

Disability Rights Wisconsin Comments on SB 246
Senate Committee on Elections, Ethics, and Rural Issues
Barbara Beckert, Director Milwaukee Office & HAVA Coordinator
June 12, 2019

Thank you, Chairwoman Bernier, and members of the Committee for the opportunity to share with you comments from Disability Rights Wisconsin regarding the need for legislative changes to Wisconsin's requirement for voters to state their name and address to receive a ballot. Thank you also to Senator Bernier and Representative Zimmerman, for their leadership advancing this bill, and the co-sponsors of this legislation for your efforts to address a significant barrier for some Wisconsin voters who have a disability that impacts their ability to speak.

Background. Disability Rights Wisconsin (DRW) is the designated federally mandated protection and advocacy agency for Wisconsin, established in 1977. DRW receives funding as part of the Help America Vote Act of 2002 (HAVA) to provide education, training, and assistance to individuals with disabilities to promote their full participation in the electoral process, including registering to vote, casting a vote and accessing polling places. We provide training, resource materials, and advocacy assistance, including staffing the Disability Rights Wisconsin Voter Hotline.

Much of our voting work is advanced collaboratively through the *Wisconsin Disability Vote Coalition* (WDVC), which is coordinated by DRW in partnership with the Wisconsin Board for People with Developmental Disabilities (BPDD). The coalition is a non-partisan effort to help ensure full participation in the entire electoral process of voters with disabilities.

DRW has worked with the Wisconsin Election Commission to provide education and to address barriers that prevent people with disabilities from fully participating in the electoral process. I serve on the WEC Accessibility Advisory Committee which has endorsed the need for legislative changes to Wisconsin's requirement for voters to state their name and address to receive a ballot.

Request for Legislative Change to Requirement for Voters to State Name and Address

Today, we ask you to support SB 246 to address a barrier to voting for some voters with disabilities. We request this change because of the concerns we have heard from some voters with disabilities and family members about the troubling and discriminatory impact of current Wisconsin law requiring voters to say their name and address before receiving a ballot (Section 6.79 (2)(a)). Some voters cannot state their name and address due to disability or medical condition; Wisconsin law does not require a disability related accommodation for these voters.

We respectfully ask you to advance SB 246, **with the amendment approved by the Assembly in AB 168**; DRW is fully in support of the important clarification provided by the amendment.

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For the November election, DRW received 6+ contacts related to concerns about this requirement for voters who were deaf or had a developmental disability and could not speak their name and address. In these cases, poll workers were initially insistent that voters say their name and address. In one case, the poll worker told a deaf voter that they would not receive a ballot unless the voter stated both name and address. In another case, a family member reported that a young man with a developmental disability had difficulty receiving a ballot because he could not speak his address. It is highly likely that other voters had similar experiences but did not contact DRW. This document includes some of the concerns we have heard from voters with disabilities and their families in their own words. In some cases, we heard that the person with a disability was humiliated and shamed by the treatment experienced at their polling place, as they tried to fulfill their civic duty.

Voting is one of our nation's most fundamental rights and a hallmark of our democracy. Title II of the Americans with Disabilities Act (ADA) requires state and local governments as public entities to ensure that people with disabilities have a full and equal opportunity to vote. The ADA's provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process. The ADA requires public entities to modify their voting policies, practices, and procedures when such modifications are necessary to avoid discrimination on the basis of a voter's disability. The current statutory requirement in Wisconsin law requiring voters to state their name and address does not address the needed modifications, and in some cases is being implemented in a matter that is discriminatory.

Recommendation for Legislative Change

Today we ask you to address these discriminatory practices by supporting SB 246 which permits individuals who cannot state their name and address to have an election official or another individual selected by the voter state the name and address for them. Under current Wisconsin law, there is not a requirement to provide an accommodation; this is in conflict with requirements of the American with Disabilities Act.

Legislative Change Must be Supported by Comprehensive Education

Changing the law is a first step in correcting this discriminatory practice. To ensure that voting is truly accessible to Wisconsin voters who have a disability, it is essential to develop and implement a comprehensive education effort for election officials, poll workers, people with disabilities, and other stakeholders to communicate this change. To ensure that voters with disabilities are not discriminated against and receive needed accommodations, the education plan should address training, the accessibility checklist, signage, and other postings at each polling place.

DRW and the Wisconsin Disability Vote Coalition are committed to working with the WEC to develop and advance this essential education, and monitor this change to ensure the voting process is truly accessible to all voters.

Comments from Voters with Disabilities and Family Members

To inform your consideration of SB 246, we ask you to consider these comments from voters with disabilities and family members. We want to thank each of them for sharing their experiences and helping to advance this change. In particular I want to thank disability advocate Ramsey Lee who took a leadership role in sharing these concerns with his legislators, Representative Zimmerman and Senator Schachtner.

Comments DRW Received from Deaf Voters regarding the November 2018 election

- *Can someone educate all the polling site and informed them that they should not force a Deaf person to speak, they already show their driver license with picture and if a must speak instead of speaking, write their full name? I also want to point out that forcing someone who is Deaf to speak may cause some trauma triggers for some people who may have been traumatized being force to speak while growing up.*
- *So the procedure at my polling place is to recite your name and address aloud, then show a picture ID. I asked what the procedure was for people whose disability prevented them from speaking. The pollster told me that "people like that" come with a caregiver or interpreter. I asked what they would do if there was no caregiver and the person was perfectly capable of communicating that information another way. They looked shocked and said that they would have to call a supervisor, but that kind of thing would probably never happen. So, if you can't verbally recite your name and address, be sure to bring a caregiver with you or you will find yourself at the mercy of the people who trained my highly enlightened pollsters.*
- *At vote location. She demanded my name and address even I gave her my driver license with picture of me. I told her I'm deaf. She was still demanded my voice. I told her here was my driver license. Still wanted my voice so I signed to her without my voice. She accepted.*

Comments Shared with DRW from the Parent of a Deaf Voter

I told the poll worker my son is deaf and I was assisting him in voting. The poll worker took his driver's license and confirmed that the information was correct. She then told me my deaf son had to orally state his name and address. I was surprised and repeated to her that he's deaf and communicated by sign language and not orally. The poll worker insisted that he speak before being allowed to proceed to vote. I objected citing this as voter discrimination and an ADA violation. The poll worker disagreed and said I could take up the issue with the polling place manager. I communicated this to my son through sign language. He couldn't understand why he had to try to use his voice and he refused. He was clearly embarrassed and confused by this insensitive and ridiculous requirement. Finally another poll worker handed me a piece of paper so my son could obtain a ballot and vote. While he was voting I went to the poll manager to complain about this

requirement. The first thing the poll manager asked me was whether I told the poll worker my son was deaf? I said of course it's the first thing I said when we went up to the table. That question seemed to reflect the ignorance to disabilities on display at this polling place. I had to insist that he file this incident in his report and noted that this requirement for a deaf voter to have to orally state their name and address should not apply to deaf people trying to vote. I cannot believe the poll workers were not at least minimally trained to address disabled voters. The sign at the table stating a person had to state their name and address is also preposterous and needs to be reviewed when it comes to deaf people trying to exercise their right to vote. It's clear to me that my son would not have been able to vote if I wasn't there to advocate for him and that's just plain wrong.

Sister of a Voter with a Developmental Disability Who Contacted DRW (Nov. 2018)

She shared an experience where poll workers would not let her brother with a disability vote since he could not independently recite his address. She contacted DRW for assistance, to better understand his rights to vote and whether it was required for him to speak his address. DRW followed up with the WEC for assistance, and with the sister who had contacted us, to share guidance from WEC staff.

Comments DRW Received from Disability Advocate Ramsey Lee:

I have been informed that currently under Wisconsin law statute 6.79(2)(a) requires voters to state their name and address before receiving a ballot to vote. This could become a challenge for voters who are non-verbal and or have a hard time hearing. I have Cerebral Palsy myself and sometimes it is hard for people to understand me. I am doing this not for myself, I am doing this so that Wisconsin voters with disabilities can fully participate in the voting process. ... this requirement could be problematic for people that are non-verbal, have a hard time speaking, or who are deaf. I am working on it as a citizen because I care about all people of Wisconsin and I was wondering if we could get a modification or a change to the Legislative statute to amend the Legislation so that reasonable accommodations can be made for voters who might not be able to state their name and address due to disability. This will help insure all voters can have full access and participate in the voting process seamlessly.

Thank you for your consideration of this testimony. Please let us know what additional information is needed, and how we can work together to increase access and remove barriers for voters with disabilities, to advance their full participation in the electoral process.

For information, please contact:

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U.S. Department of Justice
Civil Rights Division
Disability Rights Section



The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities

Voting is one of our nation’s most fundamental rights and a hallmark of our democracy. Yet for too long, many people with disabilities have been excluded from this core aspect of citizenship. People with intellectual or mental health disabilities have been prevented from voting because of prejudicial assumptions about their capabilities. People who use wheelchairs or other mobility aids, such as walkers, have been unable to enter the polling place to cast their ballot because there was no ramp. People who are blind or have low vision could not cast their vote because the ballot was completely inaccessible to them.

Important federal civil rights laws were enacted to combat such forms of discrimination and protect the fundamental right to vote for all Americans. This document provides guidance to states, local jurisdictions, election officials, poll workers, and voters on how the Americans with Disabilities Act and other federal laws help ensure fairness in the voting process for people with disabilities.

FEDERAL LAWS PROTECTING THE RIGHT TO VOTE

The **Americans with Disabilities Act (ADA)** is a federal civil rights law that provides protections to people with disabilities that are similar to protections provided to individuals on the basis of race, color, sex, national origin, age, and religion. Title II of the ADA requires state and local governments (“public entities”) to ensure that people with disabilities have a full and equal opportunity to vote. The ADA’s provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.

The **Voting Rights Act of 1965 (VRA)** also contains provisions relevant to the voting rights of people with disabilities. The VRA requires election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter's choice (other than the voter's employer or its agent or an officer or agent of the voter's union). The VRA also prohibits conditioning the right to vote on a citizen being able to read or write, attaining a particular level of education, or passing an interpretation "test."

The **Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA)** requires accessible polling places in federal elections for elderly individuals and people with disabilities. Where no accessible location is available to serve as a polling place, voters must be provided an alternate means of voting on Election Day.

The **National Voter Registration Act of 1993 (NVRA)** aims, among other things, to increase the historically low registration rates of persons with disabilities. The NVRA requires all offices that provide public assistance or state-funded programs that primarily serve persons with disabilities to also provide the opportunity to register to vote in federal elections.

The **Help America Vote Act of 2002 (HAVA)** requires jurisdictions responsible for conducting federal elections to provide at least one accessible voting system for persons with disabilities at each polling place in federal elections. The accessible voting system must provide the same opportunity for access and participation, including privacy and independence, that other voters receive.

The remainder of this document discusses how these laws apply to common aspects of the election process.

MAKING VOTER REGISTRATION ACCESSIBLE TO ALL

The first step in the voting process is registration. The NVRA requires all offices that provide public assistance or state-funded programs that primarily serve persons with disabilities to provide the opportunity to register to vote by providing voter registration forms, assisting voters in completing the forms, and transmitting completed forms to the appropriate election official. The NVRA requires such offices to provide any citizen who wishes to register to vote the same degree of assistance with voter registration forms as it provides with regard to completing the office's own forms. The NVRA also requires that if such office provides its services to a person with a disability at the person's home, the office shall provide these voter registration services at the home as well.

In a 2011 NVRA case, the Department reached a settlement with the State of Rhode Island that required state officials to ensure that voter registration opportunities are offered at all disability

services offices in the state and to develop and implement training and tracking programs for those offices.

In addition to the registration opportunities guaranteed by the NVRA, the ADA requires states to ensure that all aspects of the voter registration process are accessible to persons with disabilities. The ADA also prohibits a state from categorically disqualifying all individuals who have intellectual or mental health disabilities from registering to vote or from voting because of their disability.

PROVIDING ACCESSIBLE POLLING PLACES

In communities large and small, people cast their ballots in a variety of facilities that temporarily serve as polling places, such as libraries, schools, and fire stations, or churches, stores, and other private buildings. The ADA requires that public entities ensure that people with disabilities can access and use their voting facilities. The ADA's regulations and the ADA Standards for Accessible Design set out what makes a facility accessible and should be used to determine the level of accessibility at any facility being considered for use as a polling place. The Justice Department's [ADA Checklist for Polling Places](#) | [PDF](#) provides guidance to election officials for determining whether a polling place already has the basic accessibility features needed by most voters with disabilities or can be made accessible using temporary solutions.

An additional Justice Department publication, [Solutions for Five Common ADA Access Problems at Polling Places](#) | [PDF](#), illustrates suggested temporary solutions for several common problems found at polling places. For example, if parking is provided at a polling place but there are no accessible parking spaces, election administrators can create temporary accessible parking by using traffic cones and portable signs to mark off the accessible spaces and access aisles.

The Department of Justice has expanded the scope of the Election Day monitoring conducted by Civil Rights Division staff to include assessments of the physical accessibility of polling places. For the 2012 general election, the Department's Election Day monitors conducted accessibility surveys of approximately 240 polling places in 28 jurisdictions throughout the country.

In some circumstances, when a public entity is unable to identify or create an accessible polling place for a particular voting precinct or ward, election administrators may instead use an alternative method of voting at the polling place. While absentee balloting can be offered to voters with disabilities, it cannot take the place of in-person voting for those who prefer to vote at the polls on Election Day. Any alternative method of voting must offer voters with disabilities an equally effective opportunity to cast their votes in person. For example, the only suitable

polling site in a precinct might be an inaccessible building. In this rare circumstance, election administrators may provide “curbside voting” to allow persons with disabilities to vote outside the polling place or in their cars. In order to be effective, however, the curbside voting system must include: (1) signage informing voters of the possibility of voting curbside, the location of the curbside voting, and how a voter is supposed to notify the official that she is waiting curbside; (2) a location that allows the curbside voter to obtain information from candidates and others campaigning outside the polling place; (3) a method for the voter with a disability to announce her arrival at the curbside (a temporary doorbell or buzzer system would be sufficient, but not a telephone system requiring the use of a cell phone or a call ahead notification); (4) a prompt response from election officials to acknowledge their awareness of the voter; (5) timely delivery of the same information that is provided to voters inside the polling place; and (6) a portable voting system that is accessible and allows the voter to cast her ballot privately and independently.

Curbside voting is permissible only under these limited circumstances. Under the ADA, jurisdictions must select polling sites that are or can be made accessible, so that voters with disabilities can participate in elections on the same terms and with the same level of privacy as other voters.

In February 2014, the Department of Justice and Blair County, Pennsylvania, entered into a Settlement Agreement under the ADA concerning the accessibility of the County's polling places. The County agreed that by the 2014 general election, all of its polling places would be accessible on Election Day to voters with mobility and vision impairments. The County agreed to relocate some polling places that were not accessible and to provide temporary measures at others such as portable ramps and doorbells to make sure that they are accessible on Election Day.

ENSURING POLICIES AND PROCEDURES DO NOT DISCRIMINATE AGAINST PEOPLE WITH DISABILITIES

Public entities must ensure that they do not have policies, procedures, or practices in place that interfere with or prohibit persons with certain disabilities from registering to vote or voting based on their disability. For example, an election official cannot refuse to provide an absentee ballot or voter registration form to a person with a disability because the official knows the voter resides in a nursing home.

In addition, the ADA requires public entities to modify their voting policies, practices, and procedures when such modifications are necessary to avoid discrimination on the basis of a voter’s disability. That requirement is relaxed only if election administrators can show that the proposed modification would fundamentally alter the nature of the voting program. For example, voters who use crutches may have difficulty waiting in a long line to vote. The ADA does not

require that these voters be moved to the front of the line, but the public entity should provide a chair for them while they wait. For a voter with multiple sclerosis who may be unable to tolerate extreme temperatures, providing a chair inside the polling place may be an appropriate modification.

Similarly, election officials must modify a “no animals/pets” policy to allow voters with disabilities to be accompanied by their service animals in all areas of the polling place where the public is allowed to go. Additionally, if a jurisdiction requires voters to provide identification, the ADA requires that election officials not restrict the permissible forms of identification from voters with disabilities to ones that are not available to those voters. For example, individuals with severe vision impairments, certain developmental disabilities, or epilepsy are ineligible in many states to receive a driver’s license. Thus, accepting only a driver’s license would unlawfully screen out these voters.

PROVIDING ACCESSIBLE VOTING SYSTEMS AND EFFECTIVE COMMUNICATION

HAVA requires jurisdictions conducting **federal** elections to have a voting system (such as the actual voting machines) that is accessible, including to citizens who are blind or visually impaired, at each polling place. The accessible voting system must provide the same opportunity for access and participation, including privacy and independence, that other voters enjoy. States can satisfy this accessibility requirement through use of a direct recording electronic voting system or other voting system equipped for individuals with disabilities. In addition to HAVA, the ADA requires officials responsible for conducting all public elections to make sure that any accessible voting systems are maintained and function properly in each election, and that election officials have been adequately trained to operate them.

Following the enactment of HAVA, the Department monitored the nationwide implementation of the accessible voting systems requirements and successfully resolved litigation in Maine, New York, and Pennsylvania to ensure that accessible voting systems were established in every polling place in those states.

The ADA requires election officials conducting **any** elections at the federal, state, or local level to provide communication with voters with disabilities that is as effective as that provided to others. To ensure that voters with disabilities can fully participate in the election process, officials must provide appropriate auxiliary aids and services at each stage of the process, from registering to vote to casting a ballot. Only if providing an aid or service would result in a fundamental alteration or undue financial and administrative burdens is a jurisdiction not required to provide the aid or service. However, the jurisdiction still has an obligation to provide, if possible, another aid or service that results in effective communication. In determining the

type of auxiliary aid and service to be provided, officials must give primary consideration to the request of the voter.

Examples of auxiliary aids and services for people who are blind or have low vision include a qualified reader (a person who is able to read effectively, accurately, and impartially using necessary specialized vocabulary); information in large print or Braille; accessible electronic information and information technology; and audio recording of printed information. Examples of auxiliary aids and services for people who are deaf or have hearing loss include sign language interpreters, Video Remote Interpreting, captioning, and written notes. For additional information about auxiliary aids and services, see ADA Requirements: Effective Communication at <http://www.ada.gov/effective-comm.htm>.

For example, suppose that a jurisdiction is conducting an election for mayor and city council members using a paper ballot system. A blind voter requests an accessible ballot. A Braille ballot would have to be counted separately and would be readily identifiable, and thus would not constitute a secret ballot. Other aids and services would better afford voters who are blind the opportunity to vote privately and independently and to cast a secret ballot, just like other voters. These may include ballot overlays or templates, electronic information and information technology that is accessible (either independently or through assistive technology such as screen readers), or recorded text or telephone voting systems.

The requirement to provide effective communication also extends to other information related to the voting process, such as poll workers obtaining address and registration information from voters. Whatever information the public entity provides relating to the voting process must be accessible and usable by all who come to cast their ballots. For example, election officials should have pen and paper available and be prepared to write out questions at the polling place check-in table for a voter who is deaf and can communicate through written communications.

In 2009, the Department entered into a landmark ADA settlement agreement with the City of Philadelphia, Pennsylvania, that transformed the historic city into a model program of accessible polling places. A key component of the settlement was training for poll workers, election officials, and election administration staff.

TRAINING

Prior to Election Day or the beginning of early voting, election staff and volunteers receive training so they can appropriately interact with people with disabilities. Staff and volunteers should understand the specific auxiliary aids and services that are available. They should be aware that service animals must be allowed to accompany voters inside the polling place, that accessibility features at the polling place need to be operational, that people with disabilities are allowed assistance from a person of their choice, and that other modifications may be needed to accommodate voters with

disabilities. Many local disability organizations, including Centers for Independent Living and Protection and Advocacy Systems, conduct ADA and disability trainings in their communities. The Department of Justice and the National Network of ADA Centers can provide local contact information for these organizations.

FOR MORE INFORMATION

For information about how the ADA applies to voting, please visit our website or call our toll-free number.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

Monday-Wednesday, Friday 9:30 a.m. – 5:30 p.m., Thursday 12:30 p.m. – 5:30 p.m. (Eastern Time) to speak with an ADA Specialist. Calls are confidential.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the link under ADA.gov Updates in the lower right corner of the page.

For information about the VRA, VAEHA, NVRA, and HAVA, please visit the Voting Section's website: www.justice.gov/crt/about/vot/

To report complaints of possible violations of the federal voting rights laws, you may contact the Voting Section: www.justice.gov/crt/about/vot/misc/contact.php.

You can contact the Voting Section through our toll free number (800-253-3931) or our email address (voting.section@usdoj.gov).

For persons with disabilities, this publication is available in large print, Braille, audio tape, and on computer disk.

Reproduction of this publication is encouraged.

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The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

October 10, 2014