



**House Committee on the Judiciary - Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Oversight of the Americans with Disabilities Act of 1990:
The Current State of Integration of People with Disabilities
Wednesday, October 20, 2021 at 10:00am**

**The Americans with Disabilities Act: The Current State of Access for Voters with Disabilities
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Chairperson Cohen, Vice Chair Ross and Ranking Member Johnson, thank you for the opportunity to testify today regarding oversight of the Americans with Disabilities Act (ADA) and the voting rights of people with disabilities.

National Disability Rights Network and the Protection & Advocacy Systems

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) systems for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the US territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the American Indian Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP Network is the largest provider of legally based advocacy services to people with disabilities in the United States. Through the Protection and Advocacy for Voter Access (PAVA) program, created by the Help America Vote Act (HAVA), the P&As have a federal mandate to “ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places”¹ and are the leading experts on access to the vote for people with disabilities in the United States.

I am the Voter Access & Engagement Manager for NDRN, where I am responsible for supporting civic engagement and voting rights advocacy in every state, the District of Columbia, Puerto Rico, and the other territories, as well as providing training and technical assistance to NDRN’s nationwide network regarding voting rights and access for voters with disabilities. I also work in coalition with other civil rights organizations to ensure strong federal policy regarding voting rights and election administration.

¹ <https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

Voters with Disabilities

The United States Census Bureau has reported up to 56.7 million people with disabilities live in the community, totaling approximately 19 percent of the non-institutionalized US population². The Centers for Disease Control and Prevention and Pew Research Center believe that number is closer to 25 percent, or one in four Americans.³⁴ Further, the School of Management and Labor Relations at Rutgers University projected that there were 38.3 million people with disabilities eligible to vote in the United States, one-sixth of the total American electorate, during the 2020 Election.⁵

The disability community is diverse. People who identify as LGBTQIA+ are more likely to have a disability.⁶ A quarter or more of American Indians/Alaska Natives and Black adults have a disability.⁷ People with disabilities are disproportionately low-income, and are unemployed, underemployed, or not participating in the workforce at a rate of approximately three-fourths of the entire disability community.⁸

Additionally, people with disabilities are politically active. Pew reported that people with disabilities pay more attention to presidential elections and that election results matter more to people with disabilities when compared to people without disabilities.⁹ Despite the size, diversity, and political commitment of the disability community, America's electoral system remains largely inaccessible and has a long history of excluding people with disabilities.

Barriers for Voters with Disabilities Are Persistent

Voting in Person

The United States Government Accountability Office (GAO) has studied polling place accessibility for 20 years. During an initial 2000 survey, the GAO found that only 16 percent of the polling places surveyed had an accessible path of travel, defined as from parking to the voting station.¹⁰ This percentage increased to 27 percent in 2008¹¹ and to 40 percent in 2016¹². 40 percent, being the all-time high, means that less than half of America's polling places were architecturally accessible during the 2016 election. Yet as polling places slowly become more accessible, the actual voting stations within them are becoming less accessible. In 2008, 46 percent of voting booths were inaccessible.¹³ In 2016, inaccessible voting stations jumped to 65 percent.¹⁴ Overall, voting booths were less likely to be set up to ensure voter privacy, set up for wheelchair access, have headphones readily apparent for audio balloting, or even be turned on for voters to use.¹⁵ In 2016, GAO combined architectural access data with voting station data to find that only 17 percent of America's polling places could be considered fully accessible

² <https://www2.census.gov/library/publications/2012/demo/p70-131.pdf>

³ <https://www.cdc.gov/media/releases/2018/p0816-disability.html>

⁴ <https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

⁵ https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_electorate_projections_2020.pdf

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490559/>

⁷ <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>

⁸ <https://disabilitycompendium.org/annualreport>

⁹ <https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

¹⁰ <https://www.gao.gov/new.items/d02107.pdf>

¹¹ <https://www.gao.gov/assets/300/296294.pdf>

¹² <https://www.gao.gov/assets/690/687556.pdf>

¹³ <https://www.gao.gov/assets/300/296294.pdf>

¹⁴ <https://www.gao.gov/assets/690/687556.pdf>

¹⁵ <https://www.gao.gov/assets/690/687556.pdf>

for voters with disabilities.¹⁶ As I have stressed to members of Congress before, America's polling places are woefully, inexcusably, unjustly out of compliance with the ADA.

In the face of inaccessible polling places, curbside voting has become a critical accommodation for voters with disabilities, and many states already provide curbside voting according to their individual state statutes. Even when not written into state election law, curbside voting may be used as a stop-gap measure for voters with disabilities to cast their ballots until an inaccessible polling place can be brought into compliance with the ADA. This practice is allowed by the ADA¹⁷ as a temporary measure and may be included in polling place accessibility settlements and memoranda of agreement between the US Department of Justice (DOJ) and individual voting jurisdictions. Even in jurisdictions that feel confident their polling locations are ADA compliant, curbside voting is an important accommodation for voters for whom getting in and out of the car, walking any length of distance, or standing for any amount of time can be difficult.

The ADA is clear that curbside voting is an allowable accommodation and should include: "(1) signage informing voters of the possibility of voting curbside, the location of the curbside voting, and how a voter is supposed to notify the official that she is waiting curbside; (2) a location that allows the curbside voter to obtain information from candidates and others campaigning outside the polling place; (3) a method for the voter with a disability to announce her arrival at the curbside (a temporary doorbell or buzzer system would be sufficient, but not a telephone system requiring the use of a cell phone or a call ahead notification); (4) a prompt response from election officials to acknowledge their awareness of the voter; (5) timely delivery of the same information that is provided to voters inside the polling place; and (6) a portable voting system that is accessible and allows the voter to cast her ballot privately and independently."¹⁸

Polling Places Closures

Over the course of the last several election cycles, mass polling place closures have significantly impacted access for voters with disabilities. In *Blocking the Ballot Box: Ending Misuse of the ADA to Close Polling Places*, NDRN examined the issue of polling place closures, ADA compliance, and the United States DOJ enforcement of the ADA in depth.¹⁹ Our report finds that voting jurisdictions that settled with the DOJ in the last several years as a result of inaccessible polling places were overwhelming not closing their polling locations. Rather, they were working collaboratively with DOJ to find innovative solutions, including same-day modifications and developing low-cost solutions for permanently modifying inaccessible locations. Alternatively, jurisdictions that closed or attempted to close a significant percentage of their polling places citing the ADA typically were not under a settlement agreement or investigation by the DOJ and could not provide ADA accessibility surveys or any coordination with the P&A or other disability advocacy organizations to resolve access barriers.

The Leadership Conference on Civil and Human Rights, in *Democracy Diverted: Polling Place Closures and the Right to Vote*, found that thirteen states closed an overwhelming 1,688 polling sites in just six years.²⁰ The Leadership Conference and NDRN reports are picking up on an alarming trend occurring

¹⁶ <https://www.gao.gov/assets/690/687556.pdf>

¹⁷ https://www.ada.gov/ada_voting/ada_voting_ta.htm

¹⁸ https://www.ada.gov/ada_voting/ada_voting_ta.htm

¹⁹ <https://www.ndrn.org/resource/blocking-the-ballot-box/>

²⁰ <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

across the US - falsely blaming polling place closures on the ADA. Jurisdictions with mass poll closures in Mississippi, Georgia, and Louisiana offered “lack of ADA compliance” as a pretext for polling place closures, despite their admitted lack of understanding of the ADA’s provisions, failure to provide ADA surveys of the polling places in question, and grossly inflated cost estimates for bringing polling places into compliance with the ADA.²¹

Disability rights advocates and the DOJ do not advocate for the closure of inaccessible polling places, and this measure should always be used as a last resort. Rather, the DOJ has actively promoted, even in jurisdictions with which they have settled lawsuits for failure to comply with the ADA at polling locations, temporary same-day modifications, curbside voting as a stop-gap measure, and other low-cost best practices to ensure accessibility at polling places.²²

Impact of Voter Identification (ID) Laws

According to the National Conference of State Legislatures, 35 states currently require individuals to show some form of ID at their polling places.²³ The Brennan Center for Justice indicates that over 22 states in 2017 saw the introduction of at least 39 pieces of legislation to impose voter ID requirements or impose even stricter requirements over existing ones.²⁴ The University of Wisconsin – Madison found that 6 percent of registrants that did not vote in 2016 were blocked by the lack of correct ID.²⁵ An additional 11.2 percent of eligible registrants were deterred from voting because of confusion surrounding the voter ID law.²⁶ Strict voter ID requirements create new hurdles to voter participation with the added effect of confusion as a deterrent to voters.

Rutgers has calculated that 7.5 percent of people with disabilities do not have a state-issued photo ID, compared to 4.8 percent of people without disabilities.²⁷ The difference is statistically significant. This disparity also extends to older adults – potential voters typically over-represented among people with disabilities. A report by the US Senate Special Committee on Aging and US Senate Committee on Rules and Administration found that older Americans are a sizable voting bloc - 30 percent of the voters in 2016 were 50-64 years old, 15 percent 65 and over.²⁸ Yet, 11 percent of adults (over 21 million citizens) do not have a valid, government-issued photo ID and nearly one in five Americans over 65 (approximately 8 million people) lacked a current, government-issued photo ID.²⁹

The Brennan Center for Justice also found that 10 million voters (who are otherwise eligible) live over 10 miles from the closest office that can issue an ID that qualifies for voting purposes and is open more than two days per week.³⁰ While this would present a burden for any voter, people with disabilities and older adults are less likely to drive or have accessible public transportation options. The argument that people

²¹ <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

²² https://www.ada.gov/chicago_boe_sa.html

²³ <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

²⁴ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>

²⁵ <https://elections.countyofdane.com/documents/pdf/VoterId/UW-Voter-ID-Study-Supporting-Info.pdf>

²⁶ <https://elections.countyofdane.com/documents/pdf/VoterId/UW-Voter-ID-Study-Supporting-Info.pdf>

²⁷ <https://smlr.rutgers.edu/sites/default/files/images/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf>

²⁸ <https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>

²⁹ <https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>

³⁰ <https://www.brennancenter.org/our-work/research-reports/challenge-obtaining-voter-identification>

with disabilities who are disenfranchised by voter ID laws can simply obtain an ID has clearly not panned out in reality.

Remote Voting

Traditional vote by mail systems are not, and have never been, accessible to voters with disabilities. People with print disabilities, which includes those who are blind or low vision, have limited literacy, or limited manual dexterity, cannot privately and independently mark, verify, and cast a hand marked paper ballot. Dropping traditional paper ballots into the mail simply will not work for all voters. Increasingly people with disabilities have been given access to electronic ballot delivery systems typically reserved for military and overseas voters protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). While the ability to receive a ballot electronically can increase the accessibility of remote voting, these systems typically require the voter to print and return a paper ballot at the end of the process.³¹ Essentially receiving and marking of the ballot have been made significantly more accessible, while the ability to verify and return the ballot remain inaccessible once paper has been re-introduced to the voting process.

People with disabilities are also more likely to be disenfranchised by signature matching practices commonly employed to verify vote by mail ballots.³² For many people with disabilities, particularly those with limited manual dexterity, the appearance of a signature can vary drastically from one signing to the next. For anyone who has aged or acquired a disability between signatures, the same could easily be said. In many cases, matching signatures is a decidedly unscientific and unreliable tool to verify the voter's identity. Additionally, states vary in their readiness to accept signatures provided by a voter's assistant or signature stamp, commonly employed by people with disabilities who are unable to provide a wet signature. Further, requirements for witness signatures and notaries, represent barriers to voters with disabilities who may not have ready access if they live where accessible transit is lacking, are homebound, or have a significant need to isolate. In a few states, voters may even be required to provide a doctor's note attesting to the disability to apply to vote absentee. The same barriers that can prevent a voter from accessing a notary are compounded when access to a medical professional to provide proof of disability can require health insurance and access to ongoing medical care. A particularly glaring barrier when other excuses to vote absentee do not attach a burden of proof to the voter.

Voter assistance and Voting in Long Term Care Facilities

In addition to the ADA, voters with disabilities are protected by the Voting Rights Act of 1965, under which a voter with a disability has the right to an assistant of their choice, with the limited exceptions of the voter's employer or union representative.³³ Given that the promise of the ADA has yet to be fully realized in providing equal access to the ballot, this right to assistance has been a critical one for many voters with disabilities. Yet, voter protection hotlines operated by Election Protection and disability rights organizations across the country receive calls from voters every election who have been denied the assistant of their choice by poll workers unfamiliar with the law.

³¹ <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>

³² <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>

³³ <https://www.justice.gov/crt/statutes-enforced-voting-section#:~:text=Section%20of%20the%20VRA,agent%20of%20the%20voter's%20union>

The right to assistance is an important stop-gap measure for dealing with inaccessible polling places, accessible voting equipment that has not been maintained or prepared for use on Election Day, and vote by mail systems that continue to fall behind technological advancement. The right to assistance has also become a primary method of ensuring access to the ballot for people with disabilities who are hospitalized or live in long term care facilities. Voters experiencing unexpected hospitalization rely on elections personnel bringing the ballot to hospitals on Election Day or may even rely on a trusted friend or family member to deliver that ballot when hospitalized outside the proper voting jurisdiction, particularly in states where electronic ballot delivery is not an option. For voters who live in long term care facilities, the facility staff and visiting elections personnel may be the only contact they receive all year from any party interested in facilitating their right to register and vote.

Voting During the COVID-19 Pandemic

Voting in Person

The timing of the pandemic during peak primary season for the 2020 Presidential Election, highlighted the importance of in-person voting, as well as its long-term struggles with accessibility. Polling places in many parts of the country were reduced as schools, long term care facilities, and other previously reliable locations were unable to serve in order to protect the health of students, residents, and employees. Wisconsin demonstrated this problem as the first state to hold an in-person primary during the pandemic rather than relying on vote by mail.³⁴ The need to quarantine, particularly for older adults, also created an unexpected shortage of poll workers, when numerous jurisdictions already operate with too few poll personnel in any given year. Shortages combined with a surge in voter turnout and inability to meet the demand for mailed ballots created long lines.

New polling sites had to be assessed and adapted for ADA compliance, but inexperienced polling place volunteers were ill-prepared to provide reasonable accommodations for voters with disabilities. This meant in-person voting was at risk of failing dismally to meet the standards of the ADA, while also carrying the potential to spread the virus. Smart jurisdictions made rapid changes to their election policies to meet these demands.

In light of COVID-19, states focused on providing lengthy early voting periods and securing a sufficient number of early voting sites, to help minimize wait times and the number of voters that would interact with poll personnel in enclosed spaces on any given day. A total of 42 states offered a significant period of early voting, including early voting expansions in Texas and Kentucky.³⁵ Some states also opted to implement curbside voting or extend existing curbside voting to any voter that chooses this option related to COVID-19 concerns. For example, various jurisdictions in Virginia, including Chesapeake,³⁶ expanded curbside voting for all voters with or without disabilities in response to concerns of COVID-19 exposure at polling places. Expansion of curbside or even Harris County, TX's drive thru voting³⁷ meant that voters who are immunocompromised or at increased risk of severe COVID-19 were able to limit their exposure. Voters who tested positive for COVID-19 after the deadline to request an absentee ballot

³⁴ <https://www.jsonline.com/story/news/politics/elections/2020/04/09/wisconsin-election-milwaukee-had-5-voting-sites-while-madison-had-66/2970587001/>

³⁵ <https://www.wsj.com/articles/early-and-mail-in-voting-for-2020-election-expands-dramatically-despite-legal-fights-11604052000>

³⁶ <https://www.13newsnow.com/article/news/politics/elections/curbside-voting-during-the-covid-19-pandemic/291-46443c26-31d3-4476-9957-032f82e06b99>

³⁷ <https://harrisvotes.com/drivethruvoting>

had passed were also able to remain in their vehicles and interact with a limited number of personnel wearing personal protective equipment, similar to a drive thru COVID testing site.

Alternatively holdout states, like Alabama, expressly prohibited voting curbside to the point of forcing litigation that reached the United States Supreme Court³⁸ rather than provide this lifesaving measure at the polls. Curbside voting and early voting are important pro-voter policies for people with disabilities, giving them additional options for navigating inaccessible polling places and lining up accessible transportation or a voting assistant, both of which may be difficult to schedule on Election Day alone.

Remote Voting

Social distancing was among our best lines of defense against the COVID-19 pandemic, and as a result, several states moved to open up their absentee and vote by mail processes to all voters, allowing them to continue to quarantine if necessary and reduce congestion at the polls.³⁹ Yet, many states were ill prepared to process a drastic increase in requests for remote ballots and simply could not meet the demand to print and mail these ballots by legal deadlines.⁴⁰ As a result, states allowed many domestic voters to access their electronic ballot delivery systems for the first time. States like Colorado, Massachusetts, Nevada, and North Carolina joined states that already allowed voters with disabilities to access electronic ballot delivery, like West Virginia.⁴¹ These technologies are widely available and have been in use reliably for years in primarily vote by mail states. In fact, every state is currently required to have some form of remote ballot marking in place for military and overseas voters, according to the MOVE Act.⁴² These are tested systems, already in use, that can be offered to domestic voters with print disabilities to enhance the accessibility of vote by mail systems. The ADA is clear that any option made available to voters must be accessible for people with disabilities,⁴³ including vote by mail. States that have not already done so must immediately implement some form of electronic ballot delivery or remote accessible ballot marking system that provides an electronic ballot to voters who choose to vote from home.

In their efforts to enable remote voting for record numbers of voters during the pandemic, many jurisdictions also eased their long-standing requirements for witness signatures and notaries in order to complete and return a mailed ballot, remediating long standing barriers for voters.⁴⁴ Additionally, all but 10 states offered ballot drop boxes to return vote by mail ballots, the most in any American election.⁴⁵ Some drop boxes were observed by voters with disabilities and the P&A network to be inaccessibly designed or placed along inaccessible paths of travel, and increased ADA compliance of ballot drop boxes would better serve voters with disabilities. Yet overall, ballot drop boxes represent a useful tool for helping voters with disabilities to avoid common barriers to casting a ballot, including long lines, and

³⁸ <https://docs.justia.com/cases/federal/district-courts/alabama/aIndce/2:2020cv00619/173742/1>

³⁹ <https://www.brennancenter.org/our-work/research-reports/mail-voting-what-has-changed-2020>

⁴⁰ <https://fivethirtyeight.com/features/few-states-are-prepared-to-switch-to-voting-by-mail-that-could-make-for-a-messy-election/>

⁴¹ <https://fivethirtyeight.com/features/new-laws-let-americans-with-disabilities-vote-online-theyve-also-resurrected-the-debate-about-voting-access-vs-election-security/>

⁴² <https://www.fvap.gov/uploads/FVAP/Policies/moveact.pdf>

⁴³ https://www.ada.gov/ada_voting/ada_voting_ta.htm

⁴⁴ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-mail-voting-policies-in-effect-for-the-2020-election.aspx>

⁴⁵ <https://www.lawfareblog.com/ballot-drop-options-all-50-states>

drop boxes can be used in locations where polling places or postal service is too sparse to meet voters' needs.

Voter assistance and Voting in Long Term Care Facilities

Voting in long term care facilities proved to be one of the larger challenges of ensuring access to the ballot during a pandemic. Nursing homes and other facilities were understandably forced to close their doors to visitors to help prevent the spread of COVID-19. As a result, jurisdictions that typically send teams of elections personnel into long term care facilities, nursing homes, and hospitals to assist voters were unable to do so. Similarly, friends and family of facility residents were unable to gain entrance and assist potential voters.⁴⁶ The burden of ensuring access to the vote, fell squarely on facility staff. Guidance from the Centers for Medicare and Medicaid Services (CMS) reinforced the obligation of facility staff to facilitate voter participation among residents.⁴⁷ However, relying on overworked staff, on the front lines of a global pandemic and understaffed as a result, revealed how genuinely tenuous voter access is for people with disabilities and older adults in long term care facilities.

Threats to Voter Access Following the 2020 Election

The challenge of successfully administering a Presidential Election during a global pandemic necessitated America's elections officials thinking on their feet and enhancing options for voters as quickly as possible. Despite this, these new practices helped to make the voting process more accessible for people with disabilities. In the aftermath, states across the US have seen legislation introduced that threatens the progress made during the 2020 election cycle. By October 2021, nineteen states have enacted thirty-three laws that will negatively impact the accessibility of the vote for people with disabilities.⁴⁸

Voting in Person

Already inaccessible polling places will be further burdened by legislation that will reduce the locations or hours for polling places in Iowa, Montana, and Texas, as well as an increase to the number of voters per precinct in Nevada.⁴⁹ Additionally, the state of Alabama passed legislation in 2021 that explicitly bans the use of curbside voting anywhere in the state, in response to a handful of Alabama counties pushing the Secretary of State to allow use of curbside voting as a pandemic response measure in 2020.⁵⁰ Similarly, Harris County's innovative drive thru voting program, which used the design of a COVID-19 testing site to process large numbers of voters quickly from their vehicles, became a target of Texas legislation, that outlawed the practice.⁵¹

Georgia, Iowa, and Texas have begun limiting days/hours for early voting, which will inevitably increase wait times for voters on Election Day.⁵² Notably, Floridians and Georgians can now be charged with a crime for handing out water or food to voters waiting in line to vote, making long lines now a dangerous place for voters with disabilities, such as a voter with diabetes for whom access to food could prevent a serious medical emergency.⁵³

⁴⁶ <https://www.washingtonpost.com/outlook/2020/10/14/nursing-homes-voting-covid-discrimination/>

⁴⁷ <https://www.cms.gov/files/document/qso-21-02-nh.pdf>

⁴⁸ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁴⁹ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁰ <https://www.sos.alabama.gov/newsroom/alabama-legislature-codifies-ban-curbside-voting>

⁵¹ <https://capitol.texas.gov/tlodocs/871/billtext/pdf/SB00001.pdf>

⁵² <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵³ <https://www.flsenate.gov/Session/Bill/2021/90/BillText/er/PDF>

Voter ID Requirements

Arkansas, Florida, Georgia, Montana, New Hampshire, Texas, and Wyoming passed restrictive voter ID measures.⁵⁴ Given the known problems in acquiring the necessary types of ID or supporting documents to obtain an ID for voters with disabilities, including few locations capable of issuing an ID and non-ADA compliance at some of these facilities, voter ID requirements that are strict in nature can prevent people with disabilities from accessing the ballot box. Voter ID measures must take into consideration the readiness of a state's infrastructure to provide no-cost identification to all eligible voters in a manner that fully complies with the ADA and is accessible to all.

Remote Voting

Vote by mail became a lifeline for Americans to exercise their right to vote without jeopardizing their health during the pandemic, and consequently, it became a primary talking point in the 2020 elections news cycle. Following record numbers of mailed ballots in 2020, Alabama, Arkansas, Georgia, Iowa, Kentucky, New York, and Oklahoma will shorten the window to apply for a vote by mail ballot, while Arkansas and Iowa will also shorten timelines for ballot delivery. Arizona, Idaho, Kansas, and Texas created stricter signature matching requirements for vote by mail ballots. Florida, Georgia, Iowa, and Indiana imposed limits on the number, location, or availability of ballot drop boxes.⁵⁵

While shortened timelines and new restrictions on ballot return will harm access for both voters with disabilities and their nondisabled peers, some new measures in states will explicitly create barriers for voters with disabilities. Arizona and Florida have made it more difficult for voters with disabilities to remain on absentee voter lists from election to election.⁵⁶ Voting absentee is a useful way to ensure voters with disabilities' participation when their precinct polling places have not yet been made ADA compliant.

Voter assistance and Voting in Long Term Care Facilities

In Iowa and Kansas, people could face criminal charges for returning ballots on behalf of voters who may need assistance, such as voters with disabilities. The states of Arkansas, Florida, Iowa, Kansas, Kentucky, Montana, and Texas all passed legislation designed to limit who can assist a voter to return a vote by mail ballot.⁵⁷ Yet, the right to assistance in casting a ballot for voters with disabilities is protected by existing federal law, and limitations on who can return a ballot pose a significant barrier for people with disabilities who may not be able to return their ballots personally or have an assistant that qualifies under new state laws to return the ballot. As discussed earlier, the COVID-19 pandemic highlighted the challenge of ensuring access to the vote for people who live in long term care facilities, and vote by mail is a critical avenue for ensuring facility residents are able to participate in the electoral process. Limiting who may assist these voters threatens to disenfranchise them entirely.

Role of Congress and the Federal Government

The ADA has been and continues to be the gold standard in protecting the right to vote for people with disabilities. The United States government has an obligation to ensure that states, territories, and local jurisdictions are administering elections as accessibly as possible, and Congress has an urgent role to play

⁵⁴ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁵ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁶ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁷ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

in this process. Congressional funding is sorely needed to assist elections administrators to procure, maintain, and improve polling locations and equipment and for NDRN's national network of P&As to provide invaluable consultation on compliance with HAVA and the ADA. In this vein, Congress must act now to re-introduce and pass the PAVA Inclusion Act and provide the territorial government and P&A of the Northern Mariana Islands, as well as the Native American Disability Law Center, with desperately needed HAVA funding to ensure access to the vote for Pacific Islanders and Native Americans with disabilities. Extending funding to the only two P&As excluded from PAVA is a simple, no cost legislative fix.

Congress must also act now to prevent threats to voter access that have arisen nationwide in response to the historic voter turnout witnessed in 2020. Congress must amend the Freedom to Vote Act to allow voters with disabilities an exemption from blanket paper ballot mandates that will disenfranchise them. Creating a legislative carve out for people with disabilities, in addition to a periodic reauthorization or sense of Congress to reconsider the need for a paper ballot mandate, will allow voters with disabilities who need it most to access the same technologies we allow for military and overseas voters protected by UOCAVA. We are willing to take a limited, calculated risk to ensure that our deployed military will have their voices heard on Election Day. We must be willing to do the same for people with disabilities.

Finally, Congress and the DOJ play a critical role in ensuring that elections are fair, accurate, and accessible by implementing and enforcing a delicate patchwork of federal laws that protect the rights of voters with disabilities, including the ADA, HAVA, the Voting Accessibility for the Elderly and Handicapped Act, the National Voter Registration Act, and the Voting Rights Act. Each of these laws must be protected, restored, and enforced to their full capacity. While the DOJ is charged with enforcing the ADA and the Voting Rights Act so that voters with disabilities will not be disenfranchised, Congress must act now to pass the John Lewis Voting Rights Advancement Act to restore federal preclearance to its full strength and prevent known discriminatory practices, including undue closure of polling places, limitations on the right to voter assistance, bans on curbside voting, and restrictive voter ID requirements.

These problems are solvable, and after thirty years of the ADA, there is no excuse for not having addressed them. I have said it to this subcommittee before, but it bears repeating. We call them Americans with disabilities because they are, first and foremost, Americans. And America's democracy is only as good as its ability to hear the voices of all Americans.