



**Statement to the
Election Assistance Commission (EAC)
on Voluntary Voting System Guidelines (VVSG)**

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Chartered by the Congress of the United States

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Madame Chairman and fellow Commissioners of the U.S. Election Assistance Commission, it is an honor for me to be here today to present testimony on the Voluntary Voting System Guidelines, specifically Section 2.2.7, the “human factors” section which deals with accessibility, accuracy, and secrecy in the voting process. I am Lee Page, Associate Advocacy Director for Paralyzed Veterans of America, or PVA. PVA is a national non-profit veterans’ service organization, chartered by the Congress of the United States and dedicated to meeting the needs of over 20,000 members – honorably discharged veterans of military service with spinal cord injury or disease. Virtually all of our members use wheelchairs for mobility and all are individuals with disabilities as defined by the Americans with Disabilities Act.

As you know, the Help America Vote Act (HAVA) was passed by Congress and signed into law by President Bush in 2002. HAVA is the first time that the federal government has allocated funds for election reform. It provides much needed funds to states and local jurisdictions to modernize their voting systems, establish uniform and state wide registration lists, enact a provisional ballot, train and recruit poll workers and more. Each of these tasks requires consideration of accessibility. This Commission was also established by the passage of the Act, for the purposes of administering funds to the states, continue to educate and assist election officials in their compliance of the law, and in one specific charge develop and adopt new voluntary voting system guidelines to provide for testing and certification of voting systems.

While HAVA makes great strides in improving elections, it is more than election reform law; HAVA is a major piece of civil rights legislation. HAVA mandates that voting be accessible to people with disabilities under Title III, Section 301(a)(3) (A): “the voting system shall – be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; (B) satisfy the requirements of sub paragraph (A) through the use of at least one direct recording electronic (DRE) voting system or other voting system equipped for individuals with disabilities at each polling place; and (C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access.”

Overall, I am very encouraged by the Voluntary Voting System Guidelines (VVSG) that the Commission has put forward for comment. These guidelines reflect the work of the Technical Guidelines Development Committee (TGDC) which took into consideration the voting system standards of 2002 and 1990 issued by FEC. But the Commission did not just “rubber stamp” these recommendations. In the letter dated July 5, 2005 to Dr. Hratch Semerjian, Chairman of the TGDC and National Institute for Standards and Technology (NIST), you acknowledged the few differences and explained the need to enhance TGDC recommendations even further.

Specifically, your letter mentions compliance with Section 301. The EAC staff and legal team recognized, after a legal analysis of the recommendations provided against the mandates of the law, that to ensure compliance with HAVA several of the accessibility recommendations had to be made “mandatory rather than permissive.”

As stated in your letter: “For example, Human Factors Requirement 2.2.6 provides an accessible voting station (Acc-VS) *should* provide features to enable voters who are blind to verify their ballot choices, if normal voting procedure includes a VVPAT. We added a significant caveat to that, if the state requires the paper record produced by the VVPAT feature to be the official ballot, then the accessible voting system *shall* provide features to enable visually impaired voters to review the paper record.” Additionally, Human Factors requirements 2.2.5 provides that if normal procedure is for voters to submit their own ballot, then the Acc-VS *shall* provide features that enable voters who are blind to perform this submission. As you know this differs significantly from the wording of *should* that was provided by the TGDC in the initial recommendation.”

I am encouraged by the above language in your letter in which this Commission recognizes a difference in the meaning of the words “should” and “shall” and what it will mean in regard to providing accessibility to voters who are blind. However, the Voluntary Voting System Guidelines (VVSG) are inconsistent in the use of “shall” and “should” throughout the recommendations. Specifically, Subsection 3 of the proposed VVSG (p.2-22), which pertains to voters with “lack of fine motor control or use of their hands” is littered with “shoulds” rather than “shalls.” Section 3.4 (p.2-23, line 21) states “[t]he Acc-VS *should* provide a mechanism to enable non-manual input that is functional equivalent to tactile input” (emphasis added). Section 3.5 states “If the normal procedure is for voters to submit their own ballots, then Acc-VS *should* provide features that enable voters who lack fine motor control or the use of their hands to perform this submission” (emphasis added). Finally, Subsection 3 provides no specific guidance on the accessibility of VVPAT to voters who lack fine motor control or use of their hands.

This inconsistency of language makes it appear that one disability is entitled to more access to the vote than another. Section 301 of HAVA clearly states that voting be accessible to “individuals with disabilities, including non-visual accessibility for the blind and visually impaired”. By definition the term “individuals with disabilities” includes voters with dexterity disabilities. Accordingly, this Commission’s rationale set forth in its July 5, 2005 letter to the TGDC and NIST regarding the need to change the VVSG pertaining to voters who are blind and visually impaired must also be applied to the VVSG guidelines pertaining to voters with lack of fine motor control or use of their hands. Use of the term “should” leaves room for interpretation as to whether a feature is required. The term “shall” clearly indicates that the requirement exists.

With the passage of HAVA people with disabilities now have the same rights to privacy, security and independent voting as the general public. The principles of the VVSG use the word “SHALL” to express the intent of the law - not should, would, or could, but SHALL. This language indicates an imperative that carry the level of accessibility forward. The concept of “helping” people with disabilities is most inappropriate in carrying out this most private of civic responsibilities, and this document must avoid any possibility of that interpretation.

Additionally, the first of the three broad principles that are the foundation of the Human Factors Section (p. 2-10, lines 30-36) sets the standard that the guidelines should meet. Specifically, the first principle reads:

(1) ALL ELIGIBLE VOTERS SHALL HAVE ACCESS TO THE VOTING PROCESS WITHOUT DISCRIMINATION. The voting process shall be accessible to individuals with disabilities. Note that the voting process includes access to the polling place, instructions on how to vote, initiating the voting session, choosing candidates, getting help as needed, review of the ballot, Voter Verified Paper Audit Trail (VVPAT) if applicable, and final submission of the ballot.

Access to the voting process means accessible parking, with the path of travel to an accessible entrance, the registration table, and the voting booth, clearly indicated by correct and accessible signage. Instructions on how to vote and initiating the voting session are to be delivered by the volunteer poll worker to the person with a disability without paternalistic attitude or personal bias based on disability. Choosing the candidate, review of the ballot, and submission of the ballot are functions of the voting system that, when accessible, shall allow the voter with a disability to cast an independent vote in total secrecy.

The VVPAT is not a required function of a voting system under HAVA. However, many states have passed laws requiring a VVPAT to be used to certify an election in case of a recount. The requirements of HAVA state that a voter must be able to review the ballot privately and independently before it is cast and counted. If a state is determined to use the VVPAT as the final ballot for counting and certification, then HAVA requires that the VVPAT be accessible to all voters with disabilities, including those who lack fine motor control or the use of their hands.

An element that needs to be included as the first step in “access to the voting process” is access to registration – a barrier here prohibits further participation in the process. HAVA mandates that states establish a uniform state wide voter registration list. It is essential that disability service providers who are conducting voter registration be linked to the state wide registration data based system. In 1993, Congress passed the National Voter Registration Act (NVRA) which instructed the state division of motor vehicles (DMV) offices to offer voter registration, collect applications, and send them to the state registrars’ office. Since many thousands of people with disabilities who are eligible to vote do not drive, the state is required to designate agencies who serve people with disabilities to offer and transmit voter registration applications. Whereas the DMV participation has been very popular and successful, the disability agency participation has been spotty at best. Under Motor Voter, states are given the leeway to identify disability agencies which should provide voter registration. Any states which have not done so must do so immediately, and all states should undertake regular compliance reviews to ensure that people with disabilities have full access to the registration process.

The disability community strongly supports the other principles of the VVSG, that “each cast ballot shall accurately capture the selections made by the voter” and that “the voting process shall preserve the secrecy of the ballot.” Accuracy and privacy are absolutely key to this process and are what frequently have been missing prior to the requirement for accessibility laid out in HAVA.

Throughout the document there are references meant to encourage Acc-VS designers to conduct some realistic usability tests. We emphasize the “realistic” aspect of this statement – any tests that do not include a variety of people with a variety of disabilities is unacceptable to this community.

Again, thank you for the opportunity to express my views on behalf of the Paralyzed Veterans of America and other citizens with disabilities. PVA members and all veterans who serve our nation have defended democracy at home and abroad. Through their service and sacrifice, our form of self government stays strong. You are well aware that veterans, as a class, have extremely high voting participation. PVA is dedicated to the principle that all citizens have the right to a free, private, and independent vote. We worked with Congress and others in the disability community to ensure passage of the Help America Vote Act. We commit to working with the Election Assistance Commission until HAVA is the genuine practice, rather than policy. We stand ready to ensure that, through its effective implementation, no citizen, regardless of disability, is denied or limited in that precious right to vote.