ADA Audio Conference Series
September 18, 2012

This session is scheduled to begin at
2:00pm Eastern Time

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Don't forget to cast your vote!
Accessibility of Polling Places
September 18, 2012
DON'T FORGET TO CAST YOUR VOTE!

ACCESSIBILITY OF POLLING PLACES

Faith Gross
The Legal Center for People with Disabilities and Older People

VOTER PARTICIPATION

- 14.7 million Americans with disabilities voted in 08 Presidential Election
- Increase of 3.8 million over 2000 election
- Turnout of People with disabilities was still 7% lower than the general population

Lisa Schur, Rutgers University during testimony before the Election Assistance Commission, 10/08/09

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BARRIERS TO PARTICIPATION

- Inaccessible polling places, voting equipment
- Voter challenged or ineligible because of a mental disability
- Refusal to allow voter to bring assistant of choice
- Refused or rushed assistance
- Poorly trained poll workers
- Non-traditional signatures questioned

OVERVIEW OF FEDERAL LAWS

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VOTING RIGHTS ACT of 1965

- Guarantees the right of people with disabilities to have voting assistance from a person of their choosing
- Exception: person’s employer, or agent of employer or labor union

REHABILITATION ACT OF 1973

- Section 504
- Prohibits discrimination on the basis of disability by entities receiving federal funds
- Does not specifically address voting by people with disabilities

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VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT OF 1984

- Generally requires polling places to be physically accessible,
- If no accessible location is available, then only an alternate means of casting a ballot is required
- Absentee ballot or change of polling place

VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT OF 1984

- If assigned polling place is inaccessible, must be assigned to an accessible polling place or be provided with an alternative means for casting a ballot on the day of the election.
- Requires voter to request in advance of Election Day
VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT OF 1984

- Cannot require notarization of medical certification of voters requesting absentee ballot
- State may require medical certification to establish eligibility for a permanent absentee application or ballot, or
- Absentee ballot request after the deadline

AMERICANS WITH DISABILITIES ACT of 1990

- Title II of the ADA requires all public entities make "reasonable modifications to rules, policies, or practices" to ensure nondiscrimination in programs, services, and activities of state and local governments
- Extends the protections under Sec. 504 regardless of government size or receipt of federal funds

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National Voter Registration Act of 1993

- Purpose is to increase historically low registration rates of eligible U.S. citizens resulting from discrimination
- Includes requirements specific to people with disabilities

National Voter Registration Act of 1993

- Requires all State-funded programs primarily providing services to people with disabilities to offer voter registration
- State’s chief election official may designate private CBO that receive state funds primarily to serve people with disabilities as NVRA agencies

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HELP AMERICA VOTE ACT

- HAVA
  - Passed in 2002 in response to election administration issues during the 2000 Presidential Election
  - Includes several provisions designed to improve voting access for citizens with disabilities

HAVA SECTION 261

- Authorized payments to the states and local units of government to “assure access for individuals with disabilities” (42 U.S.C. §15421)
  - Payments generally made to the State and then granted to local government election administrators

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HAVA SECTION 261

- “making polling places, including path of travel, entrances, exits and voting areas of each polling facility accessible to
- individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters”

HAVA SECTION 261

- “providing individuals with disabilities with information about the accessibility of polling places, including outreach programs to inform the individuals about the availability of accessible polling places”

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HAVA SECTION 261

- “training election officials, poll workers and election volunteers on how best to promote the access and participation of individuals with disabilities in elections for Federal office”

HAVA SECTION 261

- Administration for Intellectual and Developmental Disabilities, US Department of Health and Human Services is the agency responsible for administering these grants

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HAVA SECTION 291

- Established the newest protection and advocacy program, Protection and Advocacy for Voting Access program (PAVA). (42 U.S.C. § 15461)
- Every state and territory and the District of Columbia

HAVA SECTION 291

- “to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places”
- HAVA specifically states that “none of the funds shall be used to initiate or otherwise participate in litigation related to election-related disability access.”
**HAVA SECTION 291**

- However, Protection and Advocacy organizations maintain their ability and authority to use their other federal funding for election-related, polling place accessibility litigation

**HAVA SECTION 301**

- requires each polling place for Federal elections to have at least 1 accessible voting system (AVS) “including nonvisual accessibility for the blind and visually impaired”
- to provide the same opportunity for access and participation (including privacy and independence) as for other voters

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HAVA SECTION 301

- This requirement may be met “through the use of at least 1 direct recording electronic voting system (DRE) or other voting system equipped for individuals with disabilities at each polling place”
- (42 U.S.C. § 15481)

OTHER HAVA PROVISIONS

- Develop minimum standards for the accessibility of voting systems;
- Required states to include people with disabilities on the mandatory HAVA State (compliance) Plan Committee
OTHER HAVA PROVISIONS

- Providing funds for research on accessible voting technology;
- Establishing a state-based administrative complaint procedure to remedy any grievances covered by the provisions of HAVA

ELECTION ASSISTANCE COMMISSION

- “to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections.
- responsible for developing voting system guidelines including standards for accessibility.
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GAO Report October 2001:

- 84% of polling places across America limit access for people with disabilities
- 23 states reported having accessibility requirements
- no universal standards for state and local voting accessibility laws and practices
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GAO Report September 2009:

- Visited 730 randomly selected polling sites across the US.
- 72.7% of polling places across America had at least 1 potential barrier to full access.
- 45.3% had potential barriers, but offered curbside voting.

GAO Report September 2009:

- 27.4% had potential barriers but did not offer curbside voting.
- Almost all polling places had an accessible voting system.
- 43 States have established accessibility requirements and funded “improvements to help facilitate accessible voting.”
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GAO Report September 2009
- 31 states reported that ensuring polling place accessibility is challenging
- recommended that USDOJ expand monitoring and oversight of polling place accessibility

POLLING PLACE SURVEYS
- Many states now have provisions in state law requiring that polling places be fully accessible
- Many states require surveys -
  - each year that there is an election, or
  - only during federal election years
USDOJ ADA Checklist for Polling Places

- Released in February 2004
- Does not appear to have been updated to reflect changes in the ADA standards
- 39 pages
- Includes information on how to conduct a survey
- Temporary solutions for Election Day

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SURVEY CHECKLISTS

- Some states have designed their own survey checklists
- Incorporate state specific accessibility requirements
- Check your State elections office website

GETTING TO THE POLLING PLACE

- Accessible parking
- Accessible passenger drop-off
- Accessible path of travel to building
- Accessible entrance to building

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THE POLLING PLACE

- Accessible path of travel to polling place within building
- Polling place set up to provide accessible path of travel and accessible voting booths or stations
- Are the booths or stations set up to ensure privacy for the voter?

Litigation and USDOJ Activity

- Kerrigan V. City of Philadelphia
- Advocacy Center (Louisiana) V. Jefferson Parish
- Justice Department Settlement Agreement with Flint, MI
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ACCESSIBILITY IS

- An awareness of the history of systemic and institutionalized discrimination against people with disabilities in election participation.
- Many states still have laws restricting the rights of at least some people with mental disabilities to participate.

ACCESSIBILITY IS

- Implementation of, and compliance with the disability-related requirements of NVRA
- Recruiting and accommodating (as needed) poll workers with disabilities
- Well trained poll workers able to provide effective customer service including providing assistance to voters who request it.
ACCESSIBILITY IS

- Good public transportation to polling places, whenever possible
- Polling location signs visible from the street with large letters and good contrast
- Secure voting systems that provide all voters with the opportunity to vote privately and without assistance

ACCESSIBILITY IS

- Effective communication in all aspects of election administration, including print materials in alternate formats (Braille, large print, audio, electronic).
- This applies to the polling place and mailed/absentee ballots.
- Simplified language (all voters could benefit!)
- Captioned PSA’s
OTHER ISSUES

- Challenges to voter eligibility based on disability
- Narrow photo ID requirements
- Usability and reliability of DRE (Direct Recording Electronic)
- All mail elections

PROTECT YOUR RIGHT TO VOTE!

- Election Protection
- 1-866-OUR-VOTE (687-8683)
- www.ourvote.org

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RESOURCES

- National Disability Rights Network Voting Access resources
- Find your state’s Protection and Advocacy Organization
- GAO Report: Additional Monitoring of Polling Places Could Further Improve Accessibility
- USDOJ information about HAVA
- USDOJ ADA Checklist for Polling Places

RESOURCES

- U.S. Election Assistance Commission
- National Technical Assistance Center for Cognitive Access
- National Federation of the Blind
- National Association of the Deaf
- National Election Protection Hotline

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RESOURCES

- Bazelon Center for Mental Health Law and National Disability Rights Network, *VOTE. It’s Your Right: A Guide to the Voting Rights of People with Mental Disabilities*

RESOURCES

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Thank you for participating in today’s ADA-Audio Conference Session

The next scheduled session is:
“The Application of Federal Tax Incentives Supporting the Americans with Disability Act”
October 16, 2012

Register at: www.ada-audio.org or call 877-232-1990 V/TTY