
VOTING RIGHTS FOR PEOPLE WITH DISABILITIES & THE ADA

JUNE 19, 2020

CIVIL RIGHTS DIVISION





WHY VOTING RIGHTS FOR PEOPLE WITH DISABILITIES MATTER

- As of November 2016, about 35.4 million, or almost 1 out of 6, voting-age Americans had a disability.
- Voter turnout rate of people with disabilities was 6.3 percentage points lower than that of people without disabilities.

Source: Disability, Voter Turnout, and Polling Place Accessibility, Presentation by Professor Lisa Schur, Rutgers University, June 12-13, 2017.



VOTING RIGHTS FOR PEOPLE WITH DISABILITIES

- Federal laws that protect the right to vote for persons with disabilities:
 - Americans with Disabilities Act of 1990
 - Voting Accessibility for the Elderly and Handicapped Act of 1984
 - Help America Vote Act of 2002
 - National Voter Registration Act of 1993
 - Voting Rights Act of 1965



VOTING RIGHTS FOR PEOPLE WITH DISABILITIES

- **“The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities”**
- A description of the federal laws protecting the right to vote for persons with disabilities
- <https://www.justice.gov/file/69411/download>

U.S. Department of Justice
Civil Rights Division
Disability Rights Section



THE AMERICANS WITH DISABILITIES ACT AND OTHER FEDERAL LAWS PROTECTING THE RIGHTS OF VOTERS WITH DISABILITIES

Voting is one of our nation's most fundamental rights and a hallmark of our democracy. Yet for too long, many people with disabilities have been excluded from this core aspect of citizenship. People with intellectual or mental health disabilities have been prevented from voting because of prejudicial assumptions about their capabilities. People who use wheelchairs or other mobility aids, such as walkers, have been unable to enter the polling place to cast their ballot because there was no ramp. People who are blind or have low vision could not cast their vote because the ballot was completely inaccessible to them.

Important federal civil rights laws were enacted to combat such forms of discrimination and protect the fundamental right to vote for all Americans. This document provides guidance to states, local jurisdictions, election officials, poll workers, and voters on how the Americans with Disabilities Act and other federal laws help ensure fairness in the voting process for people with disabilities.

FEDERAL LAWS PROTECTING THE RIGHT TO VOTE

The Americans with Disabilities Act (ADA) is a federal civil rights law that provides protections to people with disabilities that are similar to protections provided to individuals on the basis of race, color, sex, national origin, age, and religion. Title II of the ADA requires state and local governments ("public entities") to ensure that people with disabilities have a full and equal opportunity to vote. The ADA's provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.

The Voting Rights Act of 1965 (VRA) also contains provisions relevant to the voting rights of people with disabilities. The VRA requires election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter's choice (other than the voter's employer or its agent or an officer or agent of the voter's union). The VRA also prohibits conditioning the right to vote on a citizen being able to read or write, attaining a particular level of education, or passing an interpretation "test."

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ADA TITLE II: STATE & LOCAL GOVERNMENT SERVICES, PROGRAMS, AND ACTIVITIES



TITLE II: STATE & LOCAL GOVERNMENT

- “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

42 U.S.C. § 12132





TITLE II: VOTING

- Title II requires state and local governments to ensure that people with disabilities have a **full** and **equal opportunity** to vote.
- Applies to **all** elections, including federal, state, and local elections.
- Applies to **all** aspects of voting, from voter **registration** to the casting of **ballots**.



TITLE II: VOTING

- Voters with disabilities have certain rights under Title II. These include generally to:
 - vote independently and privately in a manner that is equal to that afforded to others;
 - have their polling place be physically accessible and free of barriers;
 - have access to an accessible voting booth;
 - be accompanied by a service animal;
 - be provided auxiliary aids or services necessary to ensure effective communication;
 - be provided reasonable modifications to policies, practices, or procedures;
 - receive assistance/support from a person of their choice or a poll worker.



RELEVANT ADA REQUIREMENTS

In particular, public entities must:

- Ensure that they afford individuals with disabilities an equal opportunity to participate in or benefit from the public entity's aids, benefits, or services. 28 CFR § 35.130(b)(1)(ii).
- Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, unless it would result in a fundamental alteration or undue administrative or financial burden. 28 CFR § 35.160, 35.164.
- Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. 28 CFR § 35.130(b)(7)(i).



TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- Must take steps to ensure **effective communication** with people who have hearing, vision, or speech disabilities
- In order to be effective, **auxiliary aids and services** must be provided in:
 - accessible formats,
 - a timely manner, and
 - such a way as **to protect the privacy and independence** of the individual with a disability.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- A public entity shall give **primary** consideration to the requests of individuals with disabilities.
- A public entity shall **not** require an individual with a disability to bring another individual to interpret for him or her.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- A public entity need not take any action to ensure effective communication if it can demonstrate that doing so would **fundamentally alter** the nature of the service, program, or activity.
- Not required to take actions that would result in **undue financial and administrative burdens**.
- Decision must be made by the **head** of the public entity or a designee after considering all resources available and must be accompanied by a **written statement** of the reasons for reaching that conclusion.
- Shall take **any other action** that would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

Potential Effective Communication Violations

- Lack of effective communication to a voter who is deaf
- Failure to provide an accessible ballot to a voter who is blind or has vision impairments
- Inaccessible voting systems
 - the machines are unavailable or inoperable, or poll workers cannot operate them





CONCORD, NEW HAMPSHIRE SETTLEMENT AGREEMENT

- Settlement Agreement with the City of Concord, New Hampshire (Feb. 2019)
- Resolves a complaint from a voter who is blind alleging that the city violated Title II by failing to provide the voter with an accessible ballot in a city election.
- Concord will:
 - provide voting machines that are accessible to voters who are blind or visually impaired starting in the November 2019 city election
 - provide training to poll workers on the use of the accessible voting machines
 - develop educational materials regarding availability of machines in city elections.



PALM BEACH COUNTY, FLORIDA SETTLEMENT AGREEMENT

- Settlement Agreement with Palm Beach County Supervisor of Elections (Jan. 2017)
- Resolves complaints from voters alleging that Palm Beach violated Title II and the Help America Vote Act by failing to provide functioning, accessible machine in a federal election.
- The Supervisor of Elections will:
 - provide functioning, accessible voting machines to voters with disabilities in all future federal, state, and local elections
 - train poll workers on the use of the accessible voting machines
 - provide an Election Day response team to troubleshoot problems with the machines
 - provide public education materials to inform voters of use and availability of machines.



TITLE II: VOTING

- Title II applies to the selection of facilities to be used as polling places or vote centers.
- Includes facilities for early voting, in-person absentee voting, same day voter registration centers, and Election Day voting.



TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- **Site Selection:** Governmental entities may not select a site or location of a facility that has the effect of excluding individuals with disabilities from, denies them the benefits of, or otherwise subjects them to discrimination.
- Applies to selection of facilities to be used as polling places.
- Whether a polling place is housed in a **non-governmental** facility (funeral home or church), Title II applies to the public entity's selection and use of the facility as a polling place.
- Legitimate safety requirements necessary for the safe operations of a service, program, or activity may be imposed. But such requirements must be based on actual risks, not mere speculation, stereotypes, or generalizations about individuals with disabilities.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

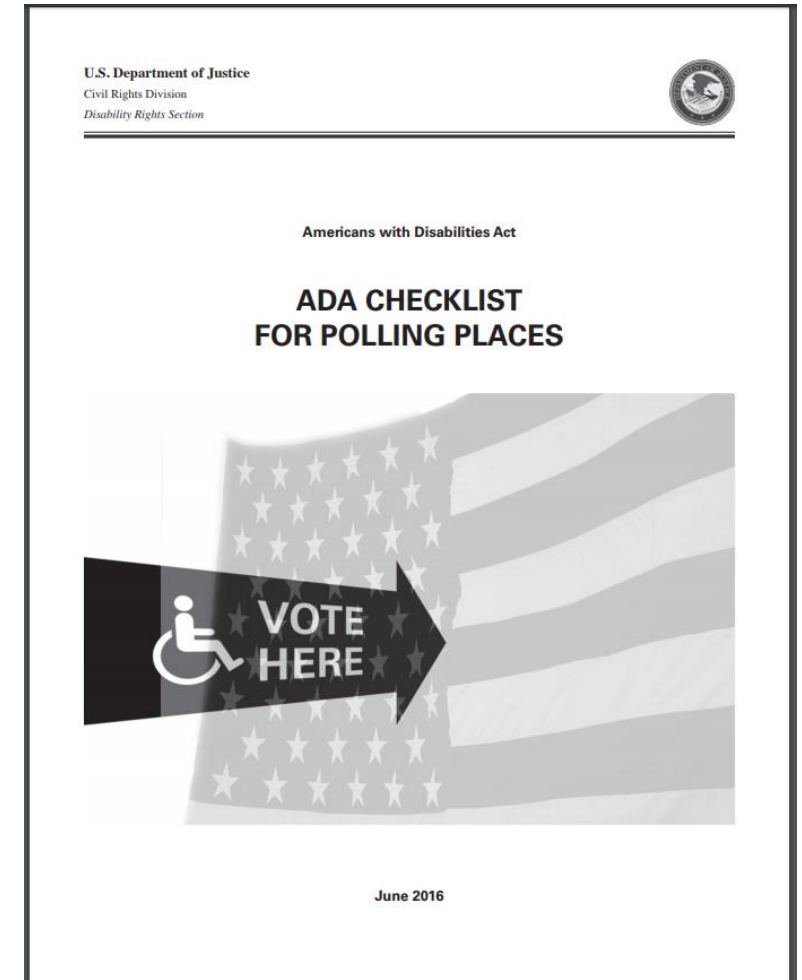
- Governmental entities must administer services, programs, and activities in the **most integrated setting appropriate** to the needs of qualified individuals with disabilities.
- A setting that enables individuals with disabilities to interact with non-disabled persons **to the fullest extent possible**.



TITLE II: STATE & LOCAL GOVERNMENT

HOW TO MAKE POLLING PLACES ACCESSIBLE

- **“ADA Checklist for Polling Places”**
- A guide and checklist for conducting accessibility surveys of polling places.
- Explains the standards that apply to polling places and guidance on how to conduct the surveys.
- <https://www.ada.gov/votingchecklist.pdf>





TITLE II: STATE & LOCAL GOVERNMENT COMMON PROBLEMS

- **“Solutions for Five Common ADA Access Problems at Polling Places”**
- A description of common accessibility problems found at polling places and potential temporary solutions to fix the problems during elections.
- https://www.ada.gov/ada_voting/voting_solutions_ta/polling_place_solutions.pdf

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SOLUTIONS FOR FIVE COMMON ADA ACCESS PROBLEMS AT POLLING PLACES

Voting is one of our nation's most fundamental rights and a hallmark of our democracy. Voting in-person on Election Day is the way most Americans cast their ballot and vote, but for far too long, many voters with disabilities who use wheelchairs or other mobility devices have had difficulties getting inside polling places to vote because of architectural barriers. Title II of the Americans with Disabilities Act (ADA) requires public entities to ensure that people with disabilities can access and use their voting facilities.

This publication provides a brief discussion of physical barriers to access in five commonly found areas at polling places: parking, sidewalks and walkways, building entrances, interior hallways, and the voting area itself. It is intended to assist election officials to meet their ADA obligation to provide polling places that are accessible to and usable by individuals with disabilities. To provide access to the polling place, a route into and through the polling place must be accessible to voters with disabilities. This accessible route should connect each area, from parking to the voting area and back again and should be the same route all voters take. If this is not possible and alternate routes must be used to provide access for voters with disabilities, temporary signs should direct voters to and along these alternate accessible routes.

While locating polling places in accessible facilities makes ADA compliance more likely, there may be times when that is not possible and the use of temporary measures to provide access will be necessary.



Entrance to a polling place with the accessible route shown from parking and drop off areas into the polling place



TITLE II: STATE & LOCAL GOVERNMENT

HOW TO MAKE POLLING PLACES ACCESSIBLE

- Title II covers the elements of a facility necessary to conduct the public entity's voting program.
- Surveying polling places can help to determine if they are or can be made accessible during an election. This includes:
 - Parking
 - Drop-off areas
 - Routes from parking, drop-off areas, public sidewalks, public transportation
 - Building entrances
 - Interior routes to the voting area
 - Voting area



TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- If a polling place has a barrier, is there a remedy for removing or fixing the barrier **temporarily** during an election?
 - If yes, the public entity may use the temporary measure, such as a portable ramp.
 - If no, the public entity may:
 - Fix the barrier with a permanent measure, such as constructing a ramp with the applicable ADA Design Standards, or
 - relocate the polling place to an alternative, accessible facility.



TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- If a public entity cannot select an accessible facility, or one that can be made temporarily accessible, in a particular voting precinct, the public entity may provide an alternative method for voting, such as **curbside voting**, provided the curbside voting system is itself accessible.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- Must make **reasonable modifications** to policies, practices, and procedures where necessary to avoid discrimination
- Unless they can demonstrate that doing so would **fundamentally alter** the nature of the service, program, or activity





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- **Potential Reasonable Modifications Violations:**
 - Poll worker refuses to assist a voter with a disability who requested assistance with navigating to the accessible voting machine or casting her ballot.
 - Refusal to provide a chair to a person with mobility impairments who cannot stand for long periods of time.
 - But the ADA does not require that voters be moved to the front of the line.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a **service animal** by an individual with a disability.
- **May ask** an individual with a disability to remove a service animal if:
 - The animal is out of control and the animal's handler does not take effective action to control it; or
 - The animal is not housebroken.
- If service animal properly excluded, public entity must give individual the opportunity to participate without having the service animal on the premises.





TITLE II: STATE & LOCAL GOVERNMENT SPECIFIC OBLIGATIONS

- A public entity shall **not** ask about the nature or extent of a person's disability, but may make **two inquiries**:
(1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform.
- Shall **not** require documentation (e.g., proof of certification or training)
- A public entity generally **may not** make these inquiries about a service animal when it is **readily apparent** that an animal is trained to perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind).





DOJ ADA VOTING INITIATIVE

- During the past four years, the Department has surveyed **more than 2,200 polling places** and increased polling place accessibility in more than **35 jurisdictions**.
- Settlement agreements have focused on issues related to accessible polling places to effective communication, including accessible ballots.
- A hallmark of the ADA Voting Initiative is its **collaboration** with jurisdictions to increase accessibility at polling places.



U.S. v. HARRIS COUNTY, TEXAS

- Harris County is the **third-largest county** in the country (over 3.4 million adults total)
- Over **750 polling places** used in county-wide elections
- In 2016, United States filed a complaint alleging that Harris County denies voters with disabilities an **equal opportunity** to participate in the County's voting programs, services, and activities, including by **failing to select facilities** to be used as polling places that are accessible to people with disabilities.



U.S. v. HARRIS COUNTY, TEXAS

- Examples of alleged barriers at Harris County's polling places:
 - No van accessible parking
 - Ramps with running slopes that greatly exceed the maximum allowed slope for accessibility
 - Steps to voting areas
 - Routes from parking, drop-off areas, public sidewalks, and public transportation with gaps, level changes, and cross slopes that exceed the maximum allowed slope for accessibility
 - Doors with insufficient maneuvering clearance, steep slopes, or inaccessible door hardware



U.S. v. HARRIS COUNTY, TEXAS

- In March 2019, the parties settled. The four-year agreement requires Harris County to:
 - Create written policies, practices and procedures for polling place selection, accessibility surveys, complaint procedures, and curbside voting
 - Provide effective curbside voting
 - Train staff, election judges and poll workers, and contractors
 - Conduct new polling place surveys
 - Implement temporary remedies during each election to make polling places accessible
 - Hire subject matter experts to provide training and technical assistance to the County to help them to comply with their obligations under the agreement

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DRS OVERVIEW

■ Questions or Comments?



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