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The Right to Vote Independently Finally Extended to Visually-Impaired Californians

Jamie Veater

Code Sections Affected

Elections Code §§ 19225, 19226, 19227, 19227.5, 19228, 19229, 19229.5 (new).
AB 2525 (Jackson); 2002 STAT. Ch. 950.

I. INTRODUCTION

“Visually-impaired Californians deserve equal access to the most fundamental right of citizenship in our democratic society, an independent and private vote.”¹ California has roughly five hundred and fifty thousand visually-impaired residents, and two percent of the national population has trouble seeing standard print ink.² Voting systems requiring information selection through visual means contribute to the decline in voter turnout by discouraging visually-impaired individuals from casting their vote.³ These voting systems therefore act as a barrier to political participation.⁴

In order to cast her vote under the vision-based systems, a visually-impaired voter must get assistance from family, friends, or a polling place volunteer.⁵ Furthermore, the individual must depend on that person to cast her vote without the opportunity to verify that the correct selection was made.⁶ Despite this visual barrier, non-visually-based voting technology is often overlooked.⁷ In 2001, the Secretary of State responded to the difficulties visually-impaired individuals face by decertifying all of the current punch-card voting systems using solely visual means of vote selection.⁸ When minority groups and voting-rights advocates filed

1. ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 2525, at 2 (May 26, 2002).

2. *Id.*

3. *See* CAL. ELEC. CODE § 19225(c) (enacted by Chapter 950) (describing the voting barrier created because voters are only permitted to access and select information through visual means, thereby discouraging visually-impaired voters from voting).

4. *See id.* (discussing the visual barrier imposed on visually impaired voters by the current voting systems, and how this barrier discourages visually-impaired voters from exercising their right to vote, “the most fundamental right of citizenship in a free and democratic society.”).

5. *See* Telephone Interview with Wendy Hill, Legislative Assistant, Assemblymember Hannah-Beth Jackson (June 13, 2002) [hereinafter Hill Interview I] (notes on file with the *McGeorge Law Review*) (discussing the current methods used by visually-impaired voters to cast their vote).

6. *See id.* (same).

7. *See* CAL. ELEC. CODE § 19225(b) (enacted by Chapter 950) (describing the current means of selection used in voting systems as computer and electronic-based systems, and stating that the non-visual means for selection, such as speech or Braille, are overlooked when voting systems are purchased or certified).

8. Hill Interview I, *supra* note 5.

a lawsuit,⁹ the Secretary of State moved up the voting system update deadline and mandated that all counties in California use updated systems that will accommodate the blind or visually impaired before the next presidential election.¹⁰

Concurrently, Chapter 950 requires polling places to have at least one voting unit that is accessible to those who are blind or visually impaired.¹¹ These voting units will provide a vocal menu of the voting choices and allow voters the opportunity to verify that they made the correct selection.¹² Thus, the blind or visually impaired are given access that is comparable to the access provided to those without such impairments.¹³ By providing accessible voting systems for the visually impaired, Chapter 950 lifts the voting barrier for those individuals.¹⁴ However, the high cost of updating the voting system is a potential problem.¹⁵ Counties must rely on money from the sale of bonds or available federal funds to update their voting systems.¹⁶ If this money is unavailable, counties are unlikely to be able to update their systems due to the high expenses involved.¹⁷

II. LEGAL BACKGROUND

The Constitution of the United States of America guarantees that every citizen will have the right to cast a vote in United States elections.¹⁸ The

9. See Bob Egelko, *Hanging Chads on the Way Out; 9 Counties Told They Must Replace Punch Cards By '04*, S.F. CHRON., Feb. 14, 2002, at A17 (describing the ruling handed down in a lawsuit filed by minority groups and voting-rights advocates that before the 2004 presidential election nine counties in California must replace their punch-card voting systems because the current system discriminates against voters in those counties).

10. See Hill Interview 1, *supra* note 5.

11. See SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 2 (June 19, 2002) (limiting the requirements of Chapter 950 based on the sufficiency of funds available to local agencies from Proposition 41).

12. See Hill Interview 1, *supra* note 5 (describing the new voting technology available to aid blind and visually impaired voters). The new technology allows for a headset to plug directly into the computer system, prompting a voice to read off which election it is and the candidate choices. *Id.* The voter is then instructed that she may push the button when the candidate she wishes to vote for is read off. *Id.* Finally, the selection is read back to the voter, allowing her to verify that the proper selection was made. *Id.*

13. SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 2 (June 19, 2002).

14. ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 2525, at 2-3 (Apr. 16, 2002).

15. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2525, at 2 (Apr. 24, 2002) (discussing the requirement that counties update their touch screen systems to ones that are accessible to vision impaired individuals).

16. See CAL. ELEC. CODE § 19227(c) (enacted by Chapter 950) (providing that the funding for updating to comply with the provisions of Chapter 950 is to come from the Voting Modernization Bond Act of 2002 or from federal funds made available for updating voting systems, excluding the General Fund, but stating that compliance is not required unless sufficient funds are available).

17. See ASSEMBLY COMMITTEE ON ELECTIONS AND APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2525, at 2 (May 26, 2002) (estimating that the cost to the counties to update their voting systems in compliance with the provisions of Chapter 950 will be between \$4.5 and \$7.5 million).

18. See U.S. CONST. amends. XIV, § 2; XXIV; XV, § 1; XXVI; XIX; XXIV, § 1 (discussing the

Constitution protects the right to vote against race, color, servitude, age, or sex discrimination.¹⁹ However, people with vision impairments have not been ensured the same protection of their right to vote.²⁰ Visually-impaired and blind individuals have been unable to cast their vote in private,²¹ and unable to verify that the correct vote selection was made for them.²²

Generally, blind and visually-impaired people cast their vote in one of three ways.²³ First, the voter may select one to two people to assist her.²⁴ To receive have this help, the voter must declare under oath that she can not cast her vote without assistance.²⁵ Second, the voter may vote by absentee ballot.²⁶ Voting absentee also requires that the blind or visually-impaired individual obtain assistance to fill out and mail the ballot.²⁷ Finally, if the blind or visually-impaired voter is unable to find someone to accompany her to the polling place and she does not wish to vote absentee, then she must rely on the volunteers at the polling place.²⁸ All three of these methods are problematic because the visually-impaired or blind voter is unable to cast her vote privately, and is unable to verify that the person assisting her voted in accordance with her selection.²⁹ In some cases, the voter may even have to rely on a complete stranger to cast her vote.³⁰

Currently, the Secretary of State is required to establish specifications and regulations pertaining to voting systems,³¹ and approve any software used in the vote tabulation and testing.³² Existing law also mandates that voting shall be

protection of the right to vote from discrimination based on race, color, servitude, age, sex, or failure to pay taxes).

19. See U.S. CONST. amends. XIV, § 2; XXIV; XV, § 1; XXVI; XIX; XXIV, § 1.

20. See U.S. CONST. amends. XIV, § 2; XXIV; XV, § 1; XXVI; XIX; XXIV, § 1.

21. See Hill Interview I, *supra* note 5 (describing the current voting system in which visually-impaired voters have to rely on others to help to make the vote selection on the punch card, preventing these voters from making their selection privately).

22. See *id.* (describing the experience of a visually-impaired voter).

23. See *id.* (discussing the only choices available to a blind or visually-impaired voter: getting the assistance of friends or family, voting by absentee ballot, or relying on volunteers at the polling place).

24. See SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 1 (June 19, 2002) (stating that "existing law provides that voting shall be secret," but that a blind or vision-impaired individual will be permitted to bring in "not more than two persons" to help cast the vote).

25. *Id.*

26. Hill Interview I, *supra* note 5.

27. See *id.* (explaining that visually-impaired voters have the option of voting by absentee ballot).

28. *Id.*

29. *Id.* (asserting that all three options available to impaired individuals prevent the casting of a private or independent vote).

30. See *id.* (describing that when an impaired voter has no one at home to help, or cannot find anyone to accompany her to the polling place, the voter has to rely on whomever is working the polling place, and that person is likely to be a complete stranger to the voter).

31. CAL. ELEC. CODE § 19205 (West 1996).

32. *Id.*

secret, although blind and visually-impaired voters may have multiple people assist them in the voting process.³³

III. CHAPTER 950

A. Rules and Regulations

Chapter 950 requires the Secretary of State to develop rules and regulations giving blind and visually-impaired people voting access equal to that of voters who are not blind or vision impaired.³⁴ Through these rules and regulations, blind and visually-impaired voters will be assured the ability to independently cast and verify their vote.³⁵ Additionally, in order to facilitate the nonvisual access that is required, Chapter 950 calls for the Secretary of State to gather recommendations from “blind consumer organizations, experts in accessible software and hardware design, and any other individual or organization” deemed appropriate.³⁶

B. Voting Systems

Pursuant to Chapter 950, each California polling place is required to have at least one voting unit that provides access for the blind and visually impaired.³⁷ The voting unit must conform to the rules and regulations adopted by the Secretary of State per Chapter 950.³⁸ However, there are no specific technical requirements with which the systems must conform.³⁹ The voting units will make use of software and hardware adaptations that allow voters to use nonvisual means to cast a secret ballot and to verify their vote independently.⁴⁰

C. Compliance and Remedies for Non-compliance

Compliance with Chapter 950 is only required if there are sufficient funds available from the Voting Modernization Bond Act of 2002 (Bond Act) or from

33. SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 1 (June 19, 2002).

34. See CAL. ELEC. CODE § 19227(a) (enacted by Chapter 950) (providing that the Secretary of State will adopt rules and regulations governing voting technology and systems used in the State that will ensure that visually-impaired voters have access equal to that of voters who have no impairments).

35. See *id.* (inferring that through the rules and regulations established by the Secretary of State vision impaired voters will be able to vote independently and privately).

36. *Id.* § 19227.5 (enacted by Chapter 950).

37. See *id.* § 19227(b) (enacted by Chapter 950) (providing that each polling place shall have at least one voting unit that conforms to the rules and regulations established by the Secretary of State in section 19227(a) of the California Elections Code).

38. *Id.*

39. Hill Interview I, *supra* note 5.

40. CAL. ELEC. CODE § 19225(d) (enacted by Chapter 950).

federal funds accessible for the upgrade of voting systems.⁴¹ If the funds are exhausted, or are unavailable to the counties for any reason, the counties are no longer required to comply with the provisions of Chapter 950.⁴² Polling places with voting systems or technology acquired prior to Chapter 950 will be considered in compliance with the requirements of the bill when they upgrade or replace their voting systems with current technology.⁴³

If counties do not comply with Chapter 950, injured voters can sue for injunctive relief to enforce Chapter 950 provisions.⁴⁴ The action for relief must “be commenced within four years after the cause of action accrues.”⁴⁵ The cause of action accrues with the latest violation.⁴⁶

IV. ANALYSIS OF THE NEW LAW

One of the major concerns in the implementation of Chapter 950 is the expense involved.⁴⁷ There are currently nine counties that must replace their voting systems.⁴⁸ Replacing a voting system with one accessible to the blind and visually impaired will cost each polling place approximately \$4.5 to \$7.5 million.⁴⁹ Counties may be able to get the money from the sale of \$200 million in bonds authorized to update their voting systems.⁵⁰ If these funds are not available, the county need not comply with the provisions of Chapter 950.⁵¹

According to Chapter 950, a local agency may use funds from the Bond Act or federal money for new voting systems.⁵² The Bond Act allows for the sale of \$200 million in bonds, available through a three-to-one state-county matching ratio,⁵³ for all counties to use in updating their voting systems.⁵⁴ Each county is permitted to submit one application to the Voting Modernization Board (VMB)

41. *Id.* § 19227(c) (enacted by Chapter 950).

42. Telephone Interview with Wendy Hill, Legislative Assistant, Assemblymember Hannah-Beth Jackson (Aug. 1, 2002) [hereinafter Hill Interview II] (notes on file with the *McGeorge Law Review*).

43. CAL. ELEC. CODE § 19227(c) (enacted by Chapter 950).

44. *Id.* § 19229(a) (enacted by Chapter 950).

45. *Id.* § 19229(b) (enacted by Chapter 950).

46. *Id.* § 19229(c) (enacted by Chapter 950).

47. See ASSEMBLY COMMITTEE ON ELECTION AND APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2525, at 2 (May 26, 2002) (estimating that the cost to the counties that are required to update their voting systems in compliance with the provisions of Chapter 950 is between \$4.5 and \$7.5 million).

48. See *id.* (describing the cost that will be incurred by the nine counties that must replace their punch card systems in the next few years to be in compliance with Chapter 950).

49. *Id.*

50. See SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 1 (June 19, 2002) (discussing the Bond Act, which was approved by 51.6 percent of the vote).

51. Hill Interview II, *supra* note 42.

52. CAL. ELEC. CODE § 19227(c) (enacted by Chapter 950).

53. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2525, at 2 (Apr. 24, 2002) (discussing the Bond Act, which provides \$200 million in bonds for the upgrade of voting systems).

54. SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 1 (June 19, 2002).

to receive these funds.⁵⁵ In order to qualify for the funds the applying county must meet six requirements.⁵⁶ These requirements include the purchase of new voting system hardware after January 1, 1999 with payments still made as of March 6, 2002, county matching funds of one dollar for every three dollars of fund money received from the VMB, and no previous request for fund money by the county.⁵⁷ Also, the county must show that the money requested will be used to update the voting system in conformity with the Secretary of State's guidelines, that the money will not be used to buy punch-card voting systems, and that the voting system purchased will provide a paper representation of each vote cast.⁵⁸ The VMB will make final decisions on all applications for funds and will notify the county as to whether it will receive the funds.⁵⁹ In addition to this funding, any available funds, excluding the General Fund, can also be used for the purpose of updating or replacing existing voting systems or technology.⁶⁰

Money is an issue in the counties because the counties are restricted in the type of systems they may purchase because some of the less expensive systems are not accessible to visually-impaired voters.⁶¹ Counties must then choose whether to use the more expensive, yet more accessible, touch-screen systems or maintain two different voting systems in each polling place.⁶² This makes the money available through the Bond Act a very important resource to the counties.

One of the most important features of Chapter 950 is that it will allow the counties to offer voting systems that provide unassisted voting options to voters with disabilities.⁶³ The systems will be accessible to the blind because of the audio component.⁶⁴ Under Chapter 950, the touch-screen systems will be fitted

55. See VOTING MODERNIZATION BOARD, VOTING MODERNIZATION ACT OF 2002, FUNDING APPLICATION AND PROCEDURAL GUIDE 1 (June 17, 2002), available at <http://www.ss.ca.gov/elections/vma/home.html> (copy on file with the *McGeorge Law Review*) (mandating that each county can submit one initial application, and may submit a revision if necessary, to the VMB).

56. See *id.* at 2 (stating that in order to be eligible to receive the funds, a county must meet all six of the requirements listed in the Act).

57. See *id.* (discussing the requirements that must be met in order to receive these funds).

58. See *id.*

59. See *id.* at 4.

60. See CAL. ELEC. CODE § 19227(c) (enacted by Chapter 950).

61. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2525, at 2 (Apr. 24, 2002) (describing the dilemma facing counties in California: the mandate to update to accessible systems and the cost faced in purchasing those systems versus the less expensive, but still certified alternative, the optical scan system).

62. See *id.* (explaining that counties cannot simply purchase the optical scan systems because under Chapter 950, the counties would not be in compliance with the law as those systems are not accessible to the visually impaired).

63. See California Secretary of State, *Know Your Voting Rights*, at http://www.ss.ca.gov/elections/elections_dis.htm (last visited Sept. 25, 2002) (copy on file with the *McGeorge Law Review*) (stating that "[t]he Secretary of State recently approved a touch screen voting machine enhanced for unassisted use by voters with disabilities. . . . known as the EZ-ACCESS voting kiosk.").

64. See Telephone Interview with Wendy Hill, Legislative Assistant, Assemblymember Hannah-Beth Jackson (July 3, 2002) [hereinafter Hill Interview III] (notes on file with the *McGeorge Law Review*).

with a microchip and headset, plugged directly into the computer system.⁶⁵ Once the headset is plugged in, a voice is activated that tells the voter which election she is about to vote in and then lists each candidate by name.⁶⁶ After the candidates' names are read, the voter is told that she can select a candidate by pushing the button on the joystick at that time.⁶⁷ Once the selection is made, the voice reads the name of the selected candidate back to the voter so that she can verify the accuracy of the selection.⁶⁸ Blind and visually-impaired voters will know that their choices were accurately recorded.⁶⁹ The voting units can be used by anyone because they can be adapted to accommodate most physical disabilities.⁷⁰ Voters who do not suffer from any impairment, either physical or visual, can also easily use the units.⁷¹

The benefit provided by Chapter 950's new technology requirement is that it allows the blind and visually impaired to become involved in the voting process with the confidence and privacy others enjoy, therefore promoting autonomy and self-reliance.⁷² With the voting technology currently available, technology allowing for speech output voting systems,⁷³ blind and vision impaired citizens will finally be able to enjoy equal access to voting.⁷⁴ By providing equal access through an independent and private vote, California helps ensure that the visually-impaired voter's right to vote is protected in the Constitution as it is for many others.⁷⁵

65. *Id.*

66. *See id.* (stating that the voice activated list of selections that will be read to the voter as including which election the voter is about to participate in, for instance gubernatorial or presidential, and then a list of the candidates competing in that election).

67. *Id.*

68. *Id.*

69. *See* Robert Salladay, *California Looks to Prevention, Secretary of State Proposes \$230 Million Program to Avoid Repeat of Florida Mess*, S.F. CHRON., Nov. 23, 2000, at A3 (describing the response of blind voters in Alameda County after using the touch-screen systems adapted with the headphones).

70. *See id.* (describing the new voting systems as easily adaptable to even physical disabilities as the machines can be raised or lowered, as well as be used with a mouthpiece).

71. *See* Hill Interview I, *supra* note 5 (describing the new systems as easy to use and beneficial to both impaired individuals and non-impaired individuals, due to the verbal nature of the systems).

72. *See* Letter from Peter Benavidez, Executive Director, Blindness Support Services, Inc., to Hannah-Beth Jackson, Assemblymember (Apr. 5, 2002) (on file with the *McGeorge Law Review*).

73. *See* Letter from Dan W. Kysor, Director of Governmental Affairs, California Council of the Blind, to Hannah-Beth Jackson, Assemblymember (Apr. 9, 2002) (on file with the *McGeorge Law Review*) (stating the "affordable technology which allows for speech output . . . [and] as California is modernizing its voting system, there is no better time" to implement the available technology).

74. *See id.* (calling for the use of new technology to bring "visually[-]impaired voters "up to par with their sighted counterparts."); Letter from Edward Hernandez, Chair, Legislative Committee, California Optometric Association, to Darrell Steinberg, Assemblymember (May 21, 2002) (on file with the *McGeorge Law Review*) (supporting AB 2525 as it will "allow blind and visually[-]impaired citizens to cast votes in a manner equivalent to that provided to individuals who are not blind or visually impaired.").

75. *See* U.S. CONST. amends. XIV, § 2; XXIV; XV, § 1; XXVI; XIX; XXIV, § 1 (discussing the protection of the right to vote from discrimination based on race, color, servitude, age, sex, or failure to pay taxes).

In addition to protecting the visually-impaired voter's rights, Chapter 950 will also help voters feel better about the voting process.⁷⁶ There have been instances where family members assisting a blind family member voted the way they wanted to on the blind voter's ballot, regardless of how the blind voter wished to vote.⁷⁷ Chapter 950 will help alleviate this problem by providing systems in which the blind and visually-impaired can cast their own vote by listening to a voice list off the choices and by allowing these voters to verify that the correct vote was cast by reading the selection back to them.⁷⁸ Through this new technology it is possible to provide visually-impaired voters with the opportunity to cast a secret ballot.⁷⁹ Thus, Chapter 950 will help the voter feel more confident that the correct vote selection was made, while ensuring that the voter had the opportunity to cast a private and independent vote, which is one of the most fundamental rights of citizenship in the United States.⁸⁰

V. CONCLUSION

For too long, blind and visually-impaired individuals have been unable to independently cast their votes.⁸¹ When casting their vote, these voters had to rely on others for help in selecting a candidate.⁸² This process did not allow voters with impairments to cast their vote in secret, as mandated by law,⁸³ nor did it provide them with the ability to verify their vote.⁸⁴

Chapter 950 remedies this by requiring that each polling place have at least one more voting machine that is accessible to visually-impaired voters.⁸⁵ The applicable voting technology allows the visually-impaired individuals to cast a secret vote and verify the selection made.⁸⁶ By implementing this new technology, the barrier to voting access will be lifted, and blind and visually-

76. See Email from Ken Metz, Director, Davidson Program, to Wendy Hill, Legislative Assistant (Mar. 25, 2002) (on file with the *McGeorge Law Review*) [hereinafter Metz Email].

77. *Id.*

78. See Hill Interview III, *supra* note 64 (discussing the new technology that will be implemented under Chapter 950).

79. See Metz Email, *supra* note 77 (supporting Chapter 950 and stating that a secret ballot should be available to all citizens, and that through the use of available modern technology it will be possible to provide the secret ballot to visually-impaired individuals).

80. ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 2525, at 2 (May 26, 2002).

81. Hill Interview I, *supra* note 5.

82. *Id.*

83. SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 1 (June 19, 2002).

84. Hill Interview I, *supra* note 5.

85. See SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, COMMITTEE ANALYSIS OF AB 2525, at 1 (June 19, 2002) (stating that requirement listed in Chapter 950 that there be at least one voting machine in every polling place that is fully accessible to the blind and visually impaired voters, provided that there are sufficient funds available to the local agencies from Proposition 41).

86. CAL. ELEC. CODE § 19225(d) (enacted by Chapter 950).

impaired voters will be encouraged to exercise their right to vote, finally protecting that fundamental right.⁸⁷ However, the effectiveness of Chapter 950 depends on the availability of funds in each county, either through the Bond Act or through other available funds.⁸⁸ By excusing the counties from complying with Chapter 950, however, the State's vision of the voting system may be impaired, as blind and visually-impaired voters will be left without the equality imparted to them by Chapter 950.

87. *Id.* § 19225(c) (enacted by Chapter 950).

88. Hill Interview II, *supra* note 42.
