



Council of the District of Columbia
Committee on the Judiciary
D.C. Board of Elections Oversight Hearing

Testimony of Peter Stephan, Staff Attorney
Disability Rights DC at University Legal Services

February 9, 2022

Thank you for the opportunity to testify about the DC Board of Elections' (Board) obligation to ensure that all District residents with disabilities have a full and equal opportunity to vote. Disability Rights DC (DRDC) is the designated protection and advocacy agency for the District. We advocate on behalf of District residents with disabilities to promote their equal access to voting, among other programs. For the last 18 years, DRDC has surveyed the accessibility of the District's polling sites, provided recommendations to the Board, and issued reports in an effort to ensure full compliance with the federal Help America Vote Act and Americans with Disabilities Act (ADA).¹

Relocate Structurally Inaccessible Voting Centers and Remove all Access Barriers

DRDC continues to urge the Board to relocate all structurally inaccessible polling sites and remove access barriers at all sites prior to the 2022 primary election. DRDC compiled and published its findings on the accessibility of the 2020 general election and recommendations to the Board,² and incorporates by reference our previous testimony regarding those findings and recommendations at the Board's 2021 oversight hearing.³ In a September 2021 letter, DRDC again urged the Board to relocate or modify all structurally inaccessible sites, some of which we have previously identified as structurally inaccessible, and all of which pose barriers and prevent people with mobility disabilities from voting independently.⁴ For example, the cracked and crumbling accessible entrance ramp at Burroughs Elementary (#22) created hazards for voters in wheelchairs. This site was previously cited for the same issue in DRDC's June 19, 2018 election report.⁵

¹ DRDC reports are available on our website at: <http://www.uls-dc.org/protection-and-advocacy-program/programs/protection-and-advocacy-for-voter-access/>.

² Disability Rights DC, *DC Voting Access Report on the November 3, 2020 General Election*.

³ DC Council Judiciary Committee's Oversight Hearing on the DC Board of Elections (February 18, 2021) (Testimony of Peter Stephan, Staff Attorney, Disability Rights DC at University Legal Services).

⁴ Letter from Peter Stephan, Staff Attorney, Disability Rights DC at University Legal Services to Terri Stroud, General Counsel, DC Board of Elections (September 16, 2021).

⁵ Disability Rights DC, *DC Voting Access Report on the June 19, 2018 Primary Election*.

Similarly, pathways to the accessible entrance at J.C. Nalle Elementary School (#38) were obstructed by one or more steps, and a crumbling pathway that led to an abrupt rise. The Board can ameliorate structural accessibility issues like cracked and crumbling pathways to the accessible entrance at Burroughs Elementary (#22) and Powell Elementary School (#15) by working with the Department of General Services and other partner agencies in advance of the 2022 elections, since each of these examples are listed as proposed voting centers.⁶ Though DRDC requested an update from the Board in September 2021 on efforts to improve accessibility of these specific voting centers as well as others, to date the Board has failed to respond to the specific recommendations in our 2020 voting access report and provided only a promise to do an assessment to determine what measures can be taken at each site in advance of each election.⁷ We urge the Committee, in its oversight capacity, to monitor the Board's efforts to ensure that all voting centers are structurally accessible and free of all access barriers.

Allow for Electronic Verification and Return of Alternate Format Ballots

DRDC testified last month in support of the Elections Modernization Amendment Act's requirement that the Board be required to offer an accessible alternate ballot for voters with disabilities to ensure equal access and the right to a private and independent vote under federal and local law.⁸ In FY 2021, the Board's failure to offer a fully accessible remote balloting option underscores the importance of passing this legislation. Specifically, the Board did not provide voters with disabilities access to a web-based alternate format ballot that allows *electronic verification and return* of remote ballots. Omniballot, the alternate format balloting program that the Board used during the 2020 election cycle, has an option if the Board elects for electronic delivery, electronic ballot marking and verification, and electronic ballot return. However, the Board has chosen to use the Omniballot option that requires the voter to print their electronically marked ballot and cast it by mail or drop box. Even if the voter with a disability has access to a computer and a printer, the Board's requirement that the voter print the paper ballot does not allow for accessible verification or accessible ballot casting for voters with print disabilities, many of whom almost certainly cannot verify and return the printed ballot privately and independently. Verification that a ballot is cast consistent with the voter's wishes, as well as ballot tracking as drafted in the Elections Modernization Amendment Act for each voter provides a way for District voters with disabilities to verify their ballots were counted. The Board must allow an electronic ballot verification and return as well as ballot tracking for voters with disabilities during the 2022 election cycle and beyond and we request that the Council oversee that the Board does so.

⁶ DC Board of Elections, Proposed Early Voting and Election Day Vote Center List, June 21, 2022 Primary Election (February 8, 2022), <https://dcboe.org/dcboe/media/PDFFiles/Proposed-Vote-Centers-02082022.pdf>.

⁷ Letter from Terri Stroud, General Counsel, DC Board of Elections to Peter Stephan, Staff Attorney, Disability Rights DC at University Legal Services (October 5, 2021).

⁸ Title II of the Americans with Disabilities (ADA), 42 U.S.C. § 12131 *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*; and the Help American Vote Act of 2002 (HAVA), 52 U.S.C. § 20901 *et seq.*

Revise the Voter Registration Form

DRDC joins the Campaign Legal Center’s testimony along with a coalition of advocates committed to ensuring that every incarcerated District resident has a meaningful opportunity to register and vote. As the Campaign Legal Center will describe in detail, the coalition urges the Board to take steps to revise the voter registration form. This revised registration form should include a space to list an incarcerated voter’s prison federal register number or DCDC number and make other revisions so it is accessible and usable for currently incarcerated District residents. The Board should also take steps to ensure that these residents timely receive their ballots. We incorporate that testimony here by reference.⁹ As we have previously testified, it is critical that the Board work with the Bureau of Prisons and DC Department of Corrections to ensure that it affirmatively provides a fully accessible remote ballot and other accommodations for people with disabilities in prison and jail, including physical, psychiatric, intellectual, and developmental disabilities, to allow them to exercise their right to read, mark, verify, and return their ballots privately and independently.

Work with DCPS to Close Schools and Prop Open Heavy Doors

After years of advocacy by DRDC and other advocacy groups, District of Columbia Public Schools (DCPS) closed its schools to students for the 2018 and 2020 election cycles. As the Committee is aware, DCPS has failed to do so for the upcoming June 2022 Mayoral primary. We urge the Board to continue to work with DCPS to close schools for the 2022 Mayoral primary because it would allow schools to prop open doors to facilitate access for voters in wheelchairs or who have other mobility disabilities. Indeed, the President’s Commission on Election Administration in 2014 recommended “to address any related security concerns, Election Day should be an in-service day.”¹⁰ The Office of the DC Auditor has recommended closing schools during elections because “utilizing schools as polling sites, while school is in session, can interfere with the school day and the voting process.”¹¹ The District should consider that several nearby states close all public schools on election days,¹² and recent legislation proposed by the DC Council would make election days DCPS holidays.¹³

⁹ DC Council Judiciary Committee’s Oversight Hearing on the DC Board of Elections (February 9, 2022) (Testimony of Aseem Mulji, Legal Counsel, Campaign Legal Center).

¹⁰ Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, pp. 33-34 (January 2014), <http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

¹¹ Office of the District of Columbia Auditor, *The District of Columbia Board of Elections Election Day Preparation and Administration Can be Improved*, p. 15 (February 6, 2015), <http://dcauditor.org/report/the-district-of-columbia-board-of-elections-election-day-preparation-and-administration-can-be-improved/>.

¹² Delaware requires that “all [public] schools, colleges and other institutions of learning” close on general election days. *See* Del. Code tit. 14 § 4107(a). Delaware state law also provides that if a school district uses schools as polling places during a primary election, then the date of the Primary Election shall be an “in-service [training] day.” *See* Del. Code tit. 14 § 4107A(b). In Maryland, both primary and general election days are “public school holidays[.]” during which public schools must be closed. *See* Md. Code Educ. § 7-103(c)(1)(vii). West Virginia requires schools to close on primary, general, and special election days. *See* W.Va. Code § 18A-5.2(a).

¹³ Elections Modernization Amendment Act of 2021, B24-0507, Section 3(d) (proposing an amendment to D.C. Code §1-1001.07a that “The District of Columbia Public Schools system shall be closed to instruction on election day in order to facilitate voting in its facilities.”), <https://lims.dccouncil.us/Legislation/B24-0507>.

Additionally, as we testified last month, DRDC found during the 2020 general election that 23 percent of surveyed voting centers still had closed, heavy doors with no working backup system (19 voting centers).¹⁴ Of those, 18 percent were DCPS schools (15 voting centers). The Board reported that during the 2020 general election DCPS would not allow them to prop doors open even when schools were closed.¹⁵ DRDC and the Equal Rights Center recently sent a letter to Chancellor Ferebee requesting they close schools for the upcoming June primary election and direct school administrators to require poll workers to prop open heavy doors at school-based voting centers when schools are closed to students. DRDC again urges the Board to work with DCPS on this, and asks that the Council include a requirement in the Elections Modernization Amendment Act to prop open heavy doors at school-based voting centers when schools are closed.

Conclusion

DRDC continues to urge the Board to make the necessary changes to ensure that all District voters can exercise their right to vote privately and independently. I am happy to answer any questions about my testimony.

¹⁴ Disability Rights DC, *DC Voting Access Report on the November 3, 2020 General Election*, Appendix B, Table 5, pp. 53-54.

¹⁵ Letter from Terri Stroud, General Counsel, DC Board of Elections to Peter Stephan, Staff Attorney, Disability Rights DC at University Legal Services (October 5, 2021).