

## **Accessible Absentee Balloting: It's Not Just the Law, It's the Right Thing to Do**

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### **Absentee Mail Balloting is the Fastest-Growing Method of Voting in America:**

The number of voting-age people in the United States suffering from some type of disability exceeds 35 million, meaning that approximately one out of every seven voters in this country may require voting assistance at the polling place. With an aging population, this number is expected to gain in significance over the next few decades.<sup>1</sup> Despite efforts to provide accessible equipment in the polling place, voter turnout among those suffering from disabilities has remained low. Statistically, “eligible citizens with disabilities were between 4 and 21 percentage points less likely to vote than were eligible citizens without disabilities.”<sup>2</sup>

Within the community of voters with disabilities, the turnout was proven to be lower “among people with visual, mobility, and cognitive impairments, but people with hearing impairments were as likely as people without disabilities to vote. Turnout was also low among those who reported difficulty going outside alone, or difficulty with daily activities inside the home.”<sup>3</sup> When demographic characteristics of age, gender, race/ethnicity and marital status are factored, the adjusted disability gap is close to 12 points in each year.<sup>4</sup>

While there may be several factors that lead to the voting gap of voters with disabilities, a striking factor seems to point to a reduced number of voter registrants within this classification of voters. In fact, voter registration in the United States could rise by 3 million if this gap were eliminated.<sup>5</sup>

At the same time, vote-by-mail laws are growing exponentially within the United States. While some states have opted for all-vote-by-mail, all states have at least some form of absentee voting by mail and, in fact, it has become the fastest-growing method of voting in the United States. For about 90% of the voting population, mail ballots work just fine. For others, however, voting-by-mail presents obstacles that may actually reduce voting participation among the eligible voters that could most benefit from this method of voting.

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<sup>1</sup> Annual Disability Statistical Compendium, Andrew Houtenville and Tony Ruiz, 2012.  
<http://disabilitycompendium.org/compendium-statistics/population-and-prevalence>.

<sup>2</sup> Reducing Obstacles to Voting for People with Disabilities, Lisa Schur, J.D., Ph.D. Associate Professor, Rutgers University.

<sup>3</sup> Disability, Voter Turnout, and Voting Difficulties in the 2012 Elections, Lisa Schur, Meera Adya, and Douglas Kruse. Report to Research Alliance for Accessible Voting and the U.S. Election Assistance Commission, Rutgers University, June 2013.

<sup>4</sup> Ibid.

<sup>5</sup> Reducing Obstacles to Voting for People with Disabilities, Lisa Schur, J.D., Ph.D. Associate Professor, Rutgers University.

### **Brief History of Accessible Voting Laws in the United States:**

Elections have evolved over the years. Since the first election in the United States in 1789, this nation has worked to make voting more inclusive and accessible to all people. These efforts to ensure that each American citizen is able to cast one vote with dignity, independence and privacy led to the enactment of many laws. These include:<sup>6</sup>

**1820-1830** - As states join the union each created a state constitution outlining voter eligibility. Voter rights are extended mostly to white, male property owners.

**1866** – Congress passes the 14<sup>th</sup> Amendment to the Constitution granting voting rights to men age 21 and over.

**1869** – Congress passes the 15<sup>th</sup> Amendment to the Constitution granting all men the right to vote regardless of race, color or former slave status.

**1890** – Many states begin to use secret ballots to ensure privacy of the vote.

**1920** – Congress passes the 19<sup>th</sup> Amendment to the Constitution granting women the right to vote.

**1964** – Congress passes the 24<sup>th</sup> Amendment to the Constitution outlawing the use of poll taxes.

**1965** – Congress passes the Voting Rights Act outlawing obstacles to voting, such as literacy tests and complicated ballot instructions.

**1971** – Congress passes the 26<sup>th</sup> Amendment to the Constitution granting voting rights to anyone 18 years of age or older.

**1975** – Congress expands the Voting Rights Act protecting the rights of people who do not speak or read English.

**1984** – Congress passes the Voting Accessibility for the Elderly and Handicapped Act requiring polling places across the country to be made physically accessible during federal elections.

**1986** – Congress authorizes the UOCAVA Act making it easier for United States Military and Uniformed Services, and other citizens overseas to vote.

**1990** – Congress passes The Americans with Disability Act (ADA) requiring all public entities to make reasonable modifications to rules, policies, or practices to ensure nondiscrimination in the programs, services and activities of state and local governments.

**1993** – Congress passes the National Voter Registration Act increasing the voter registration of Americans with Disabilities by requiring agencies that primarily serve people with disabilities to offer their clients opportunity to register to vote.

**2002** – Congress passes the Help America Vote Act (HAVA) which requires states to make polling places accessible in a manner that provides the same opportunity to people with disabilities for access and participation, as is provided to the non-disabled voters.

In addition to the federal requirements noted above, many states have instituted laws to simplify voting for its citizens. Early voting, absentee/shut-in ballot voting, vote centers, and all-vote-by-mail programs are examples of these type of state initiatives.

### **Continuing Challenges to Voting by People with Disabilities:**

Despite the many modifications and improvements to our voting laws, Americans with disabilities continue to struggle for a way to vote privately and securely. Most of the funds approved to the states through the HAVA program for the purpose of providing voting access to the community of people with disabilities, was used to provide accessible parking as well as the

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<sup>6</sup> <https://www.scholastic.com/teachers/articles/teaching-content/history-voting/>

installation of wheelchair ramps and hand rails at voting places. A great deal of money was expended to provide at least one direct recording electronic voting system in each polling place for people with disabilities. Though meeting the requirements of the law, these systems, for a variety of reasons, are little used by the community of disabled voters. Despite the millions of dollars spent on such improvements, only 76% of voters with disabilities have reported that it was very easy to vote. This is over 10% lower than the 86.4% of voters without disabilities responding in the affirmative to the same question.<sup>7</sup>

As mentioned, several states have introduced all-vote-by-mail laws allowing every citizen the right to vote from home and mail their completed ballot to the local canvassing authority. All states have some type of mail ballot option for its voting citizens. Those in most need of such services however, including those with visual impairment, are unable to complete the mail ballot process from home without assistance and in private. “Best practices in voting by mail for people with disabilities are clearly the no-excuse and all-vote-by-mail systems. The traditional system requires citizens to provide an excuse for obtaining a mail ballot, and some people with disabilities are reluctant to disclose a disability on a public form.”<sup>8</sup> Ironically, even those states that provide the all-vote-by-mail requirement, still force those least-able to physically go to the polling place in order to cast their ballot privately and without assistance.

Flaws in the accessible aspects of voting have spawned a series of lawsuits in recent years. The litigation, sparked by advocates of the disabled, alleged violations of the Americans with Disabilities Act as voters with disabilities are denied full and equal access to the absentee voting opportunities that non-disabled voters enjoy.<sup>9</sup> The resulting judicial decisions have required several states to adopt accessible voting options made possible through the use of modern technology. As technology improves, more disability advocacy groups are emboldened by their recent courtroom successes and have promised additional litigation in those states that do not provide full and equal access to absentee voting opportunities.

### **Safe, Secure and Easy Solutions Are Provided Through Technology:**

Despite the growth of absentee and all-vote-by-mail programs in the United States, one group of voters is still being left behind. Voters that are blind and disabled generally cannot see or navigate through paper absentee or vote-by-mail ballots independently. Modern voting technology has evolved, however, and on-line voting platforms have revolutionized the voting industry with the introduction of accessible audio on-line information (sample ballots with access on smart devices), accessible audio on-line absentee/vote-by-mail, and accessible audio polling place ballot marking tablets.

These programs allow a voter with any disability to vote from home securely, safely, and in private, without assistance from caregivers or others. The systems deliver accessible election information to voters allowing a voter with any disability, including visual impairment and blindness, to mark their ballot on their own computer, using whatever assistive device (audio-enabled [in multiple languages], tactile switches, closed captioning, sip-and-puff device, screen readers, etc.) that they might otherwise utilize.

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<sup>7</sup> Reducing Obstacles to Voting for People with Disabilities, Lisa Schur, J.D., Ph.D. Associate Professor, Rutgers University.

<sup>8</sup> Reducing Obstacles to Voting for People with Disabilities, Lisa Schur, J.D., Ph.D. Associate Professor, Rutgers University.

<sup>9</sup> Raymond, Laurel, Federal Judge: Ohio’s Absentee Voting System Violates Rights of Blind Residents. May 12, 2016

As Rhode Island's former Deputy Secretary of State overseeing elections, and a long-time member of the Board of Directors of the RI Governor's Commission on Disabilities, I understand that the ability to vote independently from home on a device already familiar to, and used by, the voter, increases participation levels among voters with disabilities and complies with section 508 of the American with Disabilities Act (ADA) and Web Content Accessibility Guidelines (WCAG) 2.0, the most stringent accessibility requirements of the ADA. In fact, a recent election in California demonstrated that voter participation among those with disabilities increased from approximately four users of the accessible electronic voting system provided at the polling place to over 400 users of the accessible mail ballot option.

Further, and equally important, such programs are extremely safe and hosted on secure Clouds.

Perhaps that is why many states, including Washington, California, New Mexico, Ohio, Maryland, Vermont, Florida, and Oregon, have already decided to provide equal access to absentee vote-by-mail ballots for their voters with disabilities.

Accessible Ballots are very affordable, ensure compliance with all federal accessibility laws and give voters equal access to balloting information with privacy and independence. They are a powerful and convenient voter information tool, shorten wait times at polling places and are approved by the US Department of Health and Human Services for HAVA Section 261 funding. More importantly, this technology can be funded through the new round of HAVA funds recently made available to the states.

Perhaps the inclusion of accessible balloting would be a viable option in your state plan submission for the use of HAVA funds as it will provide the best way to expand voter participation, strengthen outreach to the disability community, and comply with all the laws governing accessibility, thereby avoiding costly litigation down the road. Regardless of any present threat of litigation or imposition of legislation, providing equal access to ballot information is simply the right thing to do.

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