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Little Hoover Commission Written Testimony on Voter Participation

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Disability Rights California (DRC) appreciates the opportunity to testify on the impact on voters with disabilities in California of the implementation of some of the recent voting legislation. DRC is the protection and advocacy system in California. Under the Help America Vote Act of 2002 (HAVA), DRC is charged with ensuring "the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places."¹

Background

The Pew Research Center and the United States Census Bureau have found that about 19% of Americans have some form of disability.² As a result, policies that make the voting process more accessible to people with disabilities have the potential to impact a large segment of the state's population. Currently, people with disabilities are less likely to vote than people that do not have disabilities. Increasing voting for people with disabilities is a non-partisan issue because voters with disabilities reflect

¹ 42 U.S.C. § 15461.

² Pew Research Center, *A political profile of disabled Americans* http://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabledamericans/

the larger population and care similarly about what candidate, proposition or measure wins and loses elections.³

California has passed several laws to improve voting registration and voting, namely the California Motor Voter Law and the Voter's Choice Act. The California Motor Voter Law seeks to improve voter registration at the California Department of Motor Vehicles (DMV). The DMV has been slow implementing the law and making the new processes accessible for people with disabilities has been challenging. The Voter's Choice Act allows 14 counties in 2018 and all counties in 2020 the option to use a vote center model. Although the law contains numerous accessibility requirements, the vote center model has pros and cons for voters with disabilities. There are also challenges implementing the accessibility requirements.

California Motor Voter Law

Assembly Bill (AB) 1461 (Gonzalez 2015) requires the DMV to make changes that will improve voter registration. People applying for or renewing driver's licenses and state identification cards or providing a change of address to the DMV will have their information electronically transferred to the Secretary of State (SOS) and will be registered to vote after their eligibility to vote has been confirmed. They will not be registered if they opt out. The DMV will be required to begin implementing AB 1461 within one year of when regulations are completed, which are likely to be later in 2017 since the SOS has already drafted the regulations and received public comment. The DMV has taken some steps to begin the process. DRC is a member of the stakeholder group working with the DMV to implement the voter registration requirements of AB 1461.

Potential Impact of AB 1461

The changes have the potential to see many more Californians registered to vote. The DMV is a state agency that directly interacts with the public and is uniquely situated to make registering to vote easy and convenient to Californians seeking a driver's license or identification card. The DMV is the one state agency with which voters with disabilities are most likely to have

³ *Id.* "Rather than having one distinct partisan profile, Americans with disabilities look similar to those without disabilities both in terms of party affiliation and their distribution across the ideological spectrum."

a direct interaction. The changes in AB 1461 will make registering to vote easier by removing barriers. For example, a customer with a manual dexterity disability will no longer have to fill out a driver's license or identification card application and a separate voter registration card.

DRC's Accessibility Concerns Regarding AB 1461 Implementation and Suggestions

AB 1461 should improve voter registration statewide, but there is a serious risk that it will not improve registration for people with disabilities if the new process is not accessible. Though the DMV will not be required to fully implement AB 1461 until 2018, current improvements for in-person transactions are troubling indicators of future efforts to make systems accessible to people with disabilities. The DMV has instituted some modest improvements for in-person transactions and seems to be registering more voters, but these improvements are not accessible to many customers with disabilities. The DMV has reprogrammed the touchscreens for the driver's license test to allow customers to also use them to answer the optional voter registrations questions like party preference and whether to vote by mail. These reprogrammed touchscreen terminals are not accessible for many customers with disabilities because they lack accessibility features such as navigation keypads and text-to-speech capabilities for people who are blind or have low vision, people with mobility or dexterity disabilities, etc. Customers with disabilities should be able to complete their DMV transactions privately and independently, especially voter registration. Privacy and independence are important because people are selecting a political party when they register to vote using the touchscreens.

In response to DRC's concerns brought up at stakeholder meetings, the DMV points to steps taken to improve accessibility. The DMV gives training on working with customers with disabilities to all employees in the field office. Additionally, they point to the assignment of "Motor Voter Ambassadors" in the touchscreen testing area. However, this is not enough to make the process accessible. The training on customers with disabilities is just the standard disability awareness training and does not incorporate voter registration or the reprogrammed touchscreens. The ambassadors are not additional staff assigned to the testing areas. One of the current staff already assigned to the area is dubbed the ambassador. There is no identifying name tag or vest. The ambassadors receive no additional training.

The DMV's most recent planning does very little to ensure future accessibility for customers with disabilities. In a report to the Legislature in December 2016, the DMV presented three options for how to implement AB 1461.⁴ The DMV indicates a strong preference to use kiosks and tablets for in-person customer transactions and move away from a paper-based system. However, here are serious accessibility challenges with kiosks and tablets. In the report, the DMV did not address accessibility or how they would ensure that the kiosks and tablets can meet the needs of people with disabilities. If the DMV is going to use kiosks and tablets, they will need to be designed with accessibility in mind. DRC has written a letter to the DMV and Secretary of State advising on how to make kiosks and tablets accessible and how other large organizations have made this technology accessible. In that letter, we explained that kiosks should at least have a navigation keypad, headphone jacks, tactile labels and text-to-speech capabilities. These features help users with a variety of disabilities use the kiosk independently. The Trace Center has a helpful video explaining these features in action on a sample kiosk. (See Trace Center, EZ Access Overview, available at https://www.youtube.com/watch?v=Drx927nBzpQ.) In the same letter, DRC strongly recommended that the DMV consult with a accessibility company that specializes digital in designing and implementing accessible kiosks as they are being developed.

Overall there is a culture of reluctance concerning voter registration at the DMV. Based on our interactions we have had with the DMV on the stakeholder committee, the agency has never made voter registration a priority and does not see it as a core function, but as an additional burden. Also, we have received feedback from customers at DMV field offices that technicians skip the protocols to help customers complete their voter registration and are either unwilling or unable to answer questions about voter registration.

The DMV needs to embrace its role as the most important voter registration agency in the state. The DMV needs to change its approach to accessibility. Accessibility should be considered from the beginning and not added on at a later time. If AB 1461 is properly implemented in a way that

⁴ Budget Comm. of Legis., California New Motor Voter Pilot Program Report (2017).

incorporates the needs of people with disabilities, there is the potential to register a vast number of voters with disabilities.

Voter's Choice Act

The Voter's Rights Act (VCA), Senate Bill (SB) 450 (Allen 2016) allows 14 counties to administer elections using the vote center model. In short, counties choosing to administer elections under the vote center model mail all voters a ballot. Instead of one polling place for every 1,000 voters, there will be one vote center for every 10,000 voters on Election Day and the three days prior. In the six days prior to this, there will be one vote center for every 50,000 voters.

Potential Positive Impact the VCA Could Have on Voters with Disabilities

The VCA has the potential to address common barriers faced by voters with disabilities. Malfunctioning accessible voting systems and inadequately trained poll workers are frequent problems at traditional polling locations. Only one accessible voting system is required at a polling place and there is usually no back up. Poll workers are typically inadequately trained to troubleshoot a malfunctioning accessible voting system.

There will be three accessible voting systems per vote center, increasing the odds that at least one will be functioning. Additionally, it is possible that vote center workers will be better trained and more comfortable using the accessible voting system. Vote center workers will be on the job for 4-10 days, not just one day. Counties will hopefully have the resources and incentive to provide more thorough training. Orange County trained vote center workers for four and a half days for its test vote centers in the November 2016 election. Longer training is not mandated by the VCA but we think all counties should adopt this as a best practice.

The VCA requires counties to offer the option of Remote Accessible Voteby-Mail (RAVBM). This is similar to what is currently offered to military and overseas voters in many counties. Voters with disabilities will be sent a ballot electronically that they will be able to download. They can read and mark the ballot on their computer using their own accessible technology, like screen readers, keyboard-operated mouse, sip and puff devices, etc. They then print and mail in the ballot. This will allow many voters with disabilities to be able to vote by mail privately and independently. Traditional vote by mail requires many voters to use the assistance of others, compromising their independence and privacy. HAVA⁵ and the California Constitution⁶ provide voters with disabilities a right to vote privately and independently as other voters have.

The VCA gives the option to provide mobile vote centers, which allows counties to bring voting equipment directly to voters with disabilities. Importantly, the VCA also requires counties to seek input from the disability community about the need for mobile vote centers. This requirement is one of many requirements that counties are required to seek input from voters with disabilities for the election administration plan.

Counties that opt into the VCA are required to form a Voting Accessibility Advisory Committee (VAAC). VAACs are community-based committees that partner with local elections officials and voters with disabilities. Currently, VAACs are optional for most counties. VAACs are a best practice for accessibility because they can help elections officials develop strategies to improve voting accessibility and learn about the concerns of voters with disabilities.⁷

The VCA has the potential to improve outreach to voters with disabilities. A common problem in traditional elections is a lack of accessible voting information and minimal outreach from local election officials to voters with disabilities. The VCA requires information about the election to be posted online in accessible formats. Election officials are required to seek input from the disability community, hold public workshops, and have a communications plan that alerts the public about accessible voting options.

DRC's Concerns with VCA Implementation Related to Voters with Disabilities and Suggestions

Voters with disabilities will be disparately impacted by the switch from neighborhood polling places to regional vote centers with a Vote-by-Mail (VBM) ballot mailed to every voter. VBM ballots are generally paper ballots,

⁵ 52 U.S.C. § 21081(a)(3).

⁶ California Constitution, Art. 2, sec. 8 ("Voting shall be secret.")

⁷ The Secretary of State recommends that each county elections official establish a local VAAC to help address voting accessibility needs. (Please see: CCROV #10234, <u>http://elections.cdn.sos.ca.gov/ccrov/pdf/2014/august/14223ab.pdf</u>.)

which are inherently inaccessible to voters with many disabilities who need to use an electronic accessible voting system.

The VCA's impact on physical travel to vote in person is one of the ways the VCA negatively impacts voters with disabilities. Transportation to polling locations on Election Day is a major barrier for voters with disabilities. A vote center election will provide the option to vote up to ten days before the election, which would ideally make it easier to arrange transportation to vote. However, the VCA eliminates 90% of the polling locations. Voters with disabilities will have to travel farther to vote in person to use an AVS at a vote center. In a densely populated county with a relatively small geographic footprint, like Orange County, the vote centers may not be far removed from traditional polling locations. But in a physically large rural county with a small population like Calaveras or Inyo, the travel times could be far longer if the county uses the minimum required number of vote centers.

RAVBM will make voting by mail more private and independent for many voters with disabilities. However, RAVBM requires a voter with a disability to own a computer and printer. People with disabilities face many communication barriers and are 17% less likely to have a computer.⁸

Counties opting into the VCA have a tight schedule in order to be ready for the June 2018 primary election. DRC is concerned that in the rush to get ready some of the accessibility requirements will not be followed. For example, we have concerns that counties will not consult the disability community while they draft their Election Administration Plan (EAP). For some counties with a VAAC, the election official may take a short cut by asking the VAAC members for comments on a draft of the EAP. For many county elections officials without a VAAC, they have problems connecting with community-based organizations serving people with disabilities because there are no established relationships.

DRC is working with VCA counties to encourage them to be proactive. DRC recently drafted a memo about how counties can form a VAAC and a summary of all the accessibility requirements in the VCA.

⁸ Pew Research Center *Disabled Americans are less likely to use technology* <u>http://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/</u>

Other Suggestions

Below are best practices that should be adopted by all counties statewide whether they administer elections under the VCA or not.

County elections departments should have accessible websites that provide information on options for voters with disabilities

Prior to the November 2016 election, DRC did a survey of county elections offices' websites statewide. Many are outdated, inaccessible, and lack basic information on accessible voting options for voters with disabilities.

The Center for Technology & Civic Life is a non-profit that has designed an easy to use website template for local election officials.⁹ It has been successfully implemented by Inyo County Elections and it could be replicated by all counties statewide.¹⁰

Counties should improve access to Accessible Voting Systems

Many counties have accessible voting systems that are so outdated that the vendors do not even sell replacement parts for them. At this point, counties are calling this "legacy equipment," which were first purchased following the passage of HAVA, "temperamental and unreliable." Counties should update this aging legacy equipment so voters with disabilities can be assured that the accessible voting system they need to vote privately and independently will work on Election Day.

Many voters with disabilities do not know how to use the accessible voting system. Counties should provide clear instructions in the sample ballot, at the polling place or vote center and online for voters to learn how to use the accessible voting system.

Counties should improve poll worker training on the accessible voting system shortly before each election and provide training manuals and troubleshooting guides with photographs.

⁹ https://www.techandciviclife.org/

¹⁰ http://elections.inyocounty.us/

Counties should offer all voters the opportunity to use the accessible voting system.

Many counties train poll workers to offer the accessible voting system only to voters who they think have a disability and may benefit from it (e.g., blind voters who use a white cane or Seeing Eye dog, or a wheelchair user). However, voters who do not have an easily recognizable disability (e.g. voters who are legally blind but do not use a white cane or Seeing Eye dog, have a learning disability, or an intellectual or developmental disability) might not be offered the use of an accessible voting system. If they are not aware that it is available, they might not request to use it. If all voters are told about this accessible voting system, more voters will use it. As a result, the poll workers will be more likely to set it up. In my experience speaking at poll worker trainings, I have heard poll workers say "Why should I bother setting up the accessible voting system when nobody will use it?"

For example, Butte County offers all voters the use of the accessible voting system. During the November 2016 election, 7,256 voters, or 5.6% of the voters who voted, voted with the accessible voting system. The elections office reported that many more seniors used the accessible voting system because they had low vision. Many of them would not have used it had it not been offered to all because they did not look like they needed to use it and many of them would not have wanted to say that they had a disability because many seniors do not want to be considered as having disabilities.

All counties should form VAACs even if they are not using the vote center model.

A Voting Accessibility Advisory Committee (VAAC) provides a forum for the disability and senior communities in a county to voice their concerns and provide advice to the elections official.¹¹ The VAAC creates opportunities for collaboration and outreach within the community. The VAAC plays an essential role in helping county elections officials comply with laws requiring equal voting access for all. The Secretary of State recommends that each county elections official establish a local VAAC to help address voting accessibility needs. VAAC's can play a critical role in improving

¹¹ DRC has a publication on VAACs gear towards voters with disabilities. It is available at <u>http://www.disabilityrightsca.org/pubs/559401.pdf</u>.

voting conditions for people with disabilities. For VAACs to be successful, it is crucial to have community participation.

All counties should offer RAVBM.

As mentioned above, VBM ballots are generally paper ballots. Many voters with certain disabilities who cannot read or mark a VBM ballot (such as voters who are blind, have low vision or have mobility, dexterity, learning, intellectual or developmental disabilities). All counties using the vote center model under the VCA must offer voters with disabilities the ability to obtain an RAVBM ballot. All counties should offer RAVBM ballots to voters with disabilities.¹² Some counties already provide military and overseas voters with VBM ballots electronically. For those counties, AB 2252 (Ting 2016) requires them to offer RAVBM ballots to voters with disabilities.

¹² There is a bill pending in the legislature, AB 973 (Low), to require all counties to offer RAVBM to voters with disabilities.

VAACs: How County Elections Offices Can Start a Voting Accessibility Advisory Committee

A Voting Accessibility Advisory Committee (VAAC) is a community-based committee that partners with local elections officials and meets regularly to help the elections officials develop strategies to improve voting accessibility. A VAAC advises county elections officials about issues relating to voting accessibility. A VAAC can benefit a county in many ways, including providing a forum for the disability and senior communities to voice their concerns and opportunities for collaboration and outreach.

The VAAC is a partnership, which will create dialogue between the elections office and the disability and senior community. The VAAC plays an important role in assisting the county to comply with election laws and helps provide equal access to all voters. Issues such as accessible voting systems, accessibility of polling places and ways to improve the voting experience are examples of typical areas for discussion. If you are a voter with a disability interested in VAACs please also see our related publication: "VAAC's: How Voters with Disabilities Can Make Elections More Accessible." (December 2016, Pub. #5594.01.)

Initial Steps

County elections offices should take the lead in setting up the VAAC. This is within the duties of the county elections office. However, county policies vary and election officials should consult their local rules regarding establishing advisory committees.

Are VAACs required?

For most counties in California, VAACs are optional. However, the Secretary of State's office strongly encourages all counties to form VAACs. (Please see: CCROV #10234,

http://elections.cdn.sos.ca.gov/ccrov/pdf/2014/august/14223ab.pdf.) As discussed above, all counties should consider forming a VAAC because it will help county election officials improve accessible voting. Counties that can opt-in to the Voters Choice Act (VCA), SB 450 (2016, Allen), are mandated to form a VAAC prior to holding their first election under the VCA. The VCA requires these counties to establish a VAAC by October 1st

in the year prior to the first VCA election. The first meeting must be held by April 1st of the election year.

Importantly, VCA counties should strongly consider having a VAAC up and running well before the deadlines in the law. If a county waited until April 1st of the election year to hold the first VAAC meeting it would not allow the county to be able to use the VAAC to help create the required draft plan for the vote center model election. The VAAC is an important tool to assist elections officials with meeting the numerous VCA requirements for protecting voters with disabilities. For example, the VAAC can help elections officials select vote center and ballot drop off locations. Community members on the VAAC can help plan the required outreach events and assess whether the media plan will effectively reach voters with disabilities.

Stand-alone VAAC or combine with LAAC

County election offices need to decide if the VAAC will be combined with a Language Accessibility Advisory Committee (LAAC). A LAAC is a community-based committee that meets with elections officials about language access issues. The VCA allows counties with less than fifty thousand registered voters to have a combined VAAC and LAAC. However, there are advantages to having separate committees. For example, an independent VAAC will provide county elections officials with greater access to the disability community, which will improve compliance with state and federal law. In a combined VAAC/LAAC, it can be difficult to have a single meeting long enough to adequately cover both disability and language access issues.

Recruiting members

For VAACs to be successful, it is critical to have community participation. It is important to reach out directly to the disability community about the opportunity to join the VAAC. Just posting meeting times online is not enough. Community members will likely be excited to be a part of the VAAC, but it will take outreach to explain the VAAC's role and purpose. Let people who work with voters with disabilities know they can be on a VAAC without being an elections expert or having disabilities. There should be a multiplatform media effort to reach community members about the VAAC. The VAAC should be advertised on the county and election websites. Post flyers and posters explaining the VAAC and how to join. Below we have listed some suggested community based organizations. Other agencies that primarily serve people with disabilities can be found by checking the list of agencies in your county required to provide data on their voter registration efforts. The Secretary of State has the <u>data</u> posted online on their website

(http://www.sos.ca.gov/elections/voter-registration/nvra/reports/). Some agencies, like Regional Centers, might already have staff and client advocates focused on voting issues, who would make wonderful VAAC members. Please contact other counties to find best practices for member recruitment. It can be helpful to contact neighboring counties in order to find members because many organizations that serve people with disabilities are located across county lines. Additionally, please contact the Voting Rights Unit at DRC for assistance with identifying resources and community members.

Contact community based organizations:

- Contacting community-based organizations directly is a good first step.
- Organizations such as:
- <u>California Council of the Blind</u> (http://www.acb.org/affiliate-california)
- Veterans Services offices (<u>www.va.gov</u>)
- College/university disability services offices
- <u>Independent Living Centers</u> (see http://www.rehab.cahwnet.gov/ils/ILC-List.html the independent living center in your county)
- Local Regional Centers (http://www.dds.ca.gov/RC/RCLookup.cfm)
- Organizations serving persons with specific disabilities, such as local Deaf community groups and local chapters of United Cerebral Palsy (see http://ucp.org/findaffiliate/) or the Multiple Sclerosis Society (see <u>http://www.nationalmssociety.org/Chapters?chapters=6513,6514,655</u>
 <u>5</u>) are good organizations from which to solicit membership
- Senior Centers
- Disability Rights California (http://www.disabilityrightsca.org/)

Educate and recruit county elections staff

Ensure that all county elections staff know about and understand the VAAC. Send out an office wide email letting them know the VAAC is recruiting members. Encourage county elections staff to invite community members to join the VAAC. They can be a great resource for finding people to join.

It is also important to find the right people from the county elections office to join the VAAC. Like community members, there is no requirement for staff to have a disability. Although this last point might seem obvious, it can be helpful during outreach to staff. Additionally, there are no set rules for who should be on the VAAC in large part because the staff sizes of county elections offices vary so widely in California. People with the following job titles or responsibilities should be on the VAAC:

- Executive management (e.g., the Registrar, Assistant Registrar, etc.)
- Head poll worker trainer
- Elections equipment supervisor
- Polling site inspector
- Community outreach staff
- Media communications staff

Leadership structure

We suggest each county VAAC have two co-chairs, one from the elections staff and one from the community. The co-chairs should create and distribute an agenda incorporating county needs and community members' concerns. Co-chairs should be elected by the committee and have a finite term. At the end of a co-chair's term, other members should be encouraged to apply to become a co-chair.

A county elections office staff member should be the coordinator for the VAAC. This person can answer questions via email, arrange meeting logistics, and draft the agenda.

Agenda and suggested topics for meetings

The agenda should have time for new business, specific items and old business. Include an agenda item to plan the date, time and location for the next VAAC meeting. An agenda should be distributed as widely as possible at least 24 hours prior to the meeting. All elections office staff should be made aware of the next scheduled VAAC meeting via email or an online calendar.

Allow members to submit questions via email if they cannot attend a meeting. The questions should be read aloud and discussed during the meeting.

The VAAC should have its own page on the county elections website. The page link should feature prominently on the voters with disabilities information page. The webpage is a place to post agendas and meeting notes.

Meetings should be held at least quarterly. Suggested months for meetings are: March, June, September, and December. The exact dates are flexible but try to avoid highly stressful times close to elections. Making the timing of meetings consistent and regular allows community members to work the VAAC into their schedules.

The VAAC can perform many functions and the following are typical subjects for agenda items:

- Assist in the development of educational videos.
- Advise on the accessibility of polling places.
 - Review election plans for selecting and surveying physical accessibility of polling locations.
 - Have the polling site Americans with Disabilities Act inspector present to the VAAC post-election on reported physical accessibility issues.
- Participate in the training of poll-workers.
 - Review training materials for accessible voting systems.
 - Review voters with disabilities poll worker training.
- Suggest the allocation of county HAVA funds such as:
 - Purchase of cones for parking.
 - Purchase of bells for curbside voting.
- Provide accessibility feedback on the county elections' website.

- Help select polling place locations.
- Discuss new or pending legislation affecting voters with disabilities.
- Advise on recruiting poll workers with disabilities.
- Suggest possible community outreach.
- Advise on media strategy.

VAACs in a VCA county

The VCA requires counties that opt in to form a VAAC and has specific requirements for engaging the disability community. The VAAC meetings will need to be adjusted to incorporate these requirements. Please note that many of the following items are appropriate for VAACs in counties using traditional elections.

- Review required accessibility of website information that must be posted for voters.
- Review "remote accessible vote by mail" (RAVBM) technology.
- Determine if the elections office is prepared to provide election materials in accessible formats if requested by voters.
- Help plan the required public meeting for members of the disability community.
- Help plan required voter education workshop for voters with disabilities.
- Assess vote center locations and the needs of voters with disabilities.
- Assess ballot drop off locations and the needs of voters with disabilities.
- Comment on the voter education and outreach plan.
- Identify areas needing mobile vote centers.

Planning accessible meetings

Election officials must take steps to make meetings accessible for all participants. Accessibility is more than physical accessibility of a building. The following link is a great resource for setting up accessible meetings. http://www.adahospitality.org/accessible-meetings-events-conferences-guide VAAC meetings can be held at the county elections office. Seek input from VAAC members about alternate meeting locations. Offsite meetings can improve attendance and may be easier for members who use public transportation. Make sure there is a way to attend the meeting remotely. The option to attend via phone, skype or teleconference is a great way to increase participation and accessibility. Light snacks and drinks can help improve attendance and make meetings more comfortable. However, as discussed in the above referenced guide, be sensitive to strong scents and common food allergies.

Conclusion

All counties are strongly encouraged to create a VAAC because it is an important tool to improve voting accessibility. County elections officials with questions about VAACs are encouraged to contact the Voting Rights Unit at DRC. Staff in our Voting Rights Unit actively participate in a number of VAACs statewide. Additionally, please invite DRC to attend your VAAC. While DRC involvement is not a substitute for community members we appreciate the opportunity to join the discussion and provide guidance.

We want to hear from you! Please complete the following survey about our publications and let us know how we are doing!

https://docs.google.com/forms/d/1d6ezTl2M5UMAWU66exLbc1SQ9wDPzv tuS3AGR4-cgwE/viewform?c=0&w=1

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