



**House Committee on the Judiciary - Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Protecting the Right to Vote During the COVID-19 Pandemic
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**Protecting the Rights of Voters with Disabilities During the COVID-19 Pandemic
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Chairperson Cohen, Vice Chair Raskin, and Ranking Member Johnson, thank you for the opportunity to testify today regarding the voting rights of people with disabilities during the COVID-19 global pandemic.

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 Voting Rights Specialist for NDRN, where I am responsible for coordinating voting rights initiatives in every state, the District of Columbia, Puerto Rico, and other territories, as well as providing training and technical assistance to NDRN’s nationwide network regarding voting rights and access for voters with disabilities under HAVA, the Americans with Disabilities Act (ADA), and other applicable federal laws. I also work in coalition with the broader civil rights community in Washington, DC 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 population.² The Centers for Disease Control and Prevention and Pew Research Center believe that number is closer to 25 percent, or one in four Americans.^{[3][4]} Further, the School of Management and Labor Relations at Rutgers University projected that there were 35.4 million people with disabilities eligible to vote in the United States, one-sixth of the total American electorate, during the 2016 Election.⁵

The disability community is diverse and people with disabilities are a part of every community. 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

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 - exclusion potentially exacerbated by the COVID-19 pandemic.

Improving Access to Vote by Mail

Social distancing is our best line of defense from the threat of COVID-19, and naturally, vote by mail is a critical piece of the puzzle for keeping elections safe during the pandemic. It behooves elections administrators to allow for as many voters as possible to choose voting from home, for their own safety, as well as the health of their fellow voters and elections personnel. Voters who opt to vote by mail optimize their own social distancing, but every voter that chooses a remote ballot also decreases the number of voters that will turn out to polling places and vote centers on Election Day or during early voting periods. Reducing in person turnout in 2020 is, unfortunately, necessary to enable in person voters to properly social distance while voting and allow poll workers to sanitize between voters. There are many simple steps that can be taken to increase the usability and accessibility of vote by mail.

Now is the time to relax deadlines for absentee ballot applications and return of absentee ballots. Now is the time to eliminate barriers to accessing absentee and vote by mail ballots, including requirements for doctor notes, notaries, and witnessed signatures. Not only are these barriers for voters with disabilities in any election year, but they pose an additional health risk to voters with disabilities, and particularly

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/>

⁵https://smlr.rutgers.edu/sites/default/files/documents/faculty_staff_docs/Kruse%20and%20Schur_Disability%20electorate%20projections%202016_9-8-16.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/>

those that are immunosuppressed, who are under stay at home orders or in quarantine that must then break their self-isolation to access doctors, notaries, or witnesses just to be able to vote.

Even with these measures in place, it should be noted that traditional vote by mail systems are not, and have never been, accessible to voters with disabilities. People who are blind or low vision, have print disabilities,¹⁰ limited literacy, limited manual dexterity, and other disabilities 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. 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. These technologies are widely available and have been in use reliably for years in primarily vote by mail states. In fact, every state currently has some form of remote ballot marking in place for military and overseas voters, as required by the MOVE Act.¹¹ These are tested systems, already in use, that can be expanded for use by domestic voters to enhance the accessibility of vote by mail systems. Federal law is clear that any option made available to voters must be accessible for people with disabilities,¹² including vote by mail.

At this time, it becomes important now more than ever to make our vote by mail systems as accessible as possible. Any voter for whom voting by mail is not accessible is a voter who cannot opt to vote from home and will be forced to contribute to congestion at the polls. Further, when vote by mail systems are not made accessible for voters with disabilities, we in essence ask people with disabilities who are considered the most vulnerable for COVID-19 to be the only voters who take to the streets and assume the personal health risk of in person voting, while their non-disabled peers have the privilege of voting from the safety of their homes.

Voting by mail is an important option that must be made available and accessible to all voters, but it is not and may never be a panacea. Many of the remote accessible vote by mail systems currently market-ready or in use by voting jurisdictions across the nation make vote by mail significantly more accessible. However, any vote by mail system that requires a voter to verify and cast a paper ballot is not fully accessible to voters with disabilities. Further, electronic ballot delivery systems rely on voters supplying their own technology, including computers, tablets, smartphones, and whatever assistive technology or software the voter needs, as well as requiring access to internet or cellular data service. Adults with disabilities are 20 percent less likely than their non-disabled peers to subscribe to home broadband and own a traditional computer, a smartphone, or a tablet.¹³ Consequently, solutions that require voters to provide their own technology or secure their own internet access are a useful option that makes the vote accessible for some voters, but they are not a complete solution in themselves. The onus is, and must be, on the government to provide the supplies voters need to cast their ballots. After all, we do not turn voters away from polling places for failing to bring their own pens to mark their ballots. Until the United States is prepared to make vote by mail fully accessible, in person voting is a necessity.

¹⁰Print disabilities is a term that encompasses disabilities that make it difficult or impossible to access standard printed text. These include blindness or visual impairments, physical disabilities that limit manual dexterity (e.g., cerebral palsy, hand tremors, quadriplegia), and certain learning disabilities.

¹¹<https://www.fvap.gov/uploads/FVAP/Policies/moveact.pdf>

¹²https://www.ada.gov/ada_voting/ada_voting_ta.htm

¹³<https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/>

The Necessity of In-Person Voting

The question is not: do we need in person voting? The question for 2020 is: how do we make in person voting safe? Polling locations must follow Center for Disease Control (CDC) and other federally recommended health guidelines for COVID-19 safety. Polling locations should also be prepared to provide personal protective equipment (PPE), sanitizers, and handwashing stations for personnel and voters. Early voting periods and hours for in person voting must be extended for several weeks before Election Day to reduce congestion at the polls and allow for social distancing. The number of ballot marking devices or other accessible voting stations must also be significantly increased at every polling location, and voters should be allowed to vote curbside. Even in states where curbside voting is not currently allowed, its use would ease ADA-compliance issues that will inevitably arise from the limited number of available polling places and unexpected relocation of polling places, as well as to allow voters at greater risk in regard to COVID-19 to limit their exposure.

I would be remiss if I did not take this opportunity to also discuss the current state of polling place accessibility in the United States. The US Government Accountability Office (GAO) surveys of polling place accessibility span 20 years. In 2000, GAO data indicated that only 16 percent of polling places had an accessible path of travel from the parking area to the voting booth.¹⁴ This percentage has slowly but steadily increased to 27 percent in 2008¹⁵ and to 40 percent in 2016¹⁶. To be clear, 40 percent is an all-time high in architectural access, meaning that less than half of polling places were compliant with federal law during the 2016 presidential election. Worse, GAO began to investigate the accessibility of voting stations within polling places starting with the 2008 study, during which only 54 percent of voting booths were determined to be accessible.¹⁷ In 2016, the prevalence of accessible voting stations fell to a dismal 35 percent – a drop of 19 percentage points in just 2 presidential election cycles.¹⁸ GAO found that 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.¹⁹ In their 2016 findings, GAO combined architectural access data with voting booth data for the first time and reported an astonishing 17 percent of polling places are compliant with federal law and fully accessible for voters with disabilities – fewer than 1 in 5.²⁰ In this complicated and frightening time, America’s polling places must be made safe for all voters, but a pandemic cannot be used as an opportunity to shirk federal access law and the civil rights of voters with disabilities.

Role of Congress and the Federal Government

Congressional funding is sorely needed to ensure that elections in 2020 are fair, safe, and protect the rights of voters with disabilities, and NDRN applauds the passage of the HEROES Act by the US House of Representatives which provides critical funding for elections during our current health crisis. The United States government has an obligation to ensure that states, territories, and local jurisdictions can acquire PPE and other needed supplies for in person voting, as well as remote accessible vote by mail systems that can be implemented immediately. Many Members of Congress have stepped up to propose legislation to help address these issues by introducing the *Vote Safe Act*, *The Natural Disaster and*

¹⁴<https://www.gao.gov/new.items/d02107.pdf>

¹⁵<https://www.gao.gov/assets/300/296294.pdf>

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

¹⁷<https://www.gao.gov/assets/300/296294.pdf>

¹⁸<https://www.gao.gov/assets/690/687556.pdf>

¹⁹<https://www.gao.gov/assets/690/687556.pdf>

²⁰<https://www.gao.gov/assets/690/687556.pdf>

Emergency Ballot Act, and *The Democracy Corps Act*. NDRN calls on Congress to work together to pass a bill that will address the safety issues raised around voting during this time as well as ensuring accessibility for people with disabilities.

Further, Congressional funding is always 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 pass the *PAVA Program Inclusion Act* (HR5510) 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.

Finally, Congress and the US Department of Justice play a critical role in ensuring that elections are fair, accurate, safe, and accessible. A delicate patchwork of federal laws that protect the rights of voters with disabilities - 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. We call them Americans with disabilities because they are, first and foremost, Americans. Their civil rights, as well as the health of our voters and the health of our democracy, depend on it.