

Council of the District of Columbia
Committee on the Judiciary and Public Safety
Vote by Mail Amendment Act of 2019 Public Hearing

Testimony of Peter Stephan, Staff Attorney
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Thank you for the opportunity to testify about how the District of Columbia Council and District of Columbia Board of Elections (Board) can ensure that all DC residents with disabilities have a full and equal opportunity to vote under the Vote by Mail Amendment Act of 2019. I am a staff attorney at Disability Rights DC at University Legal Services (DRDC). Disability Rights DC advocates on behalf of DC residents with disabilities to promote their equal access to government programs, including voting. For the past 15 years, DRDC has surveyed the accessibility of the District's polling places, recommended modifications and replacement of inaccessible sites, and issued public reports¹ in an effort to urge the District to fully comply with the Help America Vote Act (HAVA). With an estimated 75,985 adult DC residents with disabilities,² voting accessibility is a significant concern in the District.

Voting by mail has reportedly improved voter participation in states that have passed such statewide legislation, including Washington, Oregon, and Colorado.³ However, DRDC urges the District to address issues with alternate format ballots, signature requirements, notice and appeal rights, and ballot center accessibility prior to implementation of the Vote by Mail Amendment Act.

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

² U.S. Census Bureau, 2018 American Community Survey (1-year supplemental estimate). Available at: <https://data.census.gov/cedsci/table?q=&hidePreview=true&table=DP02&tid=ACSDP1Y2018.DP02&t=&lastDisplayedRow=169&y=2018&g=0400000US11>

³ Gilad Edelman and Paul Glastris. *Letting people vote at home increases voter turnout. Here's proof.* The Washington Post (January 26, 2018). Available at: https://www.washingtonpost.com/outlook/letting-people-vote-at-home-increases-voter-turnout-heres-proof/2018/01/26/d637b9d2-017a-11e8-bb03-722769454f82_story.html.

Peter Miller and Sierra Powell. *Overcoming Voting Obstacles: The Use of Convenience Voting by Voters with Disabilities.* American Politics Research (May 28, 2015). Available at: <https://journals.sagepub.com/doi/pdf/10.1177/1532673x15586618>.

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Alternate Format Ballots

The Vote by Mail Amendment Act requires voters to use a paper ballot delivered by mail without any option for using an alternate format (such as web-based ballot forms). By narrowing the term ‘ballot by mail’ to “the *physical* ballot received by a qualified elector *via mail*,” voters with disabilities who cannot see or mark a paper ballot independently will not have an equal opportunity to vote by mail, in violation of Title II of the Americans with Disabilities Act (ADA). The ADA and implementing regulations require the District to make voting by mail equally accessible to people with and without disabilities. Without access to alternate format balloting (*e.g.*, electronic, web-based ballots to allow people with limited vision to vote using text-to-voice software), the Act violates the ADA by forcing voters with vision or manual dexterity disabilities to rely on others to read and mark their paper ballots, or to vote by electronic voting machines at polling places.

The Fourth Circuit found a similarly inaccessible absentee ballot system in Maryland violated the ADA. Even though Maryland provided accessible polling places with electronic ballot-marking devices, the Fourth Circuit ruled that the state must provide absentee ballots in alternate formats (*e.g.*, an online ballot marking tool available to voters at home) that enable voters with disabilities to participate equally in the absentee ballot system.⁴ Maryland has since implemented its own electronic ballot system.

The District must adopt accessible vote-by-mail measures to ensure compliance with the ADA. For example, Colorado and Oregon use web-based statewide accessible vote by mail systems. These states allow vote by mail voters to log in to the Board of Elections voter registration website and download a fillable ballot that is screen-readable at the voter’s home (meaning it can be read out loud using text to speech software, and the ballot can be completed using a digital device). The voter can then print the completed ballot, sign, and return in-person or by mail. The District’s system must allow voters to use whatever accessible technology they need to both read and mark their ballots, such as a screen reader, stylus, large buttons, touchscreen, or voice commands.

Signature Accessibility

This Act denies voters who are unable to sign paper ballots the opportunity to vote by mail. DRDC encourages the Board of Elections to implement regulations ensuring ballot signature lines have a punch hole so that voters with vision impairments know where to sign. The Board of Elections must also explicitly define the term signature to include a mark made by a voter.⁵ If a voter uses a mark for the ballot envelope, the voter’s signature would be witnessed and signed by the witness. The Board of Elections must not disqualify valid mail ballots because of the use of a mark rather than a signature.

Notice and Appeal Rights

⁴ See *National Federation of the Blind v. Lamone*, 813 F.3d 494 (4th. Cir. 2016).

⁵ See 3 DCMR § 9900.1.

The District's vote by mail system must also provide notice and an opportunity to appeal if the Board of Elections rejects a mailed ballot. The same appeal rights that exist for special ballots must be applied to vote-by-mail.⁶ Signature mismatches (comparing signatures at registration to current balloting) disproportionately impact people with disabilities for reasons such as acquired vision impairments or periodic symptoms like hand tremors.⁷ Without notice and an opportunity to appeal, voters with disabilities will be denied their right to vote and to Due Process under the Fifth Amendment. *Saucedo v. Gardner*, 335 F. Supp. 3d 202 (D.N.H. 2018) (court found state signature verification law unconstitutional for failure to provide notice and due process based on disqualification of voters with disabilities because of mismatched ballot signatures).⁸

Ballot Deposit Center Accessibility

It is essential that the Act require all ballot deposit centers (not just polling centers) to be wheelchair-accessible.⁹

Conclusion

We urge the District to explicitly provide alternate format ballots, alternate signature requirements, notice and appeal rights, and ballot center accessibility to ensure that all DC voters have an equal opportunity to exercise their right to vote by mail under this Act.

⁶ See 3 DCMR § 712.

⁷ See *Saucedo v. Gardner*, 335 F. Supp. 3d 202 (D.N.H. 2018).

⁸ See also *Peter La Follette v Padilla*, No. CPF 17-515931, 2018 WL 4050727 (Cal.Super. Apr. 09, 2018); *Georgia Muslim Voter Project v. Kemp*, 918 F.3d 1262 (11th Cir. 2019); *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017 (N.D. Fla. 2018); *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646 (N.D. Ill. Mar. 13, 2006).

⁹ Compare Vote by Mail Amendment Act of 2019 lines 78-84 (no reference to the ADA) with lines 105-107 (“Facilities and equipment are compliant with the federal Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 327; 42 U.S.C. 12101 et seq.), as amended.”).