RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments and the courts to ensure that the electoral process and voting methods are accessible to persons with disabilities and that polling places are free of physical, technological, and administrative barriers.

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments to use all appropriate means to improve enforcement of voting rights for persons with disabilities.

FURTHER RESOLVED, That the American Bar Association urges all election officials to ensure that election personnel and volunteers receive accessibility training and that persons with disabilities are actively encouraged to serve as election officials and volunteers.
I. INTRODUCTION

The right to vote is a cornerstone of democracy and is among our most fundamental rights as citizens.\(^1\) Approximately one in seven (35 to 46 million) Americans who are of voting age have accessibility needs.\(^2\) As the population ages, the number of voters with disabilities is expected to grow substantially.\(^3\)

In 2002, Congress enacted the Help America Vote Act (HAVA).\(^4\) HAVA requires voting systems to be accessible to individuals with disabilities, including those who are blind and have visual impairments.\(^5\) “Accessibility” means that persons with disabilities must be provided “with the same opportunity for access and participation (including privacy and independence) as for other voters.”\(^6\) In particular, there must be “at least one direct electronic recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.”\(^7\)

Additionally, under HAVA states and units of local governments that receive payments to assure access for persons with disabilities must make “polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to persons with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”\(^8\) Persons with disabilities must also be provided “with information about the accessibility of polling places, including outreach programs to inform the individuals about the availability of accessible polling places and training election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with disabilities in elections for Federal office.”\(^9\)

Despite the improvements HAVA has made to the accessibility of the electoral process for persons with disabilities, significant barriers remain. The National Council on Disability (NCD), an independent federal agency, surveyed nearly 900 voters with disabilities to learn about their experiences during the 2012 election cycle and issued a report in fall 2013.\(^10\) Among the NCD’s key findings were:

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\(^1\) See, e.g., Evans v. Cornman, 398 U.S. 419, 422 (1970) (“Moreover, the right to vote, as the citizen’s link to his laws and government, is protective of all fundamental rights and privileges.”); Reynolds v. Sims, 377 U.S. 533, 561-62 (1964 (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society.”)).


\(^4\) 42 U.S.C. § 15301 et seq.

\(^5\) Id. § 15481(a)(3)(A).

\(^6\) Id.

\(^7\) Id. § 15481(a)(3)(B).

\(^8\) Id. § 15421(b)(1).

\(^9\) Id. § 15421(b)(2).

Nearly 40% of respondents encountered physical barriers at their polling places. Forty-five percent reported barriers that involved voting machines. Nearly 54% encountered barriers inside the polling place. Twenty percent stated that they were prevented from exercising a private and independent vote.

In January 2014, the President’s Commission on Election Administration (PCEA) issued *The American Voting Experience: Report and Recommendations of the President’s Commission on Election Administration*, a report that examines some of the problems that hinder the efficient administration of elections and sets forth recommendations and best practices. The PCEA Report identified many of the same accessibility barriers as the NCD Report.\(^\text{11}\)

In 2007, the ABA House of Delegates adopted a policy on the voting rights of persons with disabilities. That resolution urged federal, state, local, and territorial governments to, among other things:

- Improve the administration of elections to facilitate voting by all individuals with disabilities, including those with cognitive impairments;
- Ensure that no governmental entity excludes any otherwise qualified person from voting on the basis of medical diagnosis, disability status, or type of residence;
- Clarify that people who provide assistance in voting lack the authority to determine capacity to vote, and that assistance in voting is limited to assisting voters to express the voter’s intent;
- Require and fund the development of voting systems that achieve universal design, so that voters can cast ballots privately and independently on the same voting machine, adaptable to accommodate any impairment, including physical, sensory, cognitive, intellectual, or mental; and
- Recruit and train election workers to address the needs of voters with disabilities, including physical, sensory, cognitive, intellectual, or mental disabilities.\(^\text{12}\)

In 2013, the ABA’s Standing Committee on Election Law (StCEL) undertook an examination of the experience of voters with disabilities in the years since the adoption of the 2007 policy. The StCEL found that persons with disabilities continue to encounter accessibility barriers in exercising their right to vote. It approached the ABA Commission on Disability Rights (CDR) to explore further steps by which the Association can promote access for voters with disabilities.

The StCEL and CDR have proposed this resolution with two objectives in mind: first, to increase awareness of the significant accessibility barriers that persons with disabilities continue to encounter in the electoral process, specifically physical barriers at polling places, and second, to propose concrete recommendations for eliminating these barriers.

\(^{11}\) PCEA REPORT, *supra* note 3, at 51.
\(^{12}\) ABA HOUSE OF DELEGATES,,ABA RESOLUTION 121 (AUG. 13-14, 2007).
II. Recommendations

A. Accessibility of the Electoral Process and Voting Methods

The first clause of the resolution urges governments to ensure that the electoral process and voting methods are accessible to persons with disabilities and that polling places are free of physical, technological, and administrative barriers.

1. Physical Barriers

Physical accessibility of polling places—getting to, entering, and using the polling place—is essential for persons with disabilities to exercise their right to vote. Because polling places are temporary facilities located in such structures as schools, libraries, and churches, ensuring accessibility is a challenge. The NCD Report catalogued physical barriers encountered by voters with disabilities in the 2012 election. Common barriers to getting to polling places included a lack of accessible parking; poorly maintained sidewalks; unimproved walkways; no curb cuts; and inadequate directions to accessible entrances and elevators. Common barriers to entering polling places included inaccessible, locked, or separate entrances; narrow doorways; doors that were hard to open and lacked automatic openers; stairs; poor signage; and inadequate ramps; cluttered floors and objects along paths of travel; narrow hallways; and inaccessible restrooms.13 The PCEA Report identified as barriers parking lots and spaces located far from polling places, a lack of navigable space between the parking lot and the polling place entrance, and long walking distances.14 Common barriers to using the polling place included: small rooms; lack of signage; voting machines situated in locations difficult to access or that compromised privacy; a lack of seating at voting booths; voting machines, booths, and tables that could not be adjusted for height; and insufficient numbers of poll workers to manage and assist voters.15

In United Spinal Association v. Board of Elections,16 a federal district court ruled that, due to barriers at polling sites, voters with vision and mobility impairments were denied a meaningful opportunity to participate in and benefit from the city board of election’s voting program by reason of their disabilities, in violation of Title II of the ADA and Section 504 of the Rehabilitation Act. The recurring barriers included unsafe or missing ramps, missing signage, and improper placement of voting equipment and furniture in voting areas.17 "These barriers not only impede access at the moment someone is voting, but also discourage people with disabilities from participating in future elections."18 The Second Circuit affirmed.19

2. Technological Barriers

As noted above, the NCD Report found that 45 percent of respondents reported barriers that involved voting machines. Twenty-five percent identified inadequately trained polling personnel...

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13 NCD REPORT, supra note 10, at 58.
14 PCEA REPORT, supra note 3, at 51.
15 NCD REPORT, supra note 10, at 58; PCEA REPORT, supra note 3, at 51.
17 Id.
18 Id. at 618.
as a barrier. In particular, personnel were unfamiliar with the operation of accessible voting machines or unable to troubleshoot malfunctions. In addition, machines were broken or malfunctioned. When a machine malfunctions, voters are often asked to wait while the machine is being repaired or are told to return later in the day, which may not be an option for them.

Similarly, the National Federation of the Blind (NFB), in its online survey of the voting experiences of more than 500 voters who are blind or have low vision, found that the percentage of blind voters who were able to cast their vote on an accessible machine with no problems decreased from 87 percent in 2008 to 62 percent in 2012. The percentage of blind voters who reported problems with poll workers in setting up or activating the machine increased from 19 percent in 2008 to 33 percent in 2012. Twenty-one percent of blind voters stated that the poll workers failed to provide them with instructions on how to use the machine, up from 16 percent in 2008.

In California Council of the Blind v. County of Alameda, blind plaintiffs had to vote with the assistance of a third party, because poll workers were unable to operate the accessible voting machines. The federal district court concluded that requiring plaintiffs to vote with the assistance of third parties did not provide them with a voting experience that was equal to that afforded to others.

3. Administrative Barriers

Administrative barriers also create obstacles for voters with disabilities. Such barriers include long lines and excessive waits with no seating; lack of training and awareness among poll workers about how to assist voters with disabilities; and unclear registration and voting requirements. NCD reported that lengthy standing caused voters with disabilities and older voters to leave the polls without voting.

Some NCD survey respondents reported that poll workers were condescending or rude, or exhibited pejorative attitudes. Others reported that poll workers made assumptions that they needed help to vote even though they had not requested help. Respondents also stated that poll workers were unwilling to set up accessible machines or demonstrate their use.

Other Voting Methods

Voting by mail is an important option for persons with disabilities. Voters with disabilities are more likely than other voters to vote by mail. According to data from a 2012 survey by the U.S.

20 NCD REPORT, supra note 10, at 63.
22 Id. at 1.
23 Id.
25 NCD REPORT, supra note 10, at 85.
26 Id. at 64.
27 Id. at 63.
28 Id. at 63.
Census Bureau of 94,321 citizens, 28.4 percent of persons with disabilities voted by mail, compared to 17.3 percent of voters without disabilities. Yet persons with disabilities may encounter accessibility barriers even when voting by mail. For example, those with visual impairments may have difficulty seeing mail ballots. Moreover, persons who have cognitive impairments may experience difficulty following complex written instructions on the ballot. In addition, persons whose fine motor skills are limited may have trouble marking their vote on the ballot.

A national household telephone survey of 3,022 citizens who were eligible to vote in the 2012 elections was conducted in 48 states by the Survey Research and Technology and overseen by researchers at Rutgers and Syracuse Universities. Of the 2,000 citizens who self-identified as having a disability, 13.3 percent reported difficulties voting by mail, compared to 2.2 percent of 1,022 mail voters without disabilities. Moreover, 11.3 percent of mail voters with disabilities reported needing assistance in filling out or sending in their mail ballots, compared to 0.4 percent of mail voters without disabilities. The majority of the problems reported concerned the inability of voters with visual impairments to read the ballots due to small print or of voters with cognitive impairments to understand the written materials because of their complexity. Several respondents with hand tremors reported difficulty checking the squares on the ballot.

Lack of accessibility in voting by mail has several adverse effects. Persons with disabilities may choose not to vote at all. Or, they may be forced to rely on family members or caregivers to vote, rather than voting privately and independently, with the risk of coercion or undue influence that this may entail.

To address these problems, some states provide persons with disabilities with alternative voting methods that are accessible. For example, in Oregon, voters with disabilities can use a screen reader and other technology to access a ballot at home, or call the county elections office and ask for assistance. Voters can request that election officials bring an electronic tablet and a portable printer to the voter’s home to assist with voting. Such technology helps voters with limited vision and mobility, difficulty reading, and cognitive disabilities.

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31 Id.
32 Id.
34 Id.
35 Id. at 8-9.
36 Id. at 9.
37 Lisa Schur, supra note 2, at 6.
B. Enforcement of Voting Rights for Persons with Disabilities

The second clause of the resolution urges governments to improve enforcement of voting rights for persons with disabilities.

Section 401 of HAVA charges the U.S. Department of Justice (DOJ) with responsibility to bring a civil action against any political jurisdiction for declaratory and/or injunctive relief “to carry out the uniform and nondiscriminatory election technology and administration requirements of [HAVA].” With several circuits finding no private right of action under HAVA, it is critical that DOJ continue to monitor, oversee, and enforce accessibility for voters with disabilities under HAVA, the ADA, and Section 504.

DOJ has entered into several consent decrees with states to address accessibility issues. For example, in July 2006 DOJ filed a complaint against the State of Maine, alleging that it violated Section 301 of HAVA, 42 U.S.C. § 15481, by not having in place on January 1, 2006, voting systems for use in federal elections that comply with the accessible voting system standards set forth in that section. A month later, the federal district court approved a consent decree between DOJ and the state. The consent decree required the state to: (1) become compliant with HAVA Sections 301 and 303 before the 2006 general election; (2) finalize a contract with a voting machine supplier to provide the required accessible voting machines and ancillary equipment needed for its functioning; (3) train election officials regarding proper set-up, function, and use of the accessible equipment; (4) train local election officials regarding accessible machines; and (5) develop and implement a voter education program for individuals who would be using the accessible machines.

In February 2014, the DOJ reached a settlement with Blair County, Pennsylvania, following the department’s finding that many of the county’s polling places during the November 2012 election contained barriers to access for persons with disabilities, in violation of Title II of the ADA and its implementing regulations. Among other things, beginning with the November 2014 election, the county must ensure that all polling places are accessible, and must either relocate inaccessible polling places to accessible facilities or use reasonable temporary measures such as portable ramps, signs, traffic cones and door stops to make otherwise inaccessible places temporarily accessible.

HAVA established the Election Assistance Commission (EAC) to serve as a national clearinghouse and resource of information on election administration, provide funds to states to

40 42 U.S.C. § 1511.
improve election administration, and create minimum standards for states in key areas of election administration. However, the EAC has become an essentially nonfunctional agency. It has no Commissioners, no Executive Director, and no General Counsel. If the federal government is to carry out its responsibility to improve accessibility for voters with disabilities, the EAC should be restored or an alternative provided.

States and localities play a critical role in ensuring accessibility for voters with disabilities. They should create accessibility checklists, conduct accessibility compliance reviews, and hold accessibility trainings for poll workers. The EAC has a guide on accessibility that states can use.45

C. Training and Recruitment of Election Workers

The third clause of the resolution urges election officials to ensure that election workers receive accessibility training and that persons with disabilities are actively encouraged to serve as election officials and volunteers.

As previously discussed, NCD identified poor training of the election workforce and their lack of awareness as accessibility barriers for voters with disabilities.46 Some poll workers were reportedly unable to operate accessible voting machines or troubleshoot malfunctioning equipment and were unwilling to set up or demonstrate the use of accessible machines.47 Some exhibited condescending and rude attitudes, while others made assumptions about the competency of voters with disabilities.48 NCD recommended that election personnel and volunteers receive training on, among other things, how to set up, operate, troubleshoot, fix, and demonstrate the use of accessible voting machines; disability awareness and etiquette; and compliance with the federal and state laws that protect the voting rights of persons with disabilities.49 Such training efforts should involve collaboration with persons with disabilities, national disability organizations, and disability-related entities.50

Similarly, the PCEA stressed the importance of training poll workers on how to interact with voters with disabilities and configure and operate voting equipment. It recommended, as a resource, a video guide on educating poll workers about voters with disabilities developed by the Pennsylvania Department of State.51 PCEA also emphasized the importance of ensuring that election officials work with advisory groups from the disability community in order to understand the needs of voters with disabilities, communicate to voters with accessibility needs

46 NCD REPORT, supra note 10, at 63.  
47 Id.  
48 Id. at 14.  
49 Id. at 15.  
50 Id. at 15.  
the resources available, and provide recommendations for training poll workers and managing polling places. 52

The active recruitment of election officials and volunteers with disabilities will give voters with disabilities greater confidence in the integrity and credibility of the election process. By making them more comfortable and more receptive to offers of assistance, it ultimately will increase voter turnout as well.

CONCLUSION

A free and fair electoral process is fundamental to the successful functioning of our democracy. By adopting the resolution, the American Bar Association will lend its voice to efforts to ensure that all voters, including the 35 to 46 million eligible voters with disabilities, can participate in that process on full and equal terms.

We urge the House to approve the resolution.

Respectfully submitted,

John Hardin Young
Chair
Standing Committee on Election Law

Judge Adrienne Nelson
Commissioner
Commission on Disability Rights

August 2014

52 Id. at 50.
GENERAL INFORMATION FORM

Submitting Entities: Standing Committee on Election Law
Commission on Disability Rights

Submitted By: John Hardin Young, Chair, Standing Committee on Election Law
Judge Adrienne Nelson, Commissioner, Commission on Disability Rights

1. **Summary of Resolution(s).**

   This resolution urges that the electoral process and voting methods are accessible to persons with disabilities and that polling places are free of physical, technological, and administrative barriers. The resolution also urges governments to improve enforcement of voting rights for persons with disabilities and further urges election officials to ensure that election personnel and volunteers receive accessibility training and that persons with disabilities are actively encouraged to serve as election officials and volunteers.

2. **Approval by Submitting Entity.**

   The Standing Committee on Election Law approved the resolution on 26 April 2014.
The Commission on Disability Rights approved the resolution on 10 April 2014.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   In August 2007, the Association adopted policy urging federal, state, local and territorial governments to improve the administration of elections to facilitate voting by all individuals with disabilities, including people with cognitive impairments that increase in frequency with age. The policy would not be adversely affected by the proposed resolution. The resolution expands upon the previously adopted policy and also urges enforcement of voting rights for persons with disabilities and encourages their participation in the process as election officials and volunteers.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   N/A
6. **Status of Legislation.** (If applicable)

   N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** If adopted, the policy can be used to encourage federal, state, local, and territorial governments to ensure the right to a private and independent vote by all individual, qualified to vote, as well as encouraging the development universal design of voting machinery in existing machines and for new machinery going forward.

8. **Cost to the Association.** (Both direct and indirect costs)

   None.

9. **Disclosure of Interest.** (If applicable)

   There are no known conflicts of interest with this resolution.

10. **Referrals.**

    On 26 April 2014, the Section of Individual Rights and Responsibilities joined the resolution and report as a Supporter.

    In early May 2014, the proposed report and resolution was circulated to the following entities:

    Section of State and Local Government Law
    Section of Administrative Law
    Section of Science and Technology Law
    Commission on Law and Aging
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges that the electoral process and voting methods are accessible to persons with disabilities and that polling places are free of physical, technological, and administrative barriers. The resolution also urges governments to improve enforcement of voting rights for persons with disabilities and further urges election officials to ensure that election personnel and volunteers receive accessibility training and that persons with disabilities are actively encouraged to serve as election officials and volunteers.

2. Summary of the Issue that the Resolution Addresses

The right to vote is a cornerstone of democracy and is among our most fundamental rights as citizens. Approximately one in seven (35 to 46 million) Americans who are of voting age have accessibility needs. As the population ages, the number of voters with disabilities is expected to grow substantially. In 2002, Congress enacted the Help America Vote Act (HAVA). HAVA requires voting systems to be accessible to individuals with disabilities, including those who are blind and have visual impairments. Additionally, under HAVA states and units of local governments that receive payments to assure access for persons with disabilities must make access to polling places in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. Persons with disabilities must also be provided with information about polling place accessibility. Despite the improvements HAVA has made to the accessibility of the electoral process for persons with disabilities, significant barriers remain. The resolution addresses the necessary improvements, in the development of new technology and enforcement of existing laws, which will enhance accessibility.

3. Please Explain How the Proposed Policy Position will address the issue

This resolution will enhance accessibility to the fundamental right to vote by urging that the electoral process, voting methods, and polling places are free of physical, technological, and administrative barriers; as well as urging the enforcement of voting rights for persons with disabilities and also urging accessibility training for poll workers and that persons with disabilities are actively encouraged to serve as election officials and volunteers.

4. Summary of Minority Views

None to date.