Don't forget to cast your vote!
Accessibility of Polling Places
September 18, 2012

FAITH GROSS
The Legal Center for People with Disabilities and Older People
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### 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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Americans with Disabilities Act of 1990

- Requires effective communication with people with hearing, speech or vision disabilities
- Unlike the other laws, which apply only to federal elections, the ADA applies to both state and federal elections

ADA and Voting

Court decisions interpreting the ADA have found that Title II does NOT:

- Require every polling place be accessible to persons with mobility impairments (program accessibility)
- Guarantee privacy to voters with disabilities
- Guarantee voters who are blind the right to cast their vote independently

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

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 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.

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

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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Accessibility of Polling Places

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USDOJ ADA Checklist for Polling Places
- Many states use this checklist
- Some use abridged versions which may not have diagrams or suggestions for bringing the site into permanent or temporary compliance
- Does not include rest rooms

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

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
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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

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

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