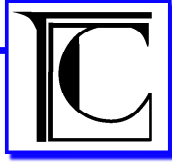


The Legal Center for People with Disabilities and Older People



Colorado's Protection & Advocacy System

The Legal Center's Recommendations Related to Accessible Voting and the Recent Decertification of Colorado's Voting Equipment

The Legal Center VOTE! Coordinator has discussed the recent decertification of most of Colorado's voting equipment with several leaders in Colorado's disability community and these recommendations are reflective of those conversations.

The fact is that regardless of the certification status at the State level, the federal Help America Vote Act (HAVA) requires that there be at least one accessible voting system (either a Direct Recording Electronic [DRE] or other system that allows voters with disabilities, including voters who are blind or have low vision, to vote privately and without assistance) in every polling place for federal elections. Colorado statutes also require this. The Secretary of State, members of the General Assembly and the county clerks recognize and accept that they must comply with HAVA regardless of the outcome of the decertification and subsequent legislation.

The issue for us is how will we accomplish this?

To the maximum extent possible, people with disabilities must be able to choose to vote in the same manner as voters without disabilities.

If the existing decertified, or in some cases conditionally certified, machines are not secure and accurate enough for the general voting population, it is difficult to accept that they are sufficiently secure and accurate for voters with disabilities. At the very least we have a perception problem. It appears that we would have a separate and unequal voting method for voters with disabilities who need an accessible voting system to facilitate their right to vote privately and without assistance

At this time our first preference is to have the issues with the existing systems addressed so that they actually are secure, accurate and reliable and are perceived to have integrity for all voters. We certainly recognize the difficult position the county clerks are in. Many are still paying for their decertified

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equipment. We are also concerned that bringing in a new and different device could be confusing for some voters with disabilities who have just recently become familiar with the existing devices.

The VVPAT (voter verifiable paper audit trail), which in 2005 became a statutory requirement for purchasing new DRE voting machines, was intended to address the accuracy and security concerns surrounding electronic voting systems. However, voters with any type of print disability cannot privately and independently verify their ballots as the audio interface only reads what has been sent to the printer, not what is actually printed on the paper. (In addition, the font on the VVPATs is very small, usually 8 point and hard for even voters without print disabilities to read.) This is actually one of the several issues that impacted decertification or conditional certification. We have long been concerned about this issue, particularly when the VVPAT becomes the official ballot of record. To the best of our knowledge, there are no voting machines on the market today that have a fully accessible VVPAT.

If the general voting population is voting on paper ballots, isn't it most desirable for voters with disabilities to vote on the very same paper ballots? This can be accomplished using the AutoMARK, a ballot marking device that was the subject of a controversial amendment (changing the definition of casting a ballot for voters using accessible voting machines) during the 2007 legislative session.

The casting of the ballot problems that we had with the AutoMARK were effectively addressed in a last minute amendment at the end of the 2007 legislative session. We now have language in state statute that defines a ballot marking device, establishes minimal accessibility requirements and requires that *all* voters in a polling place where a ballot marking device is available for accessible voting have their ballots placed in the ballot box by an election judge.

We urge the Secretary of State to begin the certification process for the AutoMARK as quickly as possible.

The AutoMARK was withdrawn from the recent certification process by ES&S, the vendor who completely failed the recertification process (Mesa and Jefferson counties). However, Premier (formerly known as Diebold) did recently submit it as part of one of their voting systems and a decision is pending. On January 4, 2008 we learned that while Premier did submit the AutoMARK recently, it is unlikely that any certification testing will occur on it in time for the 2008 elections. Understandably, the priority in the SOS office is the pending appeal of the decertification decisions. While the AutoMARK can be improved, it is generally as or more accessible than the four DRE machines that were used in the 2006 elections. None of the accessible voting systems on the market today are accessible enough. None meet the newly implemented federal accessibility requirements, nor do most of them fully meet the 2002 federal accessibility standards, but were federally certified anyway.

(Prior to the creation of the US Election Commission [EAC], “federal” certification of voting systems was done by private labs which were funded by the vendors and election officials. It appears that there was very little “regulation” of their certification activities. The EAC has not certified any voting systems yet. They are just getting the new labs up and running to begin certification of equipment using the recently implemented 2005 Voluntary Voting System Guidelines.)

If Colorado goes to all mail elections (primary and general/presidential) this year, how do we ensure that people with disabilities who want to vote privately and independently can do so? Again, federal and state law requires that there be an accessible voting system in every absentee or mail polling place. Typically, this would be each county clerk's office which is required to accept emergency ballots on Election Day and perform other Election Day functions. Travel to the clerk's office may be difficult or impossible for some voters with disabilities, particularly in rural counties, geographically large counties and any county without accessible transportation. Furthermore, we believe that it is not equal or equitable access if a voter with a disability is required to travel to the only place in the county that offers accessible voting, when the vast majority of other voters enjoy the convenience of voting privately and independently from their homes.

So, if the solution to the 2008 elections is all mail, we are strongly advocating for **multiple accessible voting sites within each county, based on each county's demographics**. We should also have accessible voting available at mail ballot drop-off sites, and, ideally, in independent living centers, senior centers, senior/accessible apartment buildings and developments, assisted living and long term care facilities, and other sites where people with disabilities may be likely to assemble or visit.

Washington State requires that every county conducting all mail elections have an **advisory board of voters with disabilities**. We suggest a similar requirement for Colorado.

Another option that Oregon was looking at last year is a mail ballot in alternate, electronic format. This would be the most equitable solution for voters who have access to adaptive computer technology. We would like consideration of this, but recognize that it just may not be feasible in 2008 given the current election administration environment.

The bottom line is that voters with disabilities must have the same options to choose from as those available to voters without disabilities.

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