



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

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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

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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

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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

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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

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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

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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

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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

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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

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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”

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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”

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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

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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.”

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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

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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)

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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

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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

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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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ELECTION ASSISTANCE COMMISSION

- Accessible Voting Technology Initiative Grants
- Clemson University
- Information Technology and Innovation Foundation.
- These are 3 year, multi-partner efforts.

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EAC ADVISORY 2007-001

- A polling place should be considered to be any location where a voter appears in person to cast a ballot, including an early voting site
- Absentee in-person voting location is a polling place
- Accessible voting unit is required

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POLLING PLACE ACCESSIBILITY

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

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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

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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

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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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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

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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

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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?

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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

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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

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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

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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

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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

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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](#)

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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*

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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

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