



Council of the District of Columbia
Committee on the Judiciary
B24-0507 Elections Modernization Amendment Act of 2021 Public Hearing

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

January 6, 2022

Thank you for the opportunity to testify about how the District of Columbia Council and Board of Elections (“Board”) can ensure that all District residents with disabilities have a full and equal opportunity to vote under the Elections Modernization Amendment Act of 2021 (“the Act”). 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 My testimony focuses on the ongoing need for the District to meaningfully address issues with alternate format ballots and signature requirements, and the changes proposed in this legislation regarding closing schools on election day that will have a positive impact on accessibility for people with disabilities.

Accessible Alternate Format Ballots

DRDC applauds the inclusion of language in the Act requiring the Board to provide an accessible alternate ballot format to help ensure District voters with disabilities can privately and independently vote by mail. Under Title II of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973, and the DC Human Rights Act, the District must make voting by mail equally accessible to people with and without disabilities.² DRDC recommends that the Committee further amend Section 5 (D.C. Code §1-1001.05) to require that the Board promulgate rules and procedures regarding the use and availability of the alternate ballot format option, including instructions on making the alternate ballot format available and fully

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 *National Federation of the Blind v. Lamone*, 813 F.3d 494 (4th. Cir. 2016); *See generally* D.C. Code §2-1402.01.

accessible to voters with disabilities. For example, the Board should revise the Voter Registration Application/Voter Registration Status Update form to allow every District resident with a disability to have the option to affirm that they need an accessible alternative format ballot at the time of registration. It is particularly important that the Board adopt specific rules and procedures for incarcerated voters with disabilities, voters with disabilities who reside in other institutions, and voters with disabilities in the community because incarcerated voters are not permitted access to the internet in those facilities and voters with disabilities in other institutions and in the larger community lack or have limited access to the internet and/or a computer due to the digital divide.

Similarly, DRDC urges the Committee to revise Section 5 to require that the Board inform the public, through effective outreach and education in accessible formats, on how people with disabilities can access, electronically mark, and return the alternate format ballot. Without this meaningful outreach and education to people with disabilities, including those in prison, jail, and other institutions, the accessible alternate format ballot program will continue to be underutilized. As the Board reported during its FY20-FY21 performance oversight responses, only six individuals requested accessible remote ballots and four voters cast them during the 2020 general election when only people with disabilities were eligible to use the system.³ To help ensure the public is aware that the accessible alternate format ballot program exists, DRDC encourages the Committee to amend the existing language in Section 5 (D.C. Code § 1-1001.05(a)(12)(B)) to require that the Board email registered voters, for whom the Board maintains email addresses, at least once with an electronic voter guide that is accessible for individuals using a screen reader software and lay-friendly instructions, separate from the electronic voter guide, about mail-in voting, including information about the accessible alternate format ballot option for registered voters with disabilities and information on how people with disabilities can access, electronically mark, and return the alternate format ballot.

DRDC also urges the Committee to revise the Act to include a requirement that all mail-in ballots, including accessible remote ballots, be delivered to registered District voters 45 days or more before each election as specified in the Vote by Mail Amendment Act of 2019 (B23-0319), so that District voters have sufficient time to detect and report any ballot delivery issues and to provide the Board sufficient time to resolve them.

DRDC is pleased that the Act also facilitates easier mail-in ballot return, whether via pre-paid postage or through the 100 ballot drop boxes in wheelchair-accessible locations. D.C. Code § 1-1001.05(a)(10A), (10E). Requiring the Board to publish drop box locations prior to their deployment will help the public provide timely feedback on the structural and operational accessibility of these locations. DRDC urges the Committee to include a publishing deadline for

³ DC BOE, Performance Oversight Report Fiscal Year 2020-2021, p. 119 (March 15, 2021), <https://www.dccouncil.us/judiciary-public-safety-4/jps-performance-oversight-responses-2021-boe/>.

the Board of at least 30 days prior to deployment to ensure sufficient time to provide feedback and for the Board to resolve any accessibility issues.

Signature Accessibility

DRDC appreciates that the Act specifies in Section 5 (D.C. Code § 1-1001.05(a)(10D)) that a mark may be used instead of a signature for ballot verification, but requests that the Committee remove the word “physically” from that provision and “physical” in Section 7 for registration applications (D.C. Code § 1-1001.07(a)(2)(A)) so that any voter can use a mark who is unable to sign, not just those who are physically unable. As recommended in DRDC’s prior testimony, the Board should require that ballot signature lines have a punch hole so that voters with vision disabilities know where to sign.

Accessible Voting Centers

DRDC also appreciates the inclusion of language in the Act (D.C. Code § 1-1001.09(b)(4)) making permanent the ability to vote at any voting center, as this makes voting easier and more accessible to people with disabilities whose own precinct may be structurally and/or operationally inaccessible. Additionally, DRDC supports, as it has previously advocated, the inclusion of language making election day a holiday for the District of Columbia Public Schools (DCPS). D.C. Code § 1-1001.07a(f). As DRDC has repeatedly stated, closing schools will improve the physical accessibility of voting center locations and will alleviate any purported security concerns so that schools can prop open doors to facilitate access for voters in wheelchairs or who have other mobility disabilities. As I have noted in prior testimony, DRDC has reported on many accessibility issues with the Board’s voting centers, including the failure to prop open doors to allow for unfettered access by voters with disabilities who otherwise have difficulty opening heavy school doors. Despite school closures during the 2020 general election, 23 percent of surveyed voting centers still had closed, heavy doors with no working backup system (19 voting centers).⁴ Of those, 18 percent were DCPS schools (15 voting centers). The Board reported that during the election DCPS would not allow them to prop doors open even after schools were closed. Accordingly, DRDC recommends that the Committee include language in Section 7a to require DCPS to prop open entrance doors during District election days and the early voting periods to allow for operational accessibility.

⁴ Disability Rights DC, DC Voting Access Report on the November 3, 2020 General Election, Appendix B, Table 5 (pp. 53-54), available at: <http://www.uls-dc.org/media/1250/2020-11-03-general-election-hava-report.pdf>.

Conclusion

DRDC appreciates the opportunity to comment on the Elections Modernization Amendment Act of 2021 and 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.