



September 9, 2020

Chairman James Clyburn  
Select Subcommittee on the Coronavirus Crisis  
United States House of Representatives  
Washington, DC 20515

Ranking Member Steve Scalise  
Select Subcommittee on the Coronavirus Crisis  
United States House of Representatives  
Washington, DC 20515

**Re: House Select Subcommittee on the Coronavirus Crisis Remote Hearing: “Ensuring a Free, Fair and Safe Election during the Coronavirus Pandemic”**

Dear Chairman Clyburn and Ranking Member Scalise:

On behalf of the National Disability Rights Network (NDRN) and the nationwide network of Protection & Advocacy (P&A) systems, we commend the Select Subcommittee for examining the steps that must be taken to ensure a free, fair, and safe general election during the coronavirus pandemic. We wish to submit this letter for the Subcommittee hearing record.

NDRN is the non-profit membership organization for the federally mandated 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), P&As have a federal mandate to ensure the full participation of individuals with disabilities in the entire electoral process, including registering to vote, casting a ballot, and accessing polling places. PAVA advocates are on the ground in communities and states, providing advice, technical assistance, and training to election officials about voting accessibility for a wide array of disabilities. They also provide outreach, training, and direct representation to individuals with disabilities, and the agencies and organizations that serve them.

**Voters with disabilities remain a large voting bloc in America’s elections.** 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.<sup>1</sup> The Centers for Disease Control and Prevention (CDC)<sup>2</sup> and Pew Research Center believe that number is closer to 25 percent, or one in

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<sup>1</sup> <https://www2.census.gov/library/publications/2012/demo/p70-131.pdf>

<sup>2</sup> <https://www.cdc.gov/media/releases/2018/p0816-disability.html>

four Americans.<sup>3</sup> 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 US, one-sixth of the total American electorate, during the 2016 Election.<sup>4</sup>

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.<sup>5</sup> A quarter or more of American Indians/Alaska Natives and Black adults have a disability.<sup>6</sup> 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 adults with disabilities, under the age of 65 and living in the community.<sup>7</sup>

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.<sup>8</sup> 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 exacerbated by the COVID-19 pandemic.

**Elections administrators must improve access to absentee, vote by mail, and remote voting during the COVID-19 pandemic.** Physical 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. As a result, the primary elections have already seen a rise in applications for and return of absentee and vote by mail ballots. As the US braces for a potential second wave of COVID-19 this fall, there is no reason to expect a decline in remote balloting, and elections administrators must be prepared.

Further, 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 physical 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 necessary to enable in-person voters to properly physical 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.

Elections officials should relax deadlines for absentee ballot applications and return of absentee ballots to accommodate voters who are experiencing increased challenges in meeting these deadlines as COVID-19 continues to change the nature of work schedules, schooling and child care, timelines for postal delivery, and availability of public transit. Given these pandemic-related challenges, elections administrators should also eliminate barriers to accessing absentee and vote by mail ballots, including requirements for doctor notes, notaries, and witnessed signatures. These requirements represent barriers for voters with disabilities in any election year who may not have ready access to doctors or notaries based on limited public transportation and lack of ADA-compliance in places of public

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<sup>3</sup> <https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

<sup>4</sup> <https://smlr.rutgers.edu/news/projecting-number-eligible-voters-disabilities-november-2016-elections-research-report>

<sup>5</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490559/>

<sup>6</sup> <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>

<sup>7</sup> <https://disabilitycompendium.org/annualreport>

<sup>8</sup> <https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

accommodation. In 2020, they pose an additional health risk to voters with disabilities, and particularly 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,<sup>9</sup> 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, like Colorado and Washington. In fact, every state is currently required to have some form of remote ballot marking in place for military and overseas voters, as required by the Military and Overseas Voter Empowerment (MOVE) Act.<sup>10</sup> 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, including vote by mail.<sup>11</sup>

At this time, because it would reduce the number of in-person voters on Election Day, it is important now more than ever to make our vote by mail systems as accessible as possible. Furthermore, 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 polls 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. Additionally, 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.<sup>12</sup>

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

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<sup>9</sup> Print 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.

<sup>10</sup> <https://www.fvap.gov/uploads/FVAP/Policies/moveact.pdf>

<sup>11</sup> [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm)

<sup>12</sup> <https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/>

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.

**In-person, early, and curbside voting remains essential during the 2020 elections.** Until vote by mail and remote voting can be made fully accessible to all eligible voters, in-person voting options must be maintained to the greatest extent possible during the 2020 election cycle. Reducing in-person voting options will inevitably result in fewer polling sites that are fully compliant with the Americans with Disabilities Act (ADA) and create congestion at the polls that hinder effective physical distancing, as we have already witnessed in primary elections held in states like Georgia<sup>13</sup>, Kentucky<sup>14</sup>, and Wisconsin<sup>15</sup>.

Yet, securing voluntary polling locations has been a challenge during a global pandemic, in which many typical polling places have shuttered their doors or restricted visitors to protect staff, customers, or facility residents from exposure to COVID-19. Consequently, early voting has become an even more essential tool to ensure access to the vote for people with disabilities. Early voting periods and polling hours for each day of in-person voting must be extended for several weeks before Election Day to reduce congestion at the polls and allow for physical distancing. Early voting provides the added benefit of allowing voters with disabilities, often considered the most at risk for serious complications with COVID-19, to secure safe transit to and from the polls when it may be available and to avoid “rush hours” at the polls for their own safety.

Polling locations must follow CDC and other federally recommended health guidelines for COVID-19 safety.<sup>16</sup> Polling locations should also be prepared to provide personal protective equipment (PPE), sanitizers, and hand washing stations for personnel and voters. The number of ballot marking devices or other accessible voting stations must also be significantly increased at every polling location. Increasing the number of voting stations available will aid in physical distancing, allow for sanitizing in between uses, and help reduce wait times. With the exception of jurisdictions in which all voters use accessible voting technology to cast their ballots, there are rarely enough accessible voting stations to meet the need and encourage their use by all types of voters that would benefit from the technology. The base standard of one accessible voting station per polling place outlined by HAVA is, and has always been, insufficient to meet the needs of voters.<sup>17</sup>

Critically, voters must also be allowed to vote curbside. Many states already provide curbside voting according to 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 ADA as a temporary measure and may be included in polling place accessibility settlements and memoranda of agreement between the US Department of Justice and individual voting jurisdictions.<sup>18</sup>

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<sup>13</sup> <https://www.npr.org/2020/06/09/873054620/long-lines-voting-machine-issues-plague-georgia-primary>

<sup>14</sup> <https://www.courier-journal.com/story/news/politics/elections/2020/06/23/kentucky-primary-live-updates-voting-throughout-election-day/3237124001/>

<sup>15</sup> <https://www.reuters.com/article/us-usa-election/long-lines-and-frustration-as-wisconsinites-vote-during-coronavirus-pandemic-idUSKBN21P1BG>

<sup>16</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

<sup>17</sup> <https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

<sup>18</sup> [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm)

In light of COVID-19, some states have 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,<sup>19</sup> expanded curbside voting for all voters with or without disabilities in response to concerns of COVID-19 exposure at polling places. Alternatively, holdout states, like Alabama, expressly prohibit voting curbside to the point of forcing litigation to provide this lifesaving measure at the polls.<sup>20</sup>

The ADA is clear that effective curbside voting programs require: “(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.”<sup>21</sup>

Additionally, it is necessary 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.<sup>22</sup> This percentage has slowly but steadily increased to 27 percent in 2008<sup>23</sup> and to 40 percent in 2016<sup>24</sup>. 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.<sup>25</sup> In 2016, the prevalence of accessible voting stations actually fell to a dismal 35 percent – a drop of 19 percentage points in just 2 presidential election cycles.<sup>26</sup> 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.<sup>27</sup> In their 2016 findings, GAO combined architectural access data with voting booth data for the first time and reported only 17 percent of polling places were compliant with federal law and fully accessible for voters with disabilities – fewer than 1 in 5.<sup>28</sup> In this complicated and frightening time, America’s polling places must be made safe for all voters, but they are also required to be accessible for all voters.

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

<sup>20</sup> <https://docs.justia.com/cases/federal/district-courts/alabama/alndce/2:2020cv00619/173742/1>

<sup>21</sup> [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm)

<sup>22</sup> <https://www.gao.gov/new.items/d02107.pdf>

<sup>23</sup> <https://www.gao.gov/assets/300/296294.pdf>

<sup>24</sup> <https://www.gao.gov/assets/690/687556.pdf>

<sup>25</sup> <https://www.gao.gov/assets/300/296294.pdf>

<sup>26</sup> <https://www.gao.gov/assets/690/687556.pdf>

<sup>27</sup> <https://www.gao.gov/assets/690/687556.pdf>

<sup>28</sup> <https://www.gao.gov/assets/690/687556.pdf>

**Elections administrators are making rapid changes to rules and practices around the 2020 elections that will drastically affect how voters interact with the electoral process.** While quick changes to elections administrations during a Presidential election year are less than ideal, it has become a necessity during the pandemic. Elections administrators can and should make many of the changes proposed, even on a short timeline. As such, ample notification must be provided to voters as quickly as decisions are made and must be provided in a broad range of accessible formats to ensure voters are aware of and can interact with essential notifications. Elections administrators must create an extensive and diverse plan for public notification and education. These plans should include: continual updates to websites and social media, press releases, coverage using local television, radio, and print news media, inclusion of accessibility options and any other necessary information in ballot packages mailed to voters, and any options for direct contact of registered voters including postal mail, email, and phone or text notifications.

All web and social media resources must be fully compliant with applicable federal access laws and should generally qualify as meeting the AA standard under the current version of the Web Content Accessibility Guidelines.<sup>29</sup> Any print materials should also be provided in large print, Braille, and electronic format. Public events and announcements conducted in-person or televised should include an American Sign Language interpreter or Communication Access Realtime Translation (commonly referred to as CART transcription). Plain language should be used in all communications to ensure readability for the greatest number of eligible voters.<sup>30</sup>

**Congressional funding is sorely needed to ensure that elections in 2020 are free, fair, safe, and protect the rights of voters with disabilities.** NDRN applauds the passage of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act which provides \$3.6 billion in critical elections funding during our current health crisis. The United States government has an obligation to ensure that tribal nations, 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.

NDRN calls on Congress to work together to pass legislation that will provide robust election funding assistance and address the safety issues raised around voting during this unprecedented time as well as ensuring accessibility for people with disabilities. The civil rights, the health of our voters, as well as the health of our democracy, depends on it. If you have any questions please contact Michelle Bishop, Voter Access & Engagement Manager, at [michelle.bishop@ndrn.org](mailto:michelle.bishop@ndrn.org) or (202) 408-9514.

Sincerely,



Curtis L. Decker  
Executive Director

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<sup>29</sup> <https://www.w3.org/WAI/standards-guidelines/wcag/>

<sup>30</sup> <https://www.plainlanguage.gov/>