



Vote
Here

The Right to Vote and the Physically Disabled

By David M. Cohen

Every election cycle, millions of Americans turn out across the country to cast their vote in local and federal elections. The process itself has in recent years been the subject of controversy, but the importance of the voting process and the fundamental right to vote remain a cornerstone of our values and integrity as a nation. Against this backdrop remains a group of citizens who are only now emerging with the same voting rights that many of us take for granted. This article traces legislative attempts to assist the physically disabled in the voting process and some of the recent progress that has been achieved in Michigan.

Disabled voters have long faced a history of obstacles in the exercise of their right to vote. As stated by Michael Harris, president of the Michigan Paralyzed Veterans of America, “People with disabilities have long been constructively disenfranchised from the electoral process. Stereotypes assumed people with disabilities were either incapable of voting, chose not to vote, or were ‘homebound’ and would only vote by absentee ballots.”¹ This disenfranchisement is a factor influencing the over 14 million disabled people of voting age that remain unregistered as voters.²

Voting Accessibility for the Elderly and Handicapped Act of 1984

The current climate exists despite a history of federal legislative attempts to increase accessibility for the physically disabled. Over 20 years ago, the passage of The Voting Ac-

with the act while not providing access to the privacy of the voting booth, critics maintained that the act was less than comprehensive regarding disability rights. This potential for a separate but equal accommodation is inherently unequal, as it removes disabled voters from the mainstream process of voting. Further complicating matters, the provisions of the act that required reporting of accessible polling locations to the Federal Election Commission expired in 1994 when they were not renewed by Congress,⁴ and to date, they have not been reinstated. As a result, the Voting Accessibility Act is in many ways rendered toothless, lacking this major mechanism for enforcement.

The less than ideal results of the Voting Accessibility Act can be seen through a brief view of the current voting situation faced by the disabled. Although the act prohibits discrimination against people with physical disabilities while voting in federal elections, it is

The problems inherent in the Voting Accessibility Act were arguably not strengthened by the subsequent passage of the Americans with Disabilities Act (ADA). In theory, this landmark act, which expands the obligations for accessibility far beyond its previous level, should have greatly affected the ability to access polling facilities. However, the ADA allows for local communities to offer “equivalent facilitation,” again raising the issue of separate but equal and its inherent inequality.⁶

One group of citizens that faces particular hardships while voting is the blind or visually impaired. The National Council on Disability has indicated that over 80 percent of voters with visual impairments must rely on others to mark their ballots. James Dickson, vice president for governmental affairs at the American Association of People With Disabilities, stated in testimony before a congressional subcommittee that “the majority of Americans take for granted their right to privacy at the polling place. According to the U.S. Census, more than 10 million voters with disabilities are unable to exercise this right because these voters cannot cast a secret ballot; they must rely on the courtesy of family members, friends or sometimes even strangers to cast their vote for them.”⁷ Mr. Dickson’s advocacy is strengthened by his position, eloquence, and the integrity of his first-hand account as a blind individual.

National Voter Registration Act of 1993

One of the major problems that continued after the enactment of the Voting Accessibility Act was the continuing high numbers of unregistered disabled voters, and this problem became a focus of the next major federal voting initiative, the National Voter Registration Act of 1993. More commonly known as the “Motor Voter Act,” it had well-touted ambitions of increasing voter registration across the board. Of particular note, the Motor Voter Act had a clearly articulated goal to increase the historically low registration rates of minorities and persons with disabilities that had resulted from discrimination.⁸ This was to be accomplished through a requirement inserted into the act that state-funded programs that were primarily engaged

cessibility for the Elderly and Handicapped Act of 1984 (Voting Accessibility Act) represented a milestone in disability voting rights. The Voting Accessibility Act generally required polling places across the United States to be physically accessible to people with disabilities for federal elections.³ The law stands as a well-intentioned first step toward improving access to the voting booth.

However, the Voting Accessibility Act did not solve accessibility issues. One problem was that its federal origin limited its scope to federal elections, failing to require accommodation for local races and ballot initiatives. Additionally, the act was not an absolute guarantor of access to a voting booth. The Voting Accessibility Act provides that where no accessible location is available to serve as a polling place, an alternate means of casting a ballot on the day of the election must be provided. In all likelihood, this provision was inserted to allow for alternate accommodations in the many polling places across the country that remained laden with accessibility barriers. In many ways, the alternate accommodation provisions can be argued to have weakened the act. Since it was possible to comply

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estimated that 20,000 of the nation’s 170,000 polling places remain inaccessible to voters who use wheelchairs.⁵ It is clear that 19 years after the law was passed, a great many citizens with disabilities still face difficulties in casting their ballots. When able to vote, often the disabled are accommodated in such a manner as to compromise their right to cast a secret ballot—a right enjoyed by all other eligible voters.

in providing services to persons with disabilities provide all program applicants with assistance in registering to vote. The assistance called for in the act is comprehensive and includes the distribution of voter registration forms, aid in filling out the forms, and the processing of the forms to the appropriate state office in charge of receiving voter applications. However, as stated above, approximately 14 million disabled people remain unregistered to vote.

Although Motor Voter is clear in its obligations, it has been reported that 42 percent of individuals receiving vocational rehabilitation services were not offered the opportunity to vote in the 2000 presidential election.⁹ Motor Voter is over 10 years old, yet it has not been completely implemented with regard to the disabled community. It is impossible to determine how many more disabled Americans would have registered to vote if they had been given the opportunity through vocational rehabilitation. It is clear that a great many people were bypassed, and this certainly goes against the intent of the Motor Voter Act.

Help America Vote Act

The Voting Accessibility Act and the Motor Voter Act both avowed a clear intent to reverse the atmosphere of disenfranchisement faced by so many with disabilities. Yet, years after their enactment, a lack of enforcement has resulted in frustration among the physically disabled community. Against this backdrop, the historic events of the 2000 presidential election enter the playing field. Regardless of political affiliation, the ballot controversy in Florida left emotions running high throughout the country. If a consensus was reached as a result of the balloting controversy, it was the consensus that reform of the voting process was needed, if only to prevent such a controversy from occurring again.

As a result, Congress began a process that resulted in the passage of the Help America Vote Act (HAVA). HAVA was signed into law by President George W. Bush on October 29, 2002. A key component of the law was an allocation of \$3.9 billion for state and local jurisdictions to use over a four-year period to ensure the integrity of the Ameri-

can electoral process. Much like Motor Voter, HAVA contains provisions designed to reform the entire voting system and increase voting accessibility for all individuals. However, HAVA addresses the inequities faced by the physically disabled who wish to exercise their rights to access the voting booth. One provision of HAVA specifically requires every precinct in the country to have at least one voting machine or system that is accessible to a person with disabilities, including those with vision impairments, so they can cast an independent and secret ballot.¹⁰ To ensure compliance, each state is required under the provisions to submit a “state plan” to receive its share of federal funding.¹¹ The plan must comply with the provisions of HAVA in providing complete accessibility for voters with physical disabilities—accommodations that provide the opportunity to have private and independent voting.

Michigan’s Efforts to Transform the Voting Process

The Michigan Secretary of State’s office took action to implement HAVA and to take advantage of the funding that HAVA provided. Michigan formed a HAVA steering committee charged with formulating a Michigan state plan, and the results are an electoral system undergoing a tremendous transformation. The significant differences in the voting process should be visible as early as the August 2006 primaries. To comply with HAVA, the state of Michigan has announced that every precinct will be equipped with at least one state-of-the-art voting booth using the AutoMARK system.¹² AutoMARK machines are unique, resembling a fax machine in appearance, with large flip-up screens and attachments that include headphones, wands, and personal sip/puff tubes. With AutoMARK, it is possible for physically disabled voters to cast a private vote using a touch screen, foot pedal, or Braille keyboard.¹³ The single machine makes it possible for blind voters, paralyzed voters, and other physically disabled voters to use a single machine to cast a private ballot with dignity and security.

As Secretary of State Terri Lynn Land stated in May of 2006, “We are at the beginning of a new era in voting for people with

Fast Facts:

- Disabled voters have long faced a history of obstacles in the exercise of their right to vote.
- Years after the enactment of the Voting Accessibility for the Elderly and Handicapped Act and the Motor Voter Act, a lack of enforcement has resulted in frustration among the physically disabled community.
- As the availability of voting machines such as the AutoMARK increases and their placement into voting precincts across Michigan continues, vigilance will be required more than ever on the part of disability activists.

disabilities.”¹⁴ This current optimism seems shared by many disability advocates throughout Michigan. The placement of an AutoMARK voting system in every precinct across Michigan is a long-awaited leap in the right direction. Many people and factors played a part in this progress. Certainly, Secretary of State Land deserves praise for having effectively moved to implement HAVA and benefit from the funding it provides. She is leading the way through HAVA implementation and other initiatives such as Michigan’s “Improving Access For All Program,” which is a grant based initiative to improve polling facility access.¹⁵

Credit for progress must also be given to the advancements in technology that are indeed miraculous, enabling a level of accommodation that many had previously conjectured to be unfeasible.

Additionally, the focus and wording of the HAVA statute make its intentions more attainable than its statutory predecessors that were previously discussed. Credit the act’s concern for the disabled community not only to the men and women of Congress who drafted and supported it, but to the tireless efforts of advocates for the disabled who have never stopped fighting for rights that most Americans have come to take for granted. Their grassroots efforts have created the statutory evolution that has led to real progress for the physically disabled.

Conclusion

As the availability of voting machines such as the AutoMARK increases and their placement into voting precincts across Michigan continues, it is important to not lose sight of the fact that vigilance will be required more than ever on the part of disability activists. The machines are on their way, but there is still a need for increased voter registration efforts among the disabled community and assurances that polling places are compliant with the Voting Accessibility Act and the ADA. The AutoMARK machines need to be safeguarded, maintained, and quite possibly updated as technology improves further. The work of ensuring the rights of the physically disabled to vote is not over, and efforts must continue to maintain the progress and ex-

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pand further opportunities for inclusion of the disabled community. With the implementation of AutoMARK voting booths across Michigan, one thing is for certain: the voice of the disabled community can now be heard across the state. ♦



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Footnotes

1. Michael Harris Testimony before Michigan HAVA Steering Committee.
2. National Council on Disability Statistics.
3. United States Department of Justice website, <http://www.usdoj.gov/>.
4. Paola Singer, *Many Disabled People Unable to Vote*, TheDay.com, November 2, 2004.
5. National Council on Disability Statistics.
6. Americans with Disabilities Act.
7. Legislative hearing on HR 3295, December 5, 2001.
8. <http://www.usdoj.gov/>.
9. National Council on Disability Statistics.
10. HAVA Statute.
11. Id.
12. “New system removes obstacles to voting, advances independence,” Michigan Secretary of State press release, May 2, 2006.
13. Id.
14. Id.
15. “Access for all,” Michigan Secretary of State and Michigan Protections & Advocacy Service press release, October 10, 2005.