

**Enjoyment of the Right to Participation in Political and Public Life by
Persons with Disabilities - Illustrations of Implementation from the United States**

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Foreword

The National Council on Disability is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities regardless of the nature or significance of the disability and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. This topic paper is part of a series of topic papers designed to provide brief background information on United States disability policy for use by the delegates in their deliberations on the United Nations Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

I. Introduction

The right to participate in political and public life is a fundamental right that forms one of the foundations of any free and democratic society. The ability to exercise this right directly impacts the degree to which people with disabilities are able to fulfill their civic rights and responsibilities, and the degree to which they can be active and included members of their communities. Draft Article 18 of a proposed UN convention/treaty on the human rights of people with disabilitiesⁱ specifically addresses participation in political and public life, and incorporates several key concepts, including: accessibility of voting procedures and facilities; the ability of people with disabilities to vote by secret ballot; participation on a basis of equality in the activities and administration of political parties and civil society; and participation in decision-making, particularly concerning issues relating to people with disabilities.

As governments and other actors undertake the drafting and implementation of this new human rights convention, it may be helpful to consider the experience of other countries in ensuring enjoyment of the concepts related to the right to participate in political and public life. This paper seeks to provide illustrations from the experience of the United States, and provides examples of legislative and other initiatives that have been undertaken to increase the participation of people with disabilities in political and public life. It is not the intent to argue that the approaches adopted in the United States are the best or only way of addressing access to this fundamental right by people with disabilities, but instead to provide this information as a resource to those engaged in ultimately implementing the new convention. Although it is beyond the scope of this paper to provide an in-depth assessment of the impact of the legislation, programs and policies described here, documents providing such assessments are available and referenced in the footnotes for those interested in learning more.

Specifically, the paper seeks to:

- provide an overview of concepts related to participation in political and public life and their relevance in supporting the human rights of people with disabilities;
- provide an overview of barriers which can impede the enjoyment of this right by people with disabilities;
- provide examples of legislation, programs, policies and practices that promote enjoyment of this right by people with disabilities; and
- provide a checklist of questions for the convention context

II. The right to participation in political and public life for people with disabilities

a) What concepts are addressed by this right in international human rights instruments?

To place this discussion of implementation measures and the convention in context, it is important to examine what is meant by the right to participation in political and public life.ⁱⁱ As articulated in Article 25 of the International Covenant on Civil and Political Rights (ICCPR), it encompasses the rights of the individual:

- (i) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (ii) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (iii) To have access, on terms of equality, to public service in his [/her] country.

With regard to the right to vote, the Committee that monitors implementation of the ICCPR has explicitly stated that the right to vote should not be restricted on the grounds of disability, and that any assistance provided to people with disabilities in exercising this right should be “independent” to preserve the secrecy of the ballot.ⁱⁱⁱ It should be noted though that while voting is an important element and modality of political and public participation, the right

also encompasses broader concepts of representation, participation in decision-making, and participation in political processes. These larger concepts of participation have been elaborated in a number of other human rights instruments. For example, Article 8 of the Convention on the Elimination of All Forms of Discrimination Against Women addresses the right of women to represent their governments at the international level and in international organizations on equal terms with men. Articles 6 and 7 of the International Labour Organisation (ILO) Convention Concerning Indigenous and Tribal Peoples provide that governments shall consult such people during development of legislation and administrative measures that affect them, and ensure their participation in the institutions and bodies that are responsible for policies and programs affecting them, as well as in studies to see how they will be impacted by planned activities such as economic development programs.

The relevance of such rights to people with disabilities is great, as the enjoyment of these rights can have a profound impact on the ability of people with disabilities to fully realize all other human rights. For example, it has been noted that the “right to vote (Article 25[ICCPR]), as a classic democratic right, is of central importance to the realization of freedom of thought and expression.”^{iv} If people with disabilities do not have access to political and other decision-making processes through such modalities as voting, holding public office and consultation, they are critically excluded from centers of decision-making that control all other aspects of their lives. Policies developed and decisions made without the participation of people with disabilities will fail to reflect the perspectives of this group, which is as much a loss to society as a whole as to people with disabilities. Moreover, exclusion of people with disabilities from political and public spheres denies them the right to contribute to their communities and societies on an equal basis with others.

b) What barriers can inhibit the enjoyment of this right by people with disabilities?

The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities reminds States that they “are under an obligation to enable persons with disabilities to exercise their rights, including their human, civil and political rights, on an equal basis with other citizens.” Although this means that people with disabilities should be able to enjoy their right to participate in political and public life on an equal basis with others, societal barriers often inhibit the ability of people with disabilities to fully exercise these rights. Such barriers may include:

- Physical barriers – such as inaccessible polling stations, voting booths that violate the right to privacy and secrecy, and inaccessible public spaces where political and other public meetings are held;^v
- Informational barriers – such as voting ballots that cannot be used by people with visual or developmental disabilities, and political and public policy information that is inaccessible to people with disabilities;^{vi}
- Legal barriers – such as legislative prohibitions against people with disabilities voting or holding public office;^{vii}
- Attitudinal barriers – such as the beliefs of polling attendants, political parties, legislators and communities that people with disabilities are not capable of voting responsibly or holding public office, and/or a lack of awareness of how to appropriately assist and accommodate people with disabilities in enjoying these rights and opportunities.

III. Illustrations of implementation of the right to participation in political and public life in the United States

On February 1, 2001, President Bush announced the “New Freedom Initiative” (NFI), which is a comprehensive national plan to remove barriers to community living for people with disabilities.^{viii} NFI recognized “that full integration into society must include access to and participation in the political process” and that more needed to be done to implement legislation and programs seeking to remove barriers to enjoyment of such access and participation by Americans with disabilities. The details of such access to political and public processes by people with disabilities in the United States are often left to the direction of the states. However, there are a number of federal statutes of relevance in this regard, and several are examined here:

a) Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA)^{ix}

This federal statute addresses issues of accessibility for people who are elderly and people with disabilities with regard to federal elections, and is intended to increase access of such groups to federal election processes. Although limited to federal elections, given that the same polling stations are typically multi-use (i.e. used in federal as well as state and local elections), the statute has the ability to improve accessibility for people with disabilities regarding state-level elections.

The VAEHA requires that “political subdivisions responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.”^x A monitoring component in the statute ensures that the chief election officer of each state provides regular reports on the accessibility of the state’s polling places to the Federal Election Commission (FEC),^{xi} which in turn provides the information to the U.S. Congress.^{xii} In this manner data can automatically be compiled to provide a picture of accessibility of polling stations within the U.S., though problems have been noted with the statistical interpretation of

reports; in some instances jurisdictions that failed to report inaccessible polling stations in response to FEC questionnaires have mistakenly been assumed to have fully accessible facilities.

With regard to registration of voters,^{xiii} the VAEHA requires that “a reasonable number of accessible permanent registration facilities” be provided for federal elections, unless the state in question already has a system allowing voters to register by mail or at their residence.^{xiv} During the course of registration, registration and voting aids must be made available, including conspicuous instructions in large type and “information by telecommunications devices for the deaf.”^{xv} In addition, public information must be provided regarding the existence of such aids, and this public information must be “calculated to reach” people with disabilities.^{xvi}

Enforcement of VAEHA lies with the U.S. Attorney General,^{xvii} and if a violation is suspected either the Attorney General or the aggrieved person(s) can bring a court case for declaratory or injunctive relief.^{xviii} Prior to bringing such an action the individual in question is required to provide notice of noncompliance with VAEHA to the chief election officer of the state, and then wait 45 days.^{xix} This waiting period provides an opportunity for the state in question to bring itself into compliance and thus avoid litigation.

b) National Voter Registration Act of 1993 (entered into effect 1995) (NVRA)^{xx}

Recognizing that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups,” Congress enacted NVRA to increase the number of voters eligible to participate in federal elections.^{xxi} The Act does not deal exclusively with disability-specific issues, but does include requirements intended to promote voter registration among people with disabilities, which in turn increases the opportunity for this group to participate in elections. It is worth noting here that although government in the U.S. has

a role to play in assisting in the registration of voters, the responsibility to register to vote is an individual, rather than a government responsibility. In other words, the onus is on individuals to seek registration, as contrasted with some countries where the onus is on the government to ensure that all eligible individuals are registered to vote.

NVRA requires that states designate as voter registration agencies, “(A) all offices in the State that provide public assistance; and (B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.”^{xxii} This increases the likelihood that people with disabilities will register to vote, because they can access voter registration processes at an increased number of venues, including their own homes if that is a place where the state-funded programs are provided.^{xxiii} Although it does not elaborate how this would occur specifically for people with disabilities, NVRA also requires that, “Assistance [be provided] to applicants in completing voter registration application forms, unless the applicant refuses such assistance.”^{xxiv}

With regard to enforcement, NVRA is similar to VAEHA, in that the Attorney General may bring a civil action for declaratory or injunctive relief, or an individual can utilize a private right of action after notifying the chief election official of the state involved and waiting 90 days (as opposed to 45 days under VAEHA) to provide an opportunity for the state to correct the problem.^{xxv} The waiting period is reduced to 20 days if the violation occurred within 120 days prior to a federal election,^{xxvi} or the requirement for notice and a wait period is waived altogether if the violation occurred within 30 days prior to a federal election.^{xxvii} Thus, a balance is struck between avoiding litigation and allowing states to self-correct problems where possible, and the individual’s need to ensure that problems identified prior to an election are resolved in a timely manner.

c) Help America Vote Act of 2002 (HAVA)^{xxviii}

Introduced in the wake of the 2000 federal elections, HAVA is intended to encourage the updating of election technologies and systems across the United States, and improve access to the voting process for all Americans. Like NVRA, HAVA is not a disability-specific statute, but contains important provisions affecting people with disabilities and their access to political processes.^{xxix}

Essentially, HAVA establishes a system for federal funding of state activities that is intended to lead to replacement of out-dated election technologies, implementation of voting technologies that are uniform, non-discriminatory and accessible to people with disabilities, training of election officials and poll workers, and development of a state plan in this regard.^{xxx} HAVA provisions related to such federal funding are administered by the Department of Health and Human Services, which awards grants to states to: make polling places accessible in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; provide information to let people know the locations of accessible voting places; and provide training to polling place workers in how to appropriately assist voters with disabilities. Additional grants help State Protection and Advocacy Systems assist people with disabilities participate in the voting process, including but not limited to registration, getting to polling places, and voting. Grants are also available to organizations to provide technical assistance to State Protection and Advocacy Systems on accessible voting machines and other matters to facilitate the participation of people with disabilities in the voting process.

HAVA also establishes four new federal commissions/committees to assist in this effort, including: the Election Assistance Commission (EAC),^{xxxi} the Election Assistance

Standards Board,^{xxxii} the Election Assistance Commission Board of Advisors,^{xxxiii} and the Technical Guidelines Development Committee.^{xxxiv} Title III of HAVA sets forth requirements that must be met by voting systems used in federal elections, whether the state implementing the system has or has not requested funding under HAVA to achieve this or not.^{xxxv} Of specific relevance to people with disabilities is the requirement that voting systems be accessible to people with disabilities,^{xxxvi} and that such systems preserve the right of all voters to vote in a “private and independent manner.”^{xxxvii}

Enforcement of HAVA occurs at both the federal and state levels. At the federal level, the U.S. Attorney General is responsible for bringing civil actions for declaratory and injunctive relief for violations of the Act.^{xxxviii} At the state level, as a condition of receiving funding under HAVA, states must establish “state-based administrative complaint procedures”^{xxxix} for individuals who feel that a violation of HAVA “has occurred, is occurring or is about to occur.”^{xl} Even if a state elects not to receive funding under the Act, it must still certify to the Attorney General that it has established a complaints procedure, or submit a state plan to the Attorney General explaining how it intends to meet the requirements of Title III of the Act.^{xli}

Although it is too early to adequately assess how HAVA impacted the 2004 federal elections, a brief review of state electoral information websites reveals that HAVA has indeed had an impact at the state level and has assisted in prompting states to review and revise accessibility of their voting systems to people with disabilities. For instance, the Maryland state plan prioritizes “accessibility for individuals with disabilities and alternative language needs” as one of its main themes.^{xlii} Furthermore, the Maryland plan sets forth specific actions that the state will undertake to ensure accessibility for voters with disabilities,^{xliii} including training and

outreach for poll workers and election officials, to ensure that they understand how to appropriately accommodate the needs of disabled voters.^{xliv}

The EAC has also been engaged in providing informational resources to states and other actors engaged in the operation and monitoring of electoral systems. For example, it has produced a “Best Practices Tool Kit,” which provides implementation checklists, and numerous examples of best practices from the states.^{xlv} As well as highlighting the need to ensure that polling venues, systems, and voter information is accessible to people with disabilities, and methods for achieving this, the Tool Kit stresses the need to consult with people with disabilities and their representative organizations in identifying and addressing needs of voters with disabilities.^{xlvi} Thus, people with disabilities are appropriately identified as stakeholders who should be involved in developing and evaluating the systems that provide them with access to political and public processes.

d) Americans with Disabilities Act of 1990 (ADA) and Section 508 of the Rehabilitation Act of 1973

The legislative and programmatic initiatives referenced above have focused largely on the right to vote and methods for ensuring enjoyment of that right by people with disabilities. With regard to access to the broader right to participate in public life, the United States has not adopted the approach used in some countries of mandating participation of people with disabilities in political and governmental decision-making bodies.^{xlvii} Instead, the approach has been one of non-discrimination, and provision of accessible environments that make possible the participation of people with disabilities in political and public life. Two statutes that form the foundation of this approach are the Americans with Disabilities Act, and the Rehabilitation Act.^{xlviii}

The ADA was established to “provide a clear and comprehensive prohibition of discrimination on the basis of disability,” and consequently addresses a wide range of societal contexts where discrimination may occur.^{xlix} Of particular relevance in the context of the right to participate in political and public life, are Titles II and III of the ADA, which respectively prohibit discrimination in the provision of public services, and in the provision of public accommodations and services provided by private entities. Meetings and activities relevant to the political and public life of any community are frequently held in public spaces, and a prerequisite to meaningful participation of people with disabilities in such activities is access to those spaces.^l

In the context of its responsibility for enforcement of these relevant provisions of the ADA, the Disability Rights Section (DRS) of the Department of Justice has embarked upon “Project Civic Access.” Under this project DRS undertakes compliance reviews of various localities and states, and where compliance is lacking it enters into settlement agreements with those jurisdictions, setting forth actions that must be taken to ensure compliance and timelines for completion.^{li} The actions to be taken are often provided with a high degree of specificity, so that there is no ambiguity regarding the steps that must be taken to bring the jurisdiction within ADA compliance. For example, a settlement agreement with Juneau, Alaska, required the city to make a number of changes to ensure accessibility of its city hall, including provision of accessible signage, longer door closure times for elevators, and provision of accessible routes to avoid fire extinguishers which could not be detected by people with visual impairments using canes.^{lii} In the course of conducting these compliance reviews the Department of Justice has compiled examples of common problems, and used this data to create a publication that seeks to inform state and local governments on ways in which to avoid these problems.^{liii}

Physical access is of course not the only form of access necessary for people with disabilities to participate in political and public life – access to information is of equal importance if people with disabilities are to be able to inform themselves about issues of political and public significance.^{liv} In this regard Section 508 of the Rehabilitation Act is relevant, as it seeks to ensure accessibility of federal electronic and information technology for people with disabilities, both employees and members of the larger public. Specifically, Section 508 requires that in the development, procurement, maintenance and use of electronic and information technology, federal agencies must ensure accessibility of that information, unless doing so would pose an “undue burden” on the agency in question.^{lv} The focus is on ensuring that people with disabilities have access “comparable” to the access and use of the data by other people.^{lvi} Where enforcement of this obligation would result in an undue burden^{lvii} on the federal agency in question, the agency still must provide the information in an alternative format accessible to individuals with disabilities.^{lviii} A system of regular reports by heads of federal agencies to the U.S. Attorney General ensures a mechanism for review of the implementation of Section 508.^{lix}

The U.S. General Services Administration (GSA) provides numerous resources to agencies and others wishing to bring their electronic information into compliance with Section 508. Through its “Section 508” website,^{lx} GSA provides free software that can assist in making electronic information accessible, as well as software that can test whether information is compliant with Section 508. The website also provides links to information access focal points and resources in other federal agencies, allowing federal agencies and others to learn from the experience of those agencies. Crucially, the website provides links to numerous disability organizations, ensuring that those seeking to provide accessible information can draw from stakeholders with expertise, namely people with disabilities themselves.

e) Partners in Policymaking

Federal legislation is not the only means through which people with disabilities have been empowered to participate in political and public life. For example, “Partners in Policymaking” is a state-run leadership training program for adults with disabilities and parents of young children with developmental disabilities, that seeks to “teach best practices in disability and the competencies of influencing public officials.”^{lxi} Developed in 1987 by the Minnesota Governor’s Council on Developmental Disabilities, the program offers self-directed courses and other resources to assist individuals in communicating with policymakers and participating in decision-making processes. The program has spread to 46 states as well as other countries (including the Netherlands and United Kingdom), and boasts “13,000 Partners graduates [who] are part of a growing national and international network of community leaders serving on policymaking committees, commissions, and boards at all levels of government.”^{lxii}

IV. Implementation check-list

The participation of people with disabilities in political and public life is both a right and a critical objective for societies seeking to harness the knowledge and resources of all community members. In light of the examples provided above, those engaged in the drafting and implementation of a new convention on the human rights of people with disabilities may find the following implementation check-list of assistance when addressing the right of people with disabilities to participate in political and public life:

- Have programs/legislative initiatives to promote participation of people with disabilities in political and public life been developed through consultation with people with disabilities and their representative organizations? (As stakeholders, people with

disabilities have a right to participate in the formulation of these initiatives, and are best placed to provide relevant expertise.)

- Do relevant programs/legislative initiatives have sufficient impact across all levels of political and public decision-making? (Initiatives which result in changes only at one level of government (e.g. federal but not state or local), will deprive people with disabilities of opportunities to participate meaningfully in all relevant decision-making forums.)
- Do relevant programs/legislative initiatives build-in automatic reporting? (Automatic reporting provides opportunities to gather data and statistics to enable ready assessment of implementation and programmatic effectiveness, as well as the production of publications and other resources that can be used by actors seeking to comply with obligations.)
- Are people with disabilities and their representative organizations actively engaged by the government and other actors in implementation assessments of relevant programs/legislative initiatives? (As noted above, people with disabilities are best placed to assess whether initiatives designed to ensure their participation in political and public life actually achieve these ends.)
- Do relevant programs/legislative initiatives ensure both physical and information access by people with disabilities? (Failure to provide both kinds of accessibility will result in lack of meaningful participation for people with disabilities in political and public life.)
- Have sufficient information resources and training been provided to raise the awareness of relevant elections officials and other actors of the rights and needs of people with disabilities to participate in political and public life? (Absence of such resources and

training can decrease the effectiveness of relevant programs and legislative initiatives, and can slow implementation. As noted above, people with disabilities should be participants in the development of such resources and training.)

- Do people with disabilities have opportunities to participate in training programs that equip them to participate effectively as members of public committees, commissions, and boards, as well as run for public office? (Empowerment is a vital catalyst for people with disabilities to contribute to political and public life.)

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ⁱ For more information on the rationale for this new convention, see “A White Paper – Understanding the Role of an International Convention on the Human Rights of People with Disabilities: An analysis of the legal, social and practical implications for policy makers and disability and human rights advocates in the United States,” (National Council on Disability, May 23, 2002), available at:

<http://www.ncd.gov/newsroom/publications/2002/publications.htm>. For information regarding the draft text and status of negotiations, please visit the UN Department of Economic and Social Affairs (DESA) Programme on Disability: <http://www.un.org/esa/socdev/enable/index.html>.

ⁱⁱ For further discussion of this and other rights relevant to a new convention on the human rights of people with disabilities, as well as sample provisions from existing human rights instruments, see “A Reference Tool – Understanding the Potential Content and Structure of an International Convention on the Human Rights of People with Disabilities: Sample treaty provisions drawn from existing international instruments,” (National Council on Disability, 2002), available at: <http://www.ncd.gov/newsroom/publications/2002/publications.htm>.

ⁱⁱⁱ Human Right Committee, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12/07/96. CCPR/C/21/Rev.1/Add.7, paras 10 and 20.

^{iv} Gerard Quinn and Theresia Degener et al, “Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability,” (Office of the High Commissioner for Human Rights, 2002), p. 58.

^v For examples of discrimination against people with disabilities during the 2000 election, see Democratic Investigative Staff, House Committee on the Judiciary, “How to Make Over One Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election,” (Aug. 20 2001), pp. 31, 32, 51, 53, available at http://www.house.gov/judiciary_democrats/electionreport.pdf. For an additional examination of voting barriers for people with disabilities during the 2000 elections, see Michael Waterstone, *Constitutional and Statutory Voting Rights for People with Disabilities*, STANFORD LAW AND POLICY REVIEW, Vol. 14.2, 2003.

^{vi} For an examination of accessibility of electronic information to people with disabilities, see “The Accessible Future,” (National Council on Disability, June 21, 2001), available at: <http://www.ncd.gov/newsroom/publications/2001/publications.htm>.

^{vii} In, *Doe v. Rowe*, 156 F. Supp. 2d 35 (D. Me. 2001), it was found that a state statute expressly disenfranchising people with psycho-social disabilities was unlawful because it violated the Equal Protection Clause of the

Fourteenth Amendment of the U.S. Constitution. Despite this ruling, many people with psycho-social and developmental disabilities find themselves disenfranchised, because some states incorporate legal capacity into their voter eligibility guidelines. *See e.g.* New York Consolidated Laws, ELN, Article 5, Title 1, § 5-106(6), stating “No person who has been adjudged incompetent by order of a court of competent judicial authority shall have the right to register for or vote at any election in this state unless thereafter he shall have been adjudged competent pursuant to law.” *See also* Kentucky Constitution § 145(3), which expressly exempts “idiots and insane persons” from voting. An individual found to be legally incompetent would thus not be permitted to vote in such states, and such findings are much more common against people with psycho-social and developmental disabilities than other members of society. Some states have sought to ameliorate the damaging consequences of a finding of incompetence, by finding that even if a person has been found mentally incompetent, that does not automatically disqualify them from voting. Rather, “Registration creates a presumption in favor of capacity to vote. This presumption remains, absent a finding by a probate court that the person is specifically incompetent to vote after a record hearing on that issue. Notification of any such finding to the Board of Election and elector shall be completed at least thirty days prior to the election in question. Any finding of incompetency not meeting these criteria is not operative with respect to the right to vote.” Consent Judgment Between Plaintiffs and Defendant Sherrod A. Brown, Secretary of State of Ohio, Case MP/C-2-82-991, Judge Holschuh, available at: http://olrs.ohio.gov/asp/pub_Glancy.asp.

^{viii} Available at: <http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html>. Such national policy papers related to realization of human rights and inclusive community living for people with disabilities are utilized in many countries, *see e.g.* “The New Zealand Disability Strategy,” (Ministry of Social Development, Government of New Zealand), available at: <http://www.odi.govt.nz/publications/nzds/index.html>. It is not uncommon for provinces within federations to also develop specific disability strategies, *see e.g.* “Alberta Disability Strategy Summary Document,” (Premier’s Council on the Status of Persons with Disabilities, Alberta Government, Canada), available at: http://www.cd.gov.ab.ca/helping_albertans/premiers_council/PDF_Files/ADS_SummaryF.pdf.

^{ix} 42 U.S.C. §§ 1973ee et seq.

^x 42 U.S.C. §§ 1973ee-1. It should be noted that section (b) provides exceptions to this requirement in cases of emergency “as determined by the chief election officer of the State,” or if the political subdivision is incapable of making the polling place even temporarily accessible and assures that voters with disabilities assigned to such an inaccessible polling place “(i) will be assigned to an accessible polling place, or (ii) will be provided with an alternate means for casting a ballot on the day of the election.” *Id.* It should also be noted that VAEHA did not provide a working definition of what constituted an accessible polling place, and in this regard did not provide an adequate level of clarity for those seeking to comply with the Act.

^{xi} The Federal Election Commission (FEC) is an independent federal agency established in 1975 to oversee certain aspects of federal elections, such as the financing of elections. For more on the FEC visit:

<http://www.fec.gov/about.shtml>.

^{xii} 42 U.S.C. §§ 1973ee-1(c).

^{xiii} It should be noted that even if it is completed on the same day as the election, in most jurisdictions in the United States, voters must be officially registered with the jurisdiction in question in order to vote.

^{xiv} 42 U.S.C. §§ 1973ee-2.

^{xv} 42 U.S.C. §§ 1973ee-3(a).

^{xvi} 42 U.S.C. §§ 1973ee-3(c). Making people with disabilities aware of their rights and the services available to them is reflected in various provisions of the draft human rights convention for people with disabilities.

^{xvii} The Attorney General heads the U.S. Department of Justice, about which information can be obtained at:

<http://www.usdoj.gov>.

^{xviii} 42 U.S.C. §§ 1973ee-4(a).

^{xix} 42 U.S.C. §§ 1973ee-4(b).

^{xx} 42 U.S.C. §§ 1973 gg et seq. For an examination of aspects of implementation of this Act, *see* “Implementation of the National Voter Registration Act by State Vocational Rehabilitation Agencies,” (National Council on Disability, October 1, 1999), available at: <http://www.ncd.gov/newsroom/publications/1999/publications.htm>.

^{xxi} 42 U.S.C. §§ 1973 gg Findings and Purposes.

^{xxii} 42 U.S.C. §§ 1973 gg-5(a)(2).

^{xxiii} 42 U.S.C. §§ 1973 gg-5(a)(4)(B).

^{xxiv} 42 U.S.C. §§ 1973 gg-5(a)(4)(A)(ii).

^{xxv} 42 U.S.C. §§ 1973 gg-9.

^{xxvi} 42 U.S.C. §§ 1973 gg-9(b)(2).

^{xxvii} 42 U.S.C. §§ 1973 gg-9(b)(3).

^{xxviii} Pub L. No. 107-252, 116 Stat. 1666 (2002), available online at:

http://www.usdoj.gov/crt/voting/hava/HAVA_2002.html.

^{xxix} For an explanation of the deadlines for implementation of various requirements under HAVA, *see* Federal Election Commission, “Dates for specific requirements of the Help America Vote Act,” available at:

<http://www.fec.gov/hava/timeline.htm>.

^{xxx} HAVA Title I, § 101.

^{xxxi} HAVA Title II, § 202. The EAC serves as a “national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections.” *Id.*

^{xxxii} HAVA Title II, § 212. The Election Assistance Standards Board reviews the voluntary system guidelines and the best practices recommendations of the EAC. *Id.* The first set of voluntary system standards/guidelines was developed by the Federal Election Commission and adopted by the EAC in 2002. The guidelines are available at: http://www.eac.gov/election_resources/vss.html.

^{xxxiii} HAVA Title II, § 212. The EAC Board of Advisors serves the same function as the Election Assistance Standards Board.

^{xxxiv} HAVA Title II, § 221. The Technical Guidelines Development Committee assists in the development of voluntary voting system guidelines.

^{xxxv} HAVA Title III, § 301(a).

^{xxxvi} HAVA Title III, § 301(a)(3). There is an additional requirement that at each polling place there be at least one direct recording electronic (DRE) voting system equipped for people with disabilities. HAVA Title III, § 301(a)(3)(B). As explained by the Federal Election Commission, “[DREs] are an electronic implementation of the old mechanical lever systems. As with the lever machines, there is no ballot; the possible choices are visible to the voter on the front of the machine. The voter directly enters choices into electronic storage with the use of a touch-screen, push-buttons, or similar device. An alphabetic keyboard is often provided with the entry device to allow for the possibility of write-in votes. The voter’s choices are stored in these machines via a memory cartridge, diskette or smart-card and added to the choices of all other voters.” Explanation available at:

<http://www.fec.gov/pages/dre.htm>.

^{xxxvii} HAVA Title III, § 301(a)(1)(A).

^{xxxviii} HAVA Title IV, § 401.

^{xxxix} HAVA Title IV, § 402(a).

^{xl} HAVA Title IV, § 402(a)(2)(B).

^{xli} HAVA Title IV, § 402(b)(1).

^{xlii} State of Maryland State Plan, 5/14/2003, p. 1 available at:

http://www.elections.state.md.us/citizens/hava/md_state_plan.pdf.

^{xliii} “State of Maryland State Plan,” 5/14/2003, pp. 6-7. Similar commitments to accessibility can be found in other state plans, such as: “Changing the Election Landscape in the State of Ohio,” Jun 16, 2003, pp. 27-28, “Tennessee’s 2004 State Plan,” July 15, 2004, and “My Vote Counts: California’s Plan for Voting in the 21st Century,” September, 2003. In addition, HAVA has been cited in settlement agreements under the Department of Justice’s “Project Civic Access” (see below). For example, a settlement agreement with Highland County, Ohio, expressly stated that the County’s elections board would seek financial support through HAVA in order to make remaining polling facilities accessible. *See* Settlement Agreement Between the United States of America and Highland County, Ohio, Under the Americans with Disabilities Act, DOJ 204-58-205, para. 11.

^{xliiv} State of Maryland State Plan, 5/14/2003, pp. 27-29. Specifically the plan states that, “training and outreach programs must address the needs of the disabled community and individuals with alternative language considerations. These programs need to ensure that poll workers and other election personnel are fully aware of and sensitive to the needs of persons with disabilities, and that election materials and outreach include formats accessible to those persons.” *Id.* at 27. Under HAVA, responsibility for overseeing funding of such training programs is the responsibility of the Secretary of Health and Human Services (HHS), and details related to HHS’ oversight and management of such programs is available at: <http://www.acf.hhs.gov/programs/add/havagca.htm>.

^{xliv} United States Election Assistance Commission, “Best Practices Toolkit,” available at:

<http://www.eac.gov/bp/index1.asp>.

^{xlvi} For example, the Tool Kit stresses the need to engage such groups in the search for accessible polling venues, and the need to conduct election debriefings with groups of people with disabilities to assess performance of voting systems in meeting the needs of voters with disabilities. *See, e.g.*, “Best Practices Toolkit – Five Considerations for Accommodating Voters with Disabilities,” available at: <http://www.eac.gov/bp/avs.asp#disabilities>. Such priority of

participation of people with disabilities and their representative organizations is consistent with the emphasis on participation addressed throughout the new human rights convention for people with disabilities.

^{xlvi} In the Republic of Uganda, the Constitution not only prohibits discrimination against people with disabilities, it also requires Parliament to include Members of Parliament with disabilities in numbers established by Parliament. Constitution of Uganda, Chapter 6, 78(1)(c). Disabled members of Parliament from Uganda have been at the forefront of the UN negotiations to draft a new human rights treaty for people with disabilities.

^{xlvi} This is not to say that the ADA is not used to help ensure accessibility of voting processes. On the contrary, the Department of Justice is responsible for ensuring accessibility of, e.g. polling stations, pursuant to Titles II and III of the ADA. In February of 2004 the Department of Justice released an “ADA Checklist for Polling Places,” to assist election and polling officials in ensuring access to these facilities for people with disabilities. The Checklist is available at: <http://www.ada.gov/votingck.htm>.

^{xlvi} Pub. L. No. 101-336, 42 U.S.C. § 12101 (2002).

ⁱ A related concern is of course access to any transportation required to reach the space in question. While this is an extremely important issue, it is beyond the scope of this paper to address here. Please see, “Access to Transportation by People with Disabilities: Illustrations of implementation from the United States,” (National Council on Disability, 2004).

ⁱⁱ For more information regarding Project Civic Access see <http://www.ada.gov/civicfac.htm>.

ⁱⁱⁱ See Settlement Agreement Between the United States of America and the City and Borough of Juneau, Alaska, Under the Americans with Disabilities Act, DOJ 204-6-42, (available at: <http://www.ada.gov/JuneauSA.htm>), Attachment I, available at <http://www.ada.gov/JuneauAttI.htm>. The paragraph regarding elevator closing times provides an explanation of the problem, the type of accessibility that should be provided, and references to standards to which the city may refer in remedying the problem. *Id.* at para. F(3)(c).

ⁱⁱⁱ United States Department of Justice, Civil Rights Division, “The ADA and City Governments: Common Problems,” (May, 2000), available at: <http://www.ada.gov/comprob.htm>.

^{iv} NCD’s report “The Accessible Future,” (The National Council on Disability, June 21, 2001), examines access to information technology as a civil right, with recommendations on how to improve access for people with disabilities. Available at: <http://www.ncd.gov/newsroom/publications/2001/publications.htm>.

^v Section 508 (a)(1)(A). A specific exemption is provided for national security systems, Section 508 (a)(5).

^{vi} Section 508 (a)(1)(A)(i) and (ii).

^{vii} “Undue burden” is defined to mean “significant difficulty or expense. In determining whether an action would result in an undue burden, an agency shall consider all agency resources available to the program or component for which the product is being developed, procured, maintained, or used.” 36 CFR §1194.4.

^{viii} Section 508 (a)(1)(B).

^{ix} Section 508 (a)(6)(c) and (d). Results of the 2001 survey are available at: <http://www.usdoj.gov/crt/508/report2/index.htm>.

^x Available at: <http://www.section508.gov>.

^{xi} See Partners in Policymaking, <http://www.partnersinpolicymaking.com/>.

^{xii} *Id.* For more information about the program and stories of specific graduates, see The Minnesota Governor’s Council on Developmental Disabilities, *Stories of Leadership*, 2002. Available at: <http://www.mnddc.org/extra/publications/partnersstories.pdf>.