# EXECUTIVE SUMMARY

# Experience of Voters with Disabilities in the 2012 Election Cycle

**National Council on Disability**

 **October 24, 2013**

The voting controversy during the presidential election in 2000 created a long overdue rallying point to improve a broken electoral system in the United States. A joint study and 2001 report by the Massachusetts Institute of Technology (MIT) and the California Institute of Technology (CIT) found that 4 to 6 million votes had been lost and uncounted as a result of registration, balloting, voting equipment, and polling place problems.[[1]](#endnote-1) The Help America Vote Act (HAVA), enacted by Congress in 2002, mandated improvements to the electoral process by establishing minimum standards for uniform and nondiscriminatory election technology and administration requirements, including, for the first time, requirements that citizens with disabilities be able to vote independently and privately.

HAVA joins existing voting rights laws to prohibit voter discrimination, suppression, intimidation, and denial of voting access for people with disabilities, coupled with the protections of the Americans with Disabilities Act (ADA) and building upon the mandate of the Voting Rights Act of 1965. This report examines the impact of HAVA through the experiences of voters with disabilities during the 2012 election cycle.

# KEY FINDINGS AND RECOMMENDATIONS:

## FINDING 1: People with disabilities continue to face barriers in exercising their voting rights because of architectural and physical barriers at registration and polling sites.

States and localities have not invested adequate resources, planning, or training to meet architectural and physical access compliance standards required to increase participation and improve the experience of voters with disabilities.

In written testimony submitted to NCD for its April 23, 2013, Policy Forum, Congressman Steny Hoyer (D-MD), who was the lead sponsor in the U.S. House of Representatives of the 1990 Americans with Disabilities Act (ADA) and the 2008 ADA Amendments Act, stated, “Congress has a responsibility to continue funding HAVA programs, including the grant program to make polling places accessible to all Americans…. We must approve a budget and appropriations bills that provide the resources to fund HAVA at levels that will treat all voters the same. To that end, I requested that the Labor, Health and Human Services, and Education Appropriations Subcommittee include $17 million toward the implementation of HAVA programs in next year’s [FY 2014] budget.”[[2]](#endnote-2)

Other witnesses at the NCD Policy Forum also expressed the belief that adequate funding is crucial to improving access for voters with disabilities and that improvement in making polling places accessible is the result in large part to the power of federal grants.

### Recommendations:

* ***States and localities must ensure that all voter service centers and polling precincts be fully accessible, in compliance with the ADA, Section 504 of the Rehabilitation Act, and the Help America Vote Act (HAVA).***NCD recommends that state and local election officials ensure the architectural accessibility of all Voter Service Centers and polling precincts—in compliance with the ADA, Section 504 of the Rehabilitation Act, and HAVA—by conducting accessibility compliance reviews before the primary and general elections and making appropriate modifications. States and localities should use existing federal resources, including U.S. Election Assistance Committee (EAC) election management resources.

 If the state is facing accessibility complaints, the Department of Justice Project Civic Access (PCA) compliance reviews should be used to facilitate and benchmark real change and address accessibility concerns across all areas to promote civic participation of people with disabilities. Additionally, state and local election boards should collaborate with Protection and Advocacy systems (P&As), the ADA National Network, disability rights groups, and self-advocates to survey registration and polling sites, using the Department of Justice (DOJ) ADA Checklist for Polling Places and other similar resources for accessible parking, curb cuts, sidewalk maintenance, accessible doors and entrances, paths of travel, restroom accessibility, and any other physical barriers, and to identify potential modifications. Accessibility should be determined before any new site is designated for voter registration or voting.

* ***Local boards of elections must be provided with the fiscal resources to make modifications necessary to meet accessibility requirements under the ADA.***NCD recommends that state election entities, including secretary of state offices, help localities maximize the availability of adequate funding to provide the necessary planning, training, materials, and resources to make modifications necessary to meet accessibility requirements under the ADA and HAVA.
* ***The Department of Justice must increase its enforcement of ADA compliance and pursue complaints raised by voters with disabilities.***NCD recommends that DOJ commit increasing resources, staff, and focus to ensure the physical, technological, and architectural accessibility of the voting process for people with disabilities through its enforcement of the ADA and Section 504 compliance. NCD further recommends that DOJ support enforcement actions brought by P&As and private litigators as enforcement partners.

## FINDING 2: Voters with disabilities do not have equal access to voting systems because states and localities have not invested adequate resources, planning, and training to provide reliable, accessible voting technology.

Although all state jurisdictions have received HAVA funding to upgrade voting systems, including accessible voting machines, voters with disabilities were disenfranchised during the 2012 elections because of voting machines that malfunctioned, were broken, were unavailable for use, or that poll personnel were unable to demonstrate or operate. Voters with disabilities were denied an equal opportunity for voting access and the opportunity to cast a private and independent ballot.

At the NCD Policy Forum on April 23, 2013, a number of distinguished panelists testified about the need for continued HAVA funding to the states for voting technology. Mark Richert, director of public policy, American Federation for the Blind (AFB), noted, “I hope that over the course of this afternoon, we’ll make the connections to the extent we do not invest as adequately as I believe we need to in protecting/managing the most sacred right that we have in this country.”[[3]](#endnote-3) Mr. Richert said, “The funds that have been made available to make the equipment available have been effective,” but there is a lack of training on the part of polling officials. He added, “If our polling workers are not prepared to use the equipment, it’s worthless.”[[4]](#endnote-4)

### Recommendations:

* ***The Presidential Commission on Election Administration should recommend and the Election Assistance Commission (EAC) should encourage state and local jurisdictions to ensure that universally designed, accessible voting machines are available, functioning, and situated to provide complete privacy for voters with disabilities.***NCD recommends that the Presidential Commission on Election Administration and the EAC encourage state and local jurisdictions to maintain universally designed, accessible voting machines that are available, functioning, and situated to provide complete privacy for voters with disabilities.
* ***Congress in its oversight capacity should direct and ensure continued research and create incentives for the development of universally designed electronic/digital voting technology and processes that preserve the privacy of the ballot and the independence of the voter while allowing verification of the vote and system reliability.***NCD recommends that Congress direct further research and create incentives for the development of universally designed electronic/digital voting technology to meet HAVA’s specific requirements for voting systems to be accessible to people with disabilities and to permit a voter to verify his or her vote on the ballot in a private and independent manner before the ballot is cast and counted. Many of the voting technologies currently in use, including direct recording electronic (DRE) and optical scan systems, have been fraught with problems as identified by voters; these problems undermine voter confidence. HAVA expressly mandates research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.
* ***Congress should appropriate funding for state secretary of state (SOS) offices to support the purchase, upgrading, and maintenance of electronic voting systems.***NCD recommends that Congress appropriate funding for SOS offices to support the purchase, upgrading, and maintenance of electronic voting systems. In the current world of technological advances and ever-changing electronic business methods, updating and improvement in voting systems is perhaps the most costly of HAVA’s innovation goals, but it holds the most promise for providing a barrier-free voting experience for voters with disabilities.
* ***The DOJ Civil Rights Division’s Voting Rights, Disability Rights, and Federal Coordination and Compliance sections should work closely together to identify state and local jurisdictions that are failing to meet their legal obligations to provide accessible voting systems for voters with disabilities, and should provide targeted monitoring and require remediation.***NCD recommends that the DOJ Civil Rights Division’s Voting Rights, Disability Rights, and Federal Coordination and Compliance sections work together to identify state and local jurisdictions that are failing to meet HAVA mandates.

These DOJ sections can leverage their expertise and fortify their influence to ensure consistency and effective enforcement of voting rights statutes and the ADA across all federally mandated programs that may affect voting access for people with disabilities.

NCD further recommends that DOJ, in conjunction with the Presidential Commission on Election Administration and the EAC, update and reissue guidance to the states on the legal obligation to provide accessible voting systems for voters with disabilities. The guidance should address requirements under HAVA, other relevant voting rights laws, and accessibility compliance under the ADA.

## FINDING 3: Voters with disabilities face discrimination at voter registration and polling sites resulting from poorly trained election personnel and volunteers.

Voters with disabilities continue to encounter election system personnel who are condescending or rude or who demonstrate pejorative attitudes toward voters with disabilities, owing to lack of training and personal bias. State and local election personnel, including Election Day officials and volunteers, require extensive training on the voting rights of people with disabilities, the local voting system, and the requirement to provide all presenting voters with the opportunity to cast a private, independent ballot.

### Recommendations:

* ***State and local election officials must invest in adequate training for all election personnel and volunteers.***NCD recommends that state and local election officials invest in adequate training for all election personnel and volunteers. Such comprehensive training should include (1) the obligations and requirements of HAVA and other relevant federal and state statutes regarding the voting rights of people with disabilities, including the right of voters to receive voting assistance from a person of their choosing; (2) the state and local voting process and election system; (3) how to set up, operate, and demonstrate the use of accessible voting machines; and (4) disability awareness and etiquette training. Elections personnel, particularly election judges and supervisors, should employ heightened scrutiny during hours of operation to make sure that voters with a full spectrum of disabilities receive assistance, effective communication, and respect. NCD further recommends that, to achieve this training goal, states and localities collaborate with trusted local sources as well as national disability organizations and disability-related entities, such as the National Council on Independent Living, the National Disability Rights Network, and the ADA National Network.
* ***State and local election officials must increase their efforts to hire people with disabilities for all election personnel and volunteer positions.***NCD recommends that state and local election officials increase their efforts to recruit and hire people with disabilities for all election personnel and volunteer positions. Such efforts will require focused outreach to the disability community.

## FINDING 4: The Federal Government plays a vital role in ensuring the integrity of the election process in the United States.

While federal elections are administered under state laws and policies, Congress has enacted laws to ensure that every U.S. citizen has equal access to exercising the right to vote. The executive, legislative, and judicial branches of the Federal Government play important roles in protecting the election process and enforcing the right of all citizens to cast private and independent ballots.

### Recommendations:

* ***The independent Election Assistance Commission established under HAVA must be fully reconstituted so it can meet its statutory mandates****.*The EAC was established under HAVA to serve as a national clearinghouse and resource for election administration information; provide funds to states to improve election administration; and create minimum standards for states in key areas of election administration. This four-member commission was without a quorum beginning December 2010; since December 2011, the EAC has had no commissioners, and both the executive director and general counsel resigned in late 2011. Without commissioners or a staff, the EAC cannot perform its mandated functions under HAVA. In a memo issued in early 2011, the general counsel and acting executive director suspended activity by the EAC-mandated advisory boards because there was no designated federal official appointed to conduct official business.

Without commissioners, there can be no actions by the important EAC boards, including the 37-member Board of Advisors and the 110-member Standards Board, as well as the Technical Guidelines Development Committee. It is critical that these seats be filled and that the EAC be staffed immediately. Panelists at the NCD Policy Forum noted the lack of commissioners. Former Senator Christopher Dodd (D-CT) said:

HAVA established a new commission to assist states in [meeting HAVA requirements]. The EAC, conceived and championed by my former colleague, Mitch McConnell, was a resource for election officials, a place to turn to for professional advice and counseling on topics from resources to systems in their states to guidelines for administering an election. Unfortunately, they are without any commissioners. One of the recommendations I would make to this group is that you insist these jobs be filled.[[5]](#endnote-5)

* ***The Presidential Commission on Election Administration should draw on the reported experiences of voters with disabilities to improve the experience of all voters.***NCD recommends that the Presidential Commission on Election Administration use this and other recent reports that capture the experiences of voters with disabilities, along with a concerted effort to focus on disability voting concerns at their public meetings, to identify the challenges related to physical, architectural, technological, and attitudinal barriers to voting and to develop solutions to improve the experience, and protect and ensure the rights of voters with disabilities and all voters.

Support for this recommendation was offered by former Senator Dodd at the NCD Policy Forum. When he was asked what specific advice NCD could give the presidential commission, he said, “Well, start with the basics. You have to be in the room and at the table…that ought to be fundamental. To talk about this and not be at the table…. I'm not suggesting one seat either. You can become advocates not only for your own community but for everyone else as well. So it ought not to be a seat physically designated for disability, but because you bring a wealth of knowledge for all Americans. So I would begin there.”[[6]](#endnote-6)

* ***The Presidential Commission on Election Administration should identify and recommend promising practices related to voting processes that can enhance the experience of voters with disabilities while protecting their rights.***NCD recommends that the Presidential Commission on Election Administration identify, investigate, and report on promising practices related to voting processes that can be made available to protect the rights and enhance the experience of voters with disabilities, and eliminate barriers to the electoral process. Such practices might include vote-by-mail systems such as that currently used in Oregon and the permanent absentee ballot voter status recently introduced in Connecticut.

 Hurricane Sandy dealt a devastating blow to a number of precincts in the northeast corridor right before the 2012 general election, severely challenging the resources of state and local election officials and the ability of voters (including first responders) to get to the polls. NCD recommends that the commission work with state and local election officials and the National Association of Secretaries of State’s Task Force on Emergency Preparedness for Elections to devise effective emergency response procedures for elections to ensure that the requirements of voters with disabilities are considered as preparedness protocols are developed. Both the National Disability Rights Network (NDRN) and the National Council on Independent Living (NCIL) have memorandums of understanding with the Federal Emergency Management Agency (FEMA), and those two entities should take an active leadership role in this process.

* ***Congress should restore and maintain full HAVA funding for the secretary of state offices and the P&As.***NCD recommends that Congress restore FY 2014 HAVA funding to the secretary of state (SOS) offices to help states comply with minimum HAVA provisions. Funding and oversight are crucial to ongoing improvement of the electoral process and its systems. Similarly, funding should be maintained for the P&A systems pursuant to Section 291.

NCD further recommends that Congress require SOS offices to file their mandatory annual reports with the EAC and with the Administration on Intellectual and Developmental Disabilities of the Department of Health and Human Services (AIDD-HHS) so that AIDD-HHS can monitor state spending to ensure compliance with the HAVA disability goals.

In a similar vein, NCD recommends that Congress request the Government Accountability Office (GAO) to conduct a field study during the 2016 general election to chart progress and establish a further point of comparison since their “Voters with Disabilities: Challenges to Voting Accessibility” surveys and reports in 2000 and 2008. Additionally, Congress should request that GAO investigate the experiences of SOS offices in their use of HAVA funds to improve and reform voting systems for voters with disabilities. GAO witness Barbara Bovbjerg commented at the NCD Policy Forum, “Our work suggests that polling places have become somewhat more accessible…and, amazingly, that accessible voting systems were available to nearly everyone…. [Y]et polling places continue to have impediments and almost half haven’t thought through how to place the system so that voters can use it privately and independently.”[[7]](#endnote-7)

## FINDING 5: The enforcement role of the Department of Justice is critical to compliance with federal statutes by states and localities.

DOJ has heightened its monitoring and enforcement of the voting rights statutes and the ADA. During the 2012 general election cycle, DOJ was a more visible, active enforcement partner with nonpartisan voter protection coalitions such as the P&A system and the Election Protection coalition led by the Lawyers Committee for Civil Rights Under Law.

However, testimony at the NCD Policy Forum on HAVA suggested the need for more vigorous enforcement. DOJ must continue to increase its presence through monitoring and rigorous enforcement in states and localities where the rights of voters with disabilities have been abridged and voters disenfranchised. As discussed in this report, DOJ must use enforcement actions under HAVA, the ADA, and Section 504 of the Rehabilitation Act.

### Recommendations:

* ***DOJ should increase and expand its monitoring of polling sites for compliance with the ADA and Section 504 of the Rehabilitation Act****.*
NCD recommends that DOJ increase and expand its monitoring of polling sites for compliance with ADA Title II and Title III, and bring enforcement actions as necessary. NCD recommends the use of DOJ’s Project Civic Access to identify areas of noncompliance and required remediation. DOJ should include Project Civic Access compliance reviews in response to all voting access complaints under review. NCD also recommends that DOJ broadly publicize its voter complaint process and vigorously pursue all complaints received.

 Further, NCD recommends that DOJ use the local expertise of Protection and Advocacy for Voting Access (PAVA) programs and other voting advocacy entities in monitoring, identifying, and addressing noncompliance. This targeted attention on voting access compliance, particularly on Election Day, will continue to send a strong message to state and local jurisdictions that they can no longer discriminate against voters with disabilities.

* ***DOJ should be vigilant in enforcing the Voting Rights Act and remediating any violations of federal voting laws.***NCD recommends that DOJ remain vigilant in enforcing the Voting Rights Act of 1965 related to any discriminatory election procedures, including voter identification laws that have the potential to disenfranchise voters with disabilities. It is an important enforcement tool, as has been proven with proposed voter photo ID requirements in Texas.

NCD similarly recommends that DOJ intervene and pursue complaints to remediate any violations of federal voting laws, proposals, and practices that impinge on voter rights.

* ***DOJ should expand its monitoring and oversight of the accessibility of polling places for people with disabilities.***NCD recommends that DOJ expand its monitoring and oversight of the accessibility of polling places for people with disabilities, using the following suggestions offered by GAO in its 2009 report:

Working with states to use existing state oversight mechanisms and using other resources, such as organizations representing election officials and disability advocacy organizations, to help assess and monitor states’ progress in ensuring polling place accessibility, similar to the effort used to determine state compliance with HAVA voting system requirements.

Expanding the scope of Election Day observations to include an assessment of the physical and technological access to the voting area and the level of privacy and independence being offered to voters with disabilities by accessible voting systems.

Expanding the ADA Checklist for Polling Places to include additional information on the accessibility of the voting area and guidance on the configuration of the accessible voting system to provide voters with disabilities with the same level of privacy and independence as is afforded other voters.

**FULL REPORT:** [www.ncd.gov/publications/2013/10242013](http://www.ncd.gov/publications/2013/10242013)

1. CalTech Voting Technology Project and MIT, “Voting: What Is, What Could Be,” July 2001, at <http://vote.caltech.edu/content/voting-what-what-could-be>. [↑](#endnote-ref-1)
2. Written testimony of Representative Steny H. Hoyer, Democratic Whip, NCD Policy Forum, April 23, 2013, available at [http://www.ncd.gov/events/OtherEvents/04232013](http://www.ncd.gov/events/OtherEvents/04232013/). [↑](#endnote-ref-2)
3. Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 10. [↑](#endnote-ref-3)
4. *Id*. at 25. [↑](#endnote-ref-4)
5. Transcript of the oral testimony of the Honorable Christopher Dodd, NCD Policy Forum, April 23, 2013. [↑](#endnote-ref-5)
6. *Id*. [↑](#endnote-ref-6)
7. Rough Draft Transcript, NCD Policy Forum, April 23, 2013, p. 30. [↑](#endnote-ref-7)