

Request to Restore HAVA Accessibility Funding in FY 2015

"Citizenship means standing up for everyone's right to vote."

President Obama, State of the Union, January 28, 2014

"Congress should restore and maintain full HAVA funding for the secretary of state offices and the P&As."

National Council on Disability Report, October 2013

REQUEST: The President's Office of Management and Budget restores \$17 million in annual funding to the Voting Access for Individuals with Disabilities grant program authorized by Section 261 of the Help America Vote Act, P.L. 107-252 beginning in Fiscal Year 2015.

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I. Executive Summary and Scope of Problem

Access to polls remains diminished for voters with disabilities.

The National Council on Disabilities (NCD) and the Presidential Commission on Election Administration precisely identified the problem: while everyone has the *right* to vote, Americans with disabilities do not have equal *access* to the vote.

“People with disabilities continue to face barriers in exercising their voting rights because of architectural and physical barriers at registration and polling sites.” (p. 9)

“Voters with disabilities do not have equal access to voting systems because states and localities have not invested adequate resources, planning, and training to provide reliable, accessible voting technology.” (p. 11, emphasis added)

*“Experience of Voters with Disabilities in the 2012 Election Cycle”, October 24, 2013
National Council on Disabilities*

“For voters with disabilities, the first question is one of physical access, both inside and outside the polling place. Outside the polling place, impediments to access present in a variety of ways, such as parking lots and spaces located far from the polling place, and a lack of navigable space between the parking lot and the polling place entrance.” (p 51, emphasis added)

The American Voting Experience: Report and Recommendations of Presidential Commission on Election Administration, January 2014

These findings are supported by two reports from the General Accounting Office (“GAO”) as well as surveys from other states and other research cited in this paper.

Funding is the proven solution that guarantees the removal of barriers for voters with disabilities. Section 261 of the Help America Vote Act provided grants to states to make election accessibility improvements between FY 2004 – FY 2011. These grants made possible significant upgrades to poll site accessibility. This program was working, but funding was eliminated in FY 2012 based on reasoning that was both incorrect and in any event no longer applies – with the consequence that the removal of barriers for voters with disabilities has slowed or stopped.

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II. Background

A. Inclusion Solutions

Inclusion Solutions has focused on providing a safe, integrated environment for people with disabilities since its founding in 2000. Our special area of expertise is to provide turnkey solutions for electoral authorities that provide voters the complete access and participation (including privacy and independence) promised as citizens. Our solutions for polling places have been used by over 2,100 election jurisdictions in all 50 states, the U.S. Virgin Islands, and the District of Columbia. One of every four election jurisdictions in the United States has made their elections accessible with Inclusion Solutions products.

With funding cut, many Americans with disabilities remain disproportionately disenfranchised, and election officials are unable to make meaningful improvements to elections access. Our company has served these two constituencies for well over a decade - and finds that election officials rely on Federal funding to implement what the law requires and their voters need. We are therefore asking for your help to restore funding that assures *all* Americans of their first right: the right to vote.

B. Help America Vote Act: How funding addresses the problem of disability access.

1. Section 261 HAVA funding significantly improved accessibility.

For a decade Section 261 of the Help America Vote Act ("HAVA") financed the purchase of election accessibility equipment. These funds were distributed via the Department of Health and Human Services to the respective states and territories, and then made available to local election authorities. Funds have been used to purchase solutions to improve accessibility such as ramps, matting for unpaved lots, parking signage, door automation and solutions, magnifiers, accessible voting booths, and adaptive technology.

Election officials that had not been able to make accessibility improvements did so with this dedicated funding - and poll site accessibility steadily improved.

"We found that, compared to 2000, the proportion of polling places without potential impediments increased and the most significant reduction in potential impediments occurred at building entrances."

"More Polling Places Had No Potential Impediments than in 2000, but Challenges Remain", United States Government Accountability Office, June 2009

2. Elimination of Funding in FY 2012: The effect on voters with disabilities.

The President's budget for FY 2012 (October 1, 2011 – September 30, 2012, and for FY 2013 and FY 2014 as well) eliminated all funding to make polling places accessible to

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individuals with disabilities beginning FY2012.¹ Funding to Protection & Advocacy Systems (P&As) to review poll site access remained in place, creating a situation where advocates can continue their excellent work identifying problems of disability access to elections – but election officials now have no funds to make the improvements the advocates require! The result of these cuts has been significant and harmful. As a vendor working in the field, we have seen a dramatic reduction in officials' ability to make elections accessible, with the problem growing each year.

Simply put: without funding, there can be little to no continued improvement in accessibility at America's polling places for voters with disabilities, rendering state and local election officials unable to fulfill the Presidential Commission's recommendations.

III. Multiple Organizations Support Restored Funding and Improved Accessibility for Voters with Disabilities

Three major organizations (as well as numerous advocates and election officials nationwide) agree: without the restoration of funding, diminishing access for voters with disabilities will disenfranchise more and more citizens.

A. The Presidential Commission on Election Administration acknowledges the problem of disability access and supports additional funding.

The United States is now experiencing the consequence of the complete elimination of voter access funding. *The American Voting Experience: Report and Recommendations of Presidential Commission on Election Administration* included these comments:

The population of voters with disabilities is large and growing. Roughly 35 to 46 million Americans of voting age — amounting to one in seven potential voters — have accessibility needs. The share of the voting population with disabilities will also grow considerably as the Baby Boomer population ages. Issues of voting and accessibility, therefore, are not ones for a discrete subset of the population. Rather, they are issues that many, if not most, voters may experience at some point in their lives. (pp 50-51)

B. The United States Government Accountability Office acknowledged poll site access has improved with the use of grant monies – and that there is still work to be done.

The GAO Report published June 2009, titled *"More Polling Places Had No Potential Impediments than in 2000, but Challenges Remain"* and the follow up report of April 23, 2013 identified the "work to be done". The GAO sampled 730 polling places throughout the United States and discovered the following:²

- *73 percent* of polling places had features that might impede access to the voting area for people with disabilities.
- *50 percent* of polling places had potential impediments in the path from the parking area to the building entrance

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- 36 percent of polling places had potential impediments in the parking area
- 29 percent of voting stations were not arranged to accommodate a wheelchair.

Thus the GAO report concluded “that [while] significant improvement has been made in the accessibility of polling places [largely as a result of this funding], **additional improvement is still required.**”³

C. Third party reports from 2012 and 2013 concur that disability access to elections has improved, and that there is still work to be done.

1. Research Alliance for Accessible Voting Report

The need for “additional improvement” is made clear in a survey of polling places conducted by the Research Alliance for Accessible Voting in conjunction with Rutgers University. This survey (2012) found that voters with disabilities were **eighteen times more likely to have difficulty getting inside the polling place than voters without disabilities.**⁴ This has created a “disability gap”, penalizing voters with disabilities (of whom nearly six in ten want to vote in person at their local polling place⁵).

2. National Disability Rights Network

Similarly, the Deputy Director of Public Policy at the National Disability Rights Network (“NDRN”) gave voting accessibility in the United States “a C+” – better than ten years ago, but with much more improvement needed.

3. State of Wisconsin Government Accountability Board Report

On July 2, 2013, the State of Wisconsin Government Accountability Board published their findings after they discovered **10,488 accessibility problems** in state voting locations. **Thirty six percent** of identified problems “represent[ed] a barrier that, in and of itself, would be likely to prevent an elderly voter or a voter with a disability from entering a polling place and casting a ballot privately and independently.”⁶

Yet the State of Wisconsin has exhausted all of their HAVA Section 261 funding to make polling places accessible - thus Election officials with already-tight budgets have no resources to remediate these known accessibility problems.

D. The National Council on Disability identified continued problems, and strongly supports restored funding.

The NCD report published October 24, 2013 makes clear that voting access for nearly one of seven Americans is threatened by the elimination of Federal funding.

The NCD specifically recommends the restoration of HAVA Funding for this purpose:

Congress should restore and maintain full HAVA funding for the secretary of state offices and the P&As. NCD recommends that Congress restore FY 2014 HAVA

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funding to the secretary of state (SOS) offices to help states comply with minimum HAVA provisions. Funding and oversight are crucial to ongoing improvement of the electoral process and its systems. Similarly, funding should be maintained for the P&A systems pursuant to Section 291.⁷

Further, the NCD recommends a more active Justice Department to ensure access for voters with disabilities:

This is consistent with the Presidential Commission Report Finding 5 that the enforcement role of the Department of Justice is critical to compliance with federal statutes by states and localities; "DOJ should increase and expand its monitoring of polling sites for compliance with the ADA and Section 504 of the Rehabilitation Act."⁸

The Commission, the Research Alliance for Accessible Voting, state officials, the General Accounting Office, NDRN and the National Council on Disability are all raising *exactly* the issues Inclusion Solutions has worked to address for our customers: polling place *inaccessibility* is a real problem – and a solvable problem with modest Federal funding.

IV. The Original Justification for Elimination of Funding was Flawed and No Longer Applies for FY 2015

A. Grants were cut in FY 2012 because of alleged "unspent" balances – yet those funds are now almost completely gone.

The justification given for the White House's funding elimination of these critical funds in 2012 was as follows:

"The Administration proposes to terminate 2012 funding for the Voting Access for Individuals with Disabilities grant program, given States have *large unexpended balances available*....States have *balances of over \$35 million in unexpended funds* from prior year appropriations for this program...State obligations relating to voting access for people with disabilities are unchanged by the 2012 funding level, and *States may use untapped funds to meet those obligations.*" (emphasis added)⁹

The logic behind this cut is flawed. (1) Funding was already exhausted in most states when these cuts were made; for the few states that had "unexpended funds" in 2012, these remaining amounts have *diminished by 90% and will soon be depleted*. (2) There is no procedure by which to reallocate unspent funds among states, so those that need more money to remediate access problems cannot secure funding from states that have completed their voting accessibility work.

1. In 2011, the math implying that unexpended funds were available was not accurate.

There were two major reasons creating the appearance of "unspent" funds in 2011.

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First, some states did not have the administrative capability to administer the funds or simply did not address the issue of voter access. This led to a concentration of (unspent) funds in a handful of unresponsive states – and the appearance that those funds were not needed to serve voters with disabilities.

Second, several states held onto funds until the end of the permitted five year period – *but those funds have largely since expired and are no longer available.* For example, the State of Florida held onto 2006-2011 accumulated funding with the intent to invest in a new voting system. Funds were released as they approached their five-year expiration (e.g. the state made available 2005 funds in 2010; 2006 funds totaling \$567,000 were released in 2011, etc.). However, Florida counties *needed access to funds to make polling sites accessible for voters with disabilities* while the state pioneered accessible voting absentee voting programs. The end result: the accumulation of \$3 million in unspent funds, while polling sites remained inaccessible to voters with disabilities and the appearance was created of the state being “overfunded.”

Please see Appendix 1 for more examples demonstrating why states have accumulated unspent HAVA funds without having solved the problem of disability access to the polls.

The math of using accumulated but unspent money to solve problems is flawed for another reason: most states that were committed to remediate the problems of disability access to elections had already spent their monies, and there is no means by which states can reallocate unspent funds from those who don't need funds to those who do need funds.

For example: Massachusetts and Connecticut have not distributed HAVA funds to their local election officials, and poll site access problems remain unsolved. Yet in nearby Vermont, funds were distributed via a competitive grant program for the purchase of automated doors, signage, accessible voting booths, and parking lot pavement projects statewide. Rather than grant monies in Massachusetts and Connecticut sitting idle, they could be put to use in Vermont or other states (e.g. North Carolina, South Carolina, Kansas, California, Hawaii and many others) that have spent all HAVA funds and still have polling place access problems they are anxious to remediate. (Please see Appendix 2 for more information.)

2. By the end of 2013, unexpended grants had vastly diminished - and by the end of 2015 all funds will have expired.

When funding was cut off two years ago, there was approximately \$35 million in unexpended grants still available for voter accessibility; *now there is only \$4 to \$5 million - almost a 90% reduction, concentrated in only a few states. **Most states have no money.*** By the end of 2016 there will be zero funds to finance voter accessibility in any state.

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V. Voter Access for People with Disabilities is at Risk

A. States made significant improvements to voter access with Federal grants.

Without question, voting accessibility in our country has significantly improved – including for those with disabilities. This is in large part because *the program that was cut was working!* Election jurisdictions with tight budgets continue to tell us that they were able to make improvements they otherwise wouldn't have made as a result of this program...and *are now unable to make improvements with the loss of grant money.*

The GAO Report confirmed that the program improved voter access for people with disabilities:

“We found that, compared to 2000, the proportion of polling places without potential impediments increased and the most significant reduction in potential impediments occurred at building entrances. We estimate that 27 percent of polling places had no features that might impede access to the voting area for people with disabilities—up from 16 percent in 2000...The most significant reduction since 2000 was that potential impediments at building entrances – such as narrow doorways or high door thresholds – decreased from 59 percent to 25 percent.”¹⁰

B. State and local officials cannot continue to make improvements without grant funding.

An excerpt from a letter sent to Congress from South Carolina State Election Director Marci Andino identifies the problems resulting from this loss of funding:¹¹

South Carolina has expended all of our funding under this program. And while we've made great strides toward accessibility, there is still work to be done and uncompleted projects. In this 2012 election year, many counties have approached us with grant requests for important accessibility projects and we have been forced to deny those requests because the program has been suspended. These include:

- *A ramp into an inaccessible polling location where several voters with disabilities had specifically complained about the lack of access;*
- *upgraded railings in polling locations;*
- *monies to upgrade doors in polling locations with automatic ADA door openers.*

Without funding under Section 261 of HAVA, none of this can happen. National funding each year for this program is about \$12 million – and South Carolina's share is small, however, the funding does make a tremendous difference for our voters with disabilities in South Carolina. I ask for all of your support in restoring this critical funding.

The simple truth is without the restoration of funding for jurisdictions to buy what they need to make their elections accessible, and without adequate enforcement on the part of the Justice Department, elections are already becoming increasingly inaccessible to a rapidly growing population of voters.

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VI. Multiple Organizations Support Restored Funding

Support for restoration of funding is universal. There are no organizations that don't want to serve voters with disabilities or help election officials. Several organizations in support of restoration of funding include:

- **Presidential Commission on Election Administration**
- **National Council on Disability**
- **National Association of Secretaries of State (NASS)**
- **National Association of State Election Directors (NASED)**
- **National Disability Rights Network (NDRN)**
- **General Accounting Office**

In addition, Section 203 of the Voter Empowerment Act of 2012¹² included language restoring this funding. That bill did not pass (for reasons unrelated to the accessibility provisions). This language provides a blueprint for any new legislation to restore funding.

With leadership and coordination, restoration of the funding would be a popular line item that would be almost universally supported.

VII. Conclusion

"Citizenship means standing up for everyone's right to vote."

Voting can be made fully accessible to every citizen in our country for very little money – in fact, less than 0.0005% of our federal budget, enough to fund our government for less than three minutes. Cutting such a small amount clearly has not improved our nation's fiscal health; but it has already begun to undermine equal access to the ballot for millions of American voters with disabilities. We can fix this!

Request

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APPENDIX 1

EXAMPLES DEMONSTRATING HOW STATE 'UNEXPENDED BALANCES' DOES NOT MEAN THE PROBLEM OF ACCESSIBILITY IS SOLVED.

Connecticut. The previous Secretary of State administration has not made funds available to registrars or town clerks for site access, despite repeated requests and efforts from the Connecticut Protection and Advocacy.

Undistributed funds 2011: \$600,000 (est.)
2014: \$200,000

New funds are critical to ensure site access in states like Connecticut.

California. California has largely administered funds under several statewide "competitive grants". Normally the state waits until several years of HHS funding has accrued and then makes the "bulk sum" of several years available at once. This competitive grant program anticipated all counties would eventually get an opportunity to participate, but only 22 of the 63 California counties have received such grants to date. If funding is suddenly eliminated, fully two thirds of counties in California will still have significant polling place access barriers with no means to pay for remedy.

Undistributed funds 2011: \$2 million - \$4
2014: Under \$500,000

New funds are critical for the 2/3 of counties that have not received large VOTE grant for site access.

Texas. The State of Texas uses a formula that gives large counties \$8,500 for site access. As a consequence, smaller counties with fewer resources decided it was not worth their while to apply for HAVA grants. Texas Protection and Advocacy group "Advocacy Inc." spoke to the Texas Association of County Clerks and election officials and lamented that polling place access remains a serious problem in the state and that more funds are needed. The result: over \$2 million of unspent funds, and limited improvement in voter accessibility.

Undistributed funds 2011: \$2 million - \$3 million (est.)
2014: Almost Zero

Many counties that have not accessed funds will disenfranchise voters with disabilities.

Georgia. The state has acknowledged polling place accessibility issues and counties have tried to access funding. However, the state's allocation mechanism makes it very difficult for many counties to access funds – even when they have clear barriers to accessibility for voters. As a result, new officials at the state level and in the disability community promised wider distribution of funds in 2011 and beyond – but only if these funds are not summarily withdrawn.

Undistributed funds 2011: \$1 million + (est.)
2014: \$200,000 - \$500,000

New funding is needed to solve major ongoing site access barriers in Georgia.

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APPENDIX 2 Letter from South Carolina State Election Director



Honorable Jim DeMint
167 Russell Senate Office Building
Washington, DC 20510

March 21, 2012

Dear Senator DeMint:

I am the director of the South Carolina State Election Commission writing to express my concern with the current proposal to eliminate federal funding of Section 261 of the Help America Vote Act (HAVA). These funds have been extremely helpful in making SC's polling places accessible to our voters with disabilities. I request your assistance in getting these funds restored to my state and others nationwide.

South Carolina received around \$100,000 annually for several years under this program and our office has worked diligently to distribute these funds to our counties to make South Carolina elections more accessible for voters with disabilities. Some of our accomplishments to date include:

- ADA iVotronic Units
- Handicapped parking signage and displays
- Pavement parking, ramps, rails
- ADA compliant entrance/threshold
- Curb cuts in sidewalks

South Carolina has expended all of our funding under this program. And while we've made great strides toward accessibility, there is still work to be done and uncompleted projects. In this 2012 election year, many counties have approached us with grant requests for important accessibility projects and we have been forced to deny those requests because the program has been suspended. These include:

- A ramp into an inaccessible polling location where several voters with disabilities had specifically complained about the lack of access.
- Upgraded railings in polling locations
- Monies to upgrade doors in polling locations with automatic ADA door openers

Moreover, South Carolina hopes to develop next generation solutions to serve our voters with disabilities. We are exploring new accessible options and the possibility of providing accessible absentee voting for our voters with disabilities who cannot get to the polls.

Without funding under Section 261 of HAVA, none of this can happen. National funding each year for this program is about \$12 million – and South Carolina's share is small, however, the funding does make a tremendous difference for our voters with

COMMISSIONERS

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Chairperson

MARK A. BENSON

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EVERY VOTE MATTERS.
EVERY VOTE COUNTS.

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disabilities in South Carolina. I ask for all of your support in restoring this critical funding.

Sincerely,

Marci Andino

cc: Mr. Jim Dickson
Vice President of Organizing and Civic Engagement
American Association of People with Disabilities
1629 K Street NW, Suite 950
Washington, DC 20006

Mr. Curt Decker
Director, National Disability Rights Network
900 Second Street, NE, Suite 211
Washington, DC 20002

Sincerely,

Marci Andino

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cc: Mr. Jim Dickson
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Mr. Curt Decker
Director, National Disability Rights Network
900 Second Street, NE, Suite 211
Washington, DC 20002

APPENDIX 3: Guiding Language from Voter Empowerment Act of 2012

21 **SEC. 203. EXPANSION AND REAUTHORIZATION OF GRANT**
22 **PROGRAM TO ASSURE VOTING ACCESS FOR**
23 **INDIVIDUALS WITH DISABILITIES.**

24 (a) **PURPOSES OF PAYMENTS.**—Section 261(b) of the
25 Help America Vote Act of 2002 (42 U.S.C. 15421(b)) is

1 amended by striking paragraphs (1) and (2) and inserting
2 the following:

3 “(1) making absentee voting and voting at
4 home accessible to individuals with the full range of
5 disabilities (including impairments involving vision,
6 hearing, mobility, or dexterity) through the imple-
7 mentation of accessible absentee voting systems that
8 work in conjunction with assistive technologies for
9 which individuals have access at their homes, inde-
10 pendent living centers, or other facilities;

11 “(2) making polling places, including the path
12 of travel, entrances, exits, and voting areas of each
13 polling facility, accessible to individuals with disabili-
14 ties, including the blind and visually impaired, in a
15 manner that provides the same opportunity for ac-
16 cess and participation (including privacy and inde-
17 pendence) as for other voters; and

18 “(3) providing solutions to problems of access
19 to voting and elections for individuals with disabili-
20 ties that are universally designed and provide the
21 same opportunities for individuals with and without
22 disabilities.”.

23 (b) **REAUTHORIZATION.**—Section 264(a) of such Act
24 (42 U.S.C. 15424(a)) is amended by adding at the end
25 the following new paragraph:

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1 “(4) For fiscal year 2013 and each succeeding
2 fiscal year, such sums as may be necessary to carry
3 out this part.”.

4 (c) PERIOD OF AVAILABILITY OF FUNDS.—Section
5 264 of such Act (42 U.S.C. 15424) is amended—

6 (1) in subsection (b), by striking “Any
7 amounts” and inserting “Except as provided in sub-
8 section (b), any amounts”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(c) RETURN AND TRANSFER OF CERTAIN FUNDS.—

12 “(1) DEADLINE FOR OBLIGATION AND EXPEND-
13 ITURE.—In the case of any amounts appropriated
14 pursuant to the authority of subsection (a) for a
15 payment to a State or unit of local government for
16 fiscal year 2013 or any succeeding fiscal year, any
17 portion of such amounts which have not been obli-
18 gated or expended by the State or unit of local gov-
19 ernment prior to the expiration of the 4-year period
20 which begins on the date the State or unit of local
21 government first received the amounts shall be
22 transferred to the Commission.

23 “(2) REALLOCATION OF TRANSFERRED
24 AMOUNTS.—

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ENDNOTES

¹ Budget of the United States released by The Office of Management and Budget, February 14, 2011.

² GAO Report, "More Polling Places Had No Potential Impediments than in 2000, but Challenges Remain," pp. 13-19. Available online at <http://www.gao.gov/products/GAO-09-685>.

³ *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, January 2014, p. 51. Available on line at <https://www.supportthevoter.gov/>.

⁴ Research Alliance for Accessible Voting, Chicago RAAV Seminar, November 12, 2013, Table 8: Polling Place Difficulties in 2012.

⁵ IBID, Table 17: Preference for How to Vote.

⁶ State of Wisconsin Government Accountability Board, "Impediments Faced by Elderly Voters and Voters with Disabilities", June 2013, p.7.

⁷ National Council on Disability, "Experience of Voters with Disabilities in the 2012 Election Cycle", October 24, 2013, p. 18.

⁸ IBID, p. 19.

⁹ Office of Management and Budget, "Terminations, Reductions, and Savings," p.83.

¹⁰ GAO Report, "More Polling Places Had No Potential Impediments than in 2000, but Challenges Remain," p. 2.

¹¹ Letter dated March 21, 2012 to the Honorable Lindsey Graham from Marci Andino, Director of Elections, State of South Carolina.

¹² The "Voter Empowerment Act of 2012" was introduced in the 112th CONGRESS, 2D SESSION.

For more information on this document please contact:

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