

The Legal Center for People  
with Disabilities  and Older People

*Colorado's Protection & Advocacy System*

January 11, 2010

The Honorable Bernie Buescher, Secretary of State  
Colorado Department of State  
1700 Broadway  
Denver, CO 80290

**Comments and Recommendations Regarding Proposed Changes to Election Rules Concerning Voting System Standards**

The Legal Center is Colorado's designated Protection and Advocacy System, charged with protecting the civil and human rights of Coloradans with disabilities. We administer the Protection and Advocacy for Voting Access Program, federally authorized and funded under the Help America Vote Act.

Thank you for an additional opportunity to provide input into elections rulemaking regarding voting systems certification. The written comments submitted on November 12, 2009 are still pertinent today. Rather than repeat all of those comments, we request that they be considered as part of the rulemaking process. We do note and appreciate your proposal to move all of the accessibility requirements into Rule 35 as per our recommendation.

New Rule 35.2 includes a new standard of compliance "**substantially compliant**". While we believe that we understand the rationale for this change in the rules, we are concerned about it for several reasons. The most pressing is how "substantially compliant" will be determined or measured? If "substantial compliance" is the standard, we strongly urge you to replace all of the accessibility requirements with the 2005 VVSG.

Since we do not expect that you will follow that recommendation, the following comments from our previous comments bear repeating:

**Rule 45**

**45.5.2.8 Accessibility Requirements**

**Current Rule 45.5.2.8.1** Specific minimum accessibility requirements include those specified in section 1-5-704 C.R.S., Secretary of State Rule 34, Rule 35 and the following:

(a) Buttons and controls shall be distinguishable by both shape and color;

*Comment from the consultants who have proposed to delete this requirement: Section 1-5-704(1) (c) CRS and rule 35.1.4 require the controls be “tactilely discernable.” The rule also provides that only those controls used to operate the system without vision meet the requirement. The requirement for both shape and color differences restricts design. The standard 12 key telephone button array pad is considered to be “tactilely discernable” and its use would be fatal to certification under prior language.*

This requirement must not be deleted from the rules. The requirement for buttons and controls to be distinguishable by both shape and color is a VVSG standard. It is an important input access feature for individuals who have low vision and those with intellectual disabilities. These are the same people who can also benefit from the use of combined visual and speech output. It appears that the technical experts are concerned about being able to approve a system that uses a standard telephone keypad with the nib on the 5 key as the only tactile marker. We believe that the only system that uses this is the “*vote-by-phone*” which fails to meet a substantial number of other accessibility requirements.

35.2.2 (d) All Touchscreen technology shall be tested for use of fingers as well as non-human touch that is both wet and dry;  
All voting systems shall also include any form of either switches, sip and puff devices, or additional blink control devices; and

The wording for the switch input is not very clear about what is required. We prefer language such as “All voting system shall provide dual switch input, or a functionally equivalent alternative input mechanism, which enables the voter to perform all of the same actions as conventional forms of input. If the system provides dual switch input, an industry standard jack shall be used to connect the switch to the voting system.” This would allow individuals to bring their own switch or use those provided.

#### **45.5.2.9 Voter-Verifiable Paper Record Requirements (V-VPAT)**

45.5.2.9.8 Every electronic voting record shall have a corresponding paper record.

45.5.2.9.9 The paper record shall be considered an official record of the election available for recounts, and shall be sturdy, clean, and of sufficient durability to be used for this purpose.

**45.5.2.9.10** The V-VPAT device shall be designed to allow every voter to review, and accept or reject his/her paper record in as private and independent manner as possible for both disabled and non-disabled voters.

Delete the “as possible” and add language that clearly requires any paper ballot to be fully accessible. i.e. When a VVPAT or paper ballot is used, an AVS shall enable the voter to

verify the content of the paper ballot in the same style and manner as the ballot was generated (for example, if the voter generated the ballot in an audio form, the voter must be able to verify the content of the paper ballot in that form; if the voter used large visual display, a large visual display needs to be available for the voter to verify the paper ballot content.

Finally, we note that HB09-1355 provides for the Secretary of State, at his or her discretion, to engage in rulemaking to require that voting systems satisfy voting systems standards promulgated by the U.S. Election Assistance Commission (EAC) after January 1, 2008. We urge you to update the accessibility requirements to match the 2005 VVSG as revised, once those revisions are finally approved by the EAC.

Respectfully submitted,

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