

## A Closer Look at Disability Laws and Voting: How Well Do the ADA and Related Laws Protect Voting Rights?

The following summary of the ADA and related laws and how well they protect voting rights for people with disabilities is taken from the article, "Voting Rights under the Americans with Disabilities Act: Are People with Intellectual or Psychiatric Disabilities Protected?" by Michael J. King and Roufeda Ebrahim\* (2007).

### **FEDERAL STATUTES**

#### **Voting Rights Act of 1965, 42 U.S.C. § 1973 et. seq. (amended 1982).**

The 1965 version addressed subtle disenfranchisement based on race and color. The 1982 amendment allowed voters who needed help because of "blindness, disability, or inability to read or write" to get "assistance by a person of the voter's choice ..." The act does not ensure a private or independent ballot and did not address the physical accessibility of the polling place.

#### **Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C. § 1973 et. seq. (1984).**

An important law designed to "promote the fundamental right to vote by improving access for handicapped and elderly individuals to registration facilities and polling places for Federal elections." The statute, however, only applies to federal elections, and allows states to define "accessibility."

#### **Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq. (1990).**

This broad antidiscrimination law has had limited success in addressing access to the polls. Many commentators cite lack of enforcement as a problem. It required that "reasonable modifications to rules, policies, and practices" be made so as to prevent disability-based discrimination. However, public polling locations, such as schools and churches, still remain inaccessible. Others suggest ineffective Federal Election Commission guidance on implementing the ADA.

#### **Help America Vote Act of 2002, 42 U.S.C. § 15301 et. seq. (2002).**

After the 2000 presidential election, Congress passed this election reform statute requiring every polling place to have at least one accessible voting machine by

2006, “in a manner that provides the same opportunity for access and participation ... as for other voters.”

Instead of abolishing the stigma-based denial of voting rights for persons with intellectual or psychiatric impairments, these statutes largely address physical and programmatic access. Because Congress has recognized the fundamental right of people with physical disabilities to vote, Schriener and Ochs argue that congressional silence with regards to the rights of people with intellectual or psychiatric disabilities must be intentional.<sup>1</sup> They add that the only other group of Americans who face such disenfranchisement are convicted felons.<sup>2</sup>

Most recent challenges of voting discrimination on the basis of disability have been pursued under the ADA.<sup>3</sup> Although the right to vote is not mentioned specifically in the ADA as a “service, program, or activity” provided by a Title II entity, courts uniformly have held voting is a “covered activity pursuant to Title II.”<sup>4</sup> The voting “services, programs, or activities” offered by state and local government, when viewed in their entirety, must be readily accessible to and usable by people with disabilities, unless this would result in a fundamental alteration or cause an undue financial administrative burden.<sup>5</sup>

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<sup>1</sup> Schriener & Ochs, supra note **Error! Bookmark not defined.**, at 4.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> Waterstone, supra note **Error! Bookmark not defined.**, at 831.

<sup>4</sup> 42 U.S.C. 12101(a)(3) (2000) (“Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.”).

<sup>5</sup> 28 C.F.R. § 35.150(a) (2004).