



National Council on Disability
Policy Forum: "The Help America Vote Act Ten Years Later:
Has the Law Accomplished Its Aim?"
April 23, 2013 2:00 p.m.

The National Disability Rights Network (NDRN) would like to thank the National Council on Disability (NCD) for holding this important and timely policy forum to assess the impacts of the Help America Vote Act ten years after its passage. NDRN and the network of Protection and Advocacy Systems have been involved since passage of the Help America Vote Act with advocating for the rights of people with disabilities to vote and monitoring the accessibility of the electoral system. Although the United States has made significant progress toward ensuring that its electoral system is accessible to everyone, there is still much work to be done. We appreciate the opportunity to draw attention to the continuing needs of people with disabilities for increased accessibility to the electoral system.

Who Are NDRN and the Protection and Advocacy Systems?

NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) systems for individuals with disabilities. The P&As were established by the United States Congress through eight separate programs to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navaho and Piute Nations in the Four Corner region of the Southwest. Collectively, the P&A Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The Protection and Advocacy for Voter Access (PAVA) program was established in 2002 as part of the Help America Vote Act (HAVA) to address the barriers that people with disabilities face when voting or registering to vote. Congress recognized the need to "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places."

The History of Inaccessibility of Voting Places

Unfortunately, the right to vote has long been denied to many people with disabilities. People with disabilities have faced and continue to face voting places that do not allow access to the voting booths for people in wheelchairs, voting machines with limited

technology that deny people with visual impairments the ability to vote privately, and other obstacles that limit the ability of people with disabilities to register to vote. A 2001 GAO report on the 2000 Presidential election found that 84 percent of polling places had impediments to accessibility for people with disabilities.¹ A similar report based on the 2008 Presidential elections found that the situation for people with disabilities had improved, but there were still significant problems – 73 percent of all polling places studied still had impediments to accessibility.² Although 2008 Census data shows that 14.7 million people with disabilities voted in the presidential election, research by Rutgers University shows that the voter turnout rate of people with disabilities was 7 percentage points lower than that of people without disabilities.³

Challenges to Polling Place Accessibility in the 2012 Elections

Protection and Advocacy agencies continued to find barriers to accessibility in the 2012 election. In addition to challenges faced by people with disabilities in the past, such as polling places that are physically inaccessible and ballots that are not accessible to people with visual impairments, the 2012 election saw people with disabilities unable to vote for other reasons as well. For example, groups ostensibly working to protect the voting process overall inappropriately challenged the ability of people with disabilities to vote based on a perception that they did not have the legal capacity to vote or that they needed a guardian's approval to vote. Often times, people with disabilities were incorrectly informed that they did not have the right to vote.

In one example of this, a North Carolina-based entity that receives and processes applications of individuals for mental health services filed a complaint that one of its contractors registered a person with a disability to vote without the consent of the voter's guardian. The entity characterized the registration of people with mental illness who have guardians to vote as "voter fraud," even though the North Carolina Constitution and state law provides that people with guardians retain the right to vote. Moreover, the North Carolina Division of Medical Assistance (DMA) found that this entity and other mental health care providers did not regularly offer people with mental illness the ability to register to vote. Disability Rights North Carolina, the North Carolina P&A, has filed a complaint with the Department of Justice Voting Rights Section over the refusal of this and other North Carolina mental health care providers to recognize the right of people with mental illness to vote.

¹ U.S. Gov't Accountability Office, GAO-02-107, *Voters with Disabilities: Access to Polling Places and Alternative Voting Methods* (2001).

² U.S. Gov't Accountability Office, GAO-09-685, *Voters With Disabilities: More Polling Places Had No Potential Impediments Than In 2000, But Challenges Remain* (2009), <http://www.gao.gov/cgi-bin/getrpt?GAO-09-685>.

³ Lisa Schur, Rutgers University Professor, Testimony before Election Assistance Commission (Oct. 8, 2009), available at <http://www.eac.gov/assets/1/Events/testimony%201-3%20lisa%20schur%20public%20meeting%20october%2008%202009.pdf>.

In another instance, a District Attorney in a County in Texas announced, before the election, that he would convene a grand jury on election assistance programs, in the county that has the highest rate of assisted voting in the State. The District Attorney stated that he would subpoena voters to ask them under oath why they requested assistance in voting and threaten prosecution against those who assisted people with voting. This would force many voters to disclose confidential information about the nature of their disabilities and could easily create a chilling effect both on people with disabilities and the people who volunteer to assist them with voting. Disability Rights Texas, the Texas P&A, sent the District Attorney a letter requesting that he refrain from interrogating people who come to their polling places with someone to assist them with voting and not subpoena voters with disabilities to testify before a grand jury.

Other problems that were experienced across the country include a lack of accessible voting machines, poll workers who were not able to assist voters with the machines, a lack of accessible parking, long lines and people not being allowed to sit while waiting to vote, and other problems with physical accessibility of polling places. According to a study issued by South Carolina Protection and Advocacy⁴ reviewing polling places from 23 of the 46 counties across the state during the 2012 elections, 15 percent of the polling places surveyed had no accessible parking, 11 percent of the polling places surveyed did not have a clear and level route of travel from the accessible parking spaces to the entrance, and 27 percent of the polling places surveyed did not have a clear path in the voting area for a person who uses a wheelchair or other mobility aid. 37 percent of the polling places did not have a sign for curbside voting, while 44% were not consistently monitored for curbside voters. NDRN also participated in a voter protection hotline with the Lawyers' Committee for Civil Rights Under Law, which found that many people with disabilities were denied access to curbside voting.

Even during the upcoming off-year for federal elections, the Protection and Advocacy agencies will continue to follow-up with local Boards of Elections and Secretaries of State to ensure that they are aware of these problems and that they continue to work toward full accessibility of polling places for people with disabilities. We will be sure to share information with NCD about continuing problems that come to light, and publicly raise awareness about continuing problems with voting accessibility for people with disabilities.

Voting is perhaps the most fundamental of the rights accorded United States citizens, and must be made accessible and available to all. NDRN and the Protection and Advocacy agencies nationwide hope to continue to work with Congress and with state and local voting officials to improve accessibility. In order to continue to improve voter accessibility for people with disabilities, we recommend the following steps:

- 1) Increase funding for the PAVA program to help ensure that people with disabilities are allowed to perform this sacred constitutional right;

⁴ Available at <http://pandasc.org/wp-content/uploads/2012/12/SURVEY-ACCESS-REPORT-2012.pdf>

- 2) Allow the Native American Consortium to receive funding under the PAVA program. Although all of the other existing Protection and Advocacy agencies receive funding under the PAVA program to advocate for voter accessibility, the Native American P&A does not because it is not a “state”-designated Protection and Advocacy agency as required under the Help America Vote Act; and
- 3) Provide funding to State and local election officials to help them address voting accessibility issues.

We appreciate the opportunity to provide testimony regarding these issues. If you would like further information, please contact Patrick Wojahn at (202) 408-9514, x102.