (CACEO) CalPEAC election officials training and certification classes.

Section Four

We continue to disagree with the Secretary of State's requirement that counties have one and only one direct recording electronic voting system (DRE) per precinct that is accessible to people with disabilities. This unnecessarily limits equal access to voting for people with disabilities and is contrary to Section 301(e)(3)(81) of the Help America Vote Act.

At the conclusion of the "Top to Bottom Review," it was decided that counties can only have one DRE machine at each polling place. See Press Release from the Office of the

Secretary of State dated August 3, 2007, available at <https://www.sos.ca.gov/voting-systems/oversight/ttbr/db07-042-ttbr-system-decisions-release.pdf>. This is contrary to federal law, which requires at least one DRE or other accessible voting system per polling place.

We acknowledge that ballots cast on a DRE may raise some security concerns for some voters. However, limiting the number of accessible voting systems to only one prohibits counties from making individualized decisions about the number of accessible voting systems that will meet the needs of voters with disabilities in their region. County election officials are in the best position to determine the number of accessible voting machines to place at a polling location. For example, at a poll monitor training that Disability Rights California staff attended, a poll monitor asked if they could request additional accessible voting machines since there are a lot of voters with disabilities in the precinct and there is usually a line for the DRE. Unfortunately, the answer was no, because only one accessible machine is allowed per polling place.

Only allowing one accessible machine per polling place perpetuates the stigmatization and segregation of people with disabilities. In many counties, voters use an accessible machine can be presumed to be voters with disabilities since nondisabled voters are often discouraged from using DREs. Disability Rights California staff observed poll worker training in four counties. In two of those counties, poll workers were told to only encourage voters with obvious mobility or vision disabilities to use DREs. This perpetuates stigma and discrimination of people with disabilities, and may raise privacy concerns if only one or two people use the DRE.¹

Disability Rights California encourages the restoration of the HAVA requirement that *at least one* accessible voting system be available in each polling place rather than restricting the policy to only one per polling place.

RESPONSE

The assertion that the Secretary of State's decision to limit the use of certain DRE machines to one per precinct is not consistent with federal law is inaccurate. Federal law requires at least one accessibly voting unit to be available in each polling place and the Secretary's voting system approval documents comply with that requirement entirely.

Section Five, Six, Seven

No comments.

Section Eight

We continue to strongly recommend that the Secretary of State survey all voters who use the accessible voting system polling places to identify problems and issues with accessible voting systems after each state election.

¹ We appreciate the Secretary of State's repeal of the rule requiring five people using a DRE voting machine before the votes could be counted.

One of the main points of Section 301 is to provide accessible voting systems for people with disabilities so they can vote in a private and independent manner. It is important that voters have an opportunity to tell the election officials and the Secretary of State whether or not this goal has been met. We do not believe simply identifying "incident reports" will capture the information needed to evaluate the accessibility of California's voting systems.

Additionally, we noted an error on page 63 for the link to the Election Day Observation reports. When we clicked on the link www.sos.ca.gov/elections/voting_systems/historic/historic_pm.htm, we reached a page stating "The page you are looking for cannot be found." However, we located the document at the following address: <http://www.sos.ca.gov/voting-systems/oversight/eday-reports.htm>.

RESPONSE

Surveying voters, particularly voters with disabilities, to gain insight into their experiences with the electoral process has been discussed by the Voting Accessibility Advisory Committee established by the Secretary of State. The Secretary of State looks forward to reviewing any survey data gathered by Disability Rights California and any other organization regarding the Election Day experiences of voters.

The appropriate link will be provided for the Election Day Observation reports in the final State Plan update.

Section Nine

Information about the State's HAVA complaint process remains difficult to find on the Secretary of State's website. This is due to the fact that the same complaint form is used by the State for general complaints as well as those directed towards fraud allegations and HAVA compliance problems.

We recommend that the HAVA complaint process and form be accessible from the home page and identified clearly with a banner and link.

We also recommend that the complaint form be revised in a manner which helps the complainant identify the HAVA violation at issue. For example, the addition of boxes which the voter could check to indicate the topic(s) of their complaint such as "I was not able to cast my ballot in private" or "I was not allowed an opportunity to verify my selections before casting my ballot."²

² See, Mississippi's HAVA Complaint form at:

<http://www.sos.ms.gov/links/elections/home/tab1/HAVAComplaintForm.pdf>

See also, Colorado's HAVA complaint form at:

http://www.elections.colorado.gov/content/Documents/Clerks%20Corner/SOS%20Approved%20Forms/2008_forms/HAVA_complaint_form_05.15.08.pdf.

Lastly, we recommend providing information on the website about how a voter who encounter accessibility barriers in completing the complaint form may request a reasonable accommodation from the Secretary of State's office.

RESPONSE

A direct link to the complaint form referenced in the comment is provided on the Secretary of State's Elections Division main page under the heading "Voter Information." This is the same location as complaint forms from other states recommended to the Secretary of State in the footnote, and seems an appropriate location.

A separate complaint form is now provided for HAVA complaints, in part because federal requirements for HAVA complaints differ from state requirements (HAVA complaints must be notarized, for instance).

The form currently includes "For more information or assistance" and lists the Secretary of State's voter information hotline contact number. However, specifying that assistance "filling out the form" will be provided may be a useful clarification and will be added to the form.

Section Ten

We suggest adding more detail to this section. Although it gives a general sense of where the money allocated for the purposes noted was spent, it includes little specifics concerning the programs. It would be helpful to know specifically what the nature of the funded programs were, who the partners were, how often the activities were conducted and how many voters or poll workers were trained. The lack of data makes it difficult to determine the effectiveness of the funded programs.

RESPONSE

This comment is similar to those provided by Los Angeles County and the CACEO. As indicated in responses to those comments, to help clarify how money has been spent, the Secretary of State will add a summary sheet showing receipt of funds, descriptions and amounts of expenditures and balances to the State Plan update. The summary will be provided in Section 10 of the State Plan because that section provides readers with information about Title I expenditures for the purposes of meeting HAVA Title III requirements, the spending the comment seeks to summarize.

Section Eleven

The state has made meaningful steps to increase communication about the implementation of HAVA. We hope the Secretary of State's office will continue to do all it can to meet with stakeholders and get input from the public.

RESPONSE

The Secretary of State will continue those meaningful steps to communicate with interested parties, including taking proactive steps such as meeting with members of the Voting Accessibility Advisory Committee established by the Secretary of State and

maintaining continual communication with elections officials through participation in CACEO monthly meetings and in monthly calls with all counties initiated by the Secretary of State.

(END OF COMMENTS)

In closing, thank you again for the opportunity to provide input and feel free to contact us if you have any questions about our comments. Further if you would like us to give you specific language in "addition and strikeout" style, please let us know.

Very truly yours,

Margaret Johnson
Advocacy Director

Hillary Sklar
Staff Attorney

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