

# Voting Rights For People With Disabilities

A Handbook For Change

ALABAMA DISABILITIES

**AD  
AP**

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# Table of Contents

I. Introduction.....	3
II. Federal Laws protect the Rights of People Who Are Elderly or Who Have Disabilities.....	3
1. The Americans With Disabilities Act.....	3-4
2. Voting Accessibility for the Elderly and Handicapped Act.....	4
3. Help America Vote Act.....	4
4. Disability Provisions of HAVA.....	4
III. What Is Required in an Accessible Polling Place.....	5
IV. Legal Requirements of Accessibility.....	5
V. Disability Awareness.....	8
VI. Litigation Regarding Voter Access.....	9-10
VII. Rhode Island: First State to Make All of its Voting Places Mobility Accessible.....	11



## About ADAP:

The Alabama Disabilities Advocacy Program (ADAP) is Alabama’s federally funded protection and advocacy agency for persons with disabilities. ADAP’s mission is to respond to violations of the rights of persons with disabilities. Housed within the University of Alabama School of Law, ADAP employs a team of advocates, social workers and attorneys to protect and expand the rights of Alabamians with disabilities through legally based advocacy services. ADAP is guided in this work by its vision of a society where persons with disabilities are valued, exercise self-determination through meaningful choices, and have equality of opportunity.



## About Our Director:

Reuben W. Cook has been Director of the Alabama Disabilities Advocacy Program for over thirteen years, and has been employed at ADAP for over 16 years. He holds the following degrees: B.S. in Accounting (University of Alabama), J.D. (University of Alabama), and LL.M. (Emory University). Mr. Cook is a member of the Alabama State Bar and an inactive member of the Georgia and Florida Bars.

# Voting Rights For People With Disabilities

## Voting Accessibility for People Who Are Elderly or People Who Have Disabilities

### I. Introduction

People who are elderly and people with disabilities have faced many different barriers throughout history that interfere with their fundamental right to vote. Alabama recognized the needs of these individuals and passed legislation in an attempt to ensure that all barriers were removed to allow every qualified voter the opportunity to vote.<sup>1</sup>

Many people who are elderly or who have disabilities may not participate in the voting process because of their reluctance to ask for help. Many people with disabilities may want to avoid the extra attention given, or the embarrassing situations that can occur when strangers want to help. Elderly voters and voters with disabilities want to participate in elections, but their participation should be the same as other voters—free of any barriers that fail to allow them to vote independently and confidentially.

Alabama has approximately 945,705 residents with disabilities, comprising 23.2% of the total population.<sup>2</sup> The estimated number of qualified voters who are elderly or who have disabilities that actually voted in the 2000 election was 348, 566.<sup>3</sup> This number comprises 40% of the total population. Taking into account that 58% of all registered voters in Alabama voted in the November 5, 2002 general election, it appears that people with disabilities want to vote.<sup>4</sup>

### II. Federal Laws Protect the Rights of People Who are Elderly or Who Have Disabilities

#### 1. The Americans With Disabilities Act of 1990

The Americans With Disabilities Act of 1990 (ADA) prohibits discrimination against qualified people with disabilities. The law guarantees access to programs and services run by the state and local governments. The ADA is comprised of five sections or “titles” that cover different aspects of non-discrimination.

- **Title I** covers private sector employment
- **Title II** covers state and local government programs, activities, services, and employment
- **Title III** covers private businesses and nonprofit service organizations (public accommodations & commercial facilities)



<sup>1</sup> Ala. Code § 21-4-20 et. seq. The article was enacted in 1985 to ensure the fundamental right to vote by requiring registration and polling places for state elections to be readily accessible for people that are elderly and for people that have disabilities.

<sup>2</sup> Census Bureau Report on voting statistics during the 2000 election.

<sup>3</sup> Id.

<sup>4</sup> Primary/Primary Run-Off/General Election Statistics-State of Alabama, Elections Division, Office of the Secretary of state, State of Alabama.

Many private clubs and religious organizations are exempt from providing access to the public. However, if a religious organization or private club is involved in an event that is open to the public, or is providing services to a branch of local, state or federal government, then ADA compliance is required.

## 2. Voting Accessibility for the Elderly and Handicapped Act of 1984

The Voting Accessibility for the Elderly and Handicapped Act of 1984 generally requires polling places across the United States to be physically accessible to people with disabilities for federal elections. Where no accessible location is available to serve as a polling place, there must be an alternate means of casting a ballot on the day of the election. This law also requires states to make available registration and voting aids for voters who have a disability or who are elderly, including information by telecommunications devices for the deaf (TDDs) which are also known as teletypewriters (TTYs).



## 3. Help America Vote Act of 2002

With the enactment of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545, people who are elderly or who have disabilities are now entitled to even more protection and inclusion in the election process.

## 4. Disability Provisions of HAVA

HAVA promises to improve voting access to people that are elderly or who have disabilities by:

- Making accessibility grants available to states and local government to improve physical and non-visual access to polling places.
- Creating minimum standards for accessibility of voting systems that states must follow.
- Mandating that states include people with disabilities on the creation of a State Plan for compliance with the Act's requirements; and
- Providing for funding for research on accessible voting technology.



### III. What Is Required In An Accessible Polling Place?

What does accessible mean?

- Voters that are elderly or who have disabilities have the right to full participation in elections. They have the right to vote independently and confidentially. They also have the right to be treated with dignity and respect in all aspects of the voting process.
- No registered voter should be denied the right to vote solely on the basis of physical or mental disability.
- No polling place in Alabama should be inaccessible to voters who are elderly or who have mental or physical disabilities.



### IV. Legal Requirements of Accessibility

People who are elderly or people with disabilities should have the same opportunity to full access and full participation in the voting process, including privacy and independence. If a voter cannot get into the polling place, the voter does not have the same opportunity as other voters. Access must be provided on a permanent or temporary basis on the day of the election. Further, if election workers treat a person with a disability in a discriminatory manner, then accessibility of the polling facility can be called into question.

#### 1. Building Access:

**Parking:** Accessible spaces should be clearly marked. They should be located on level ground at the shortest distance to the accessible entrance to the voting facility. The number of spaces should be no less than 4% of the total number of spaces. If the facility houses other businesses on election day, the accessible spaces must be adequate to accommodate voters as well as others.

**Accessible Route:** The path of travel from the parking area to the facility should be a single continuous path that is wide, smooth, as level as possible, without low or overhanging hazards or obstructions, and should not require the use of stairs.

**Signage:** Signage is required to direct the public to the location of accessible parking, passenger drop off points. Signs are needed to direct and identify accessible entrances and should include the international symbol of accessibility in easy to read typefaces, and be large enough to be read from a distance. The word “*Handicapped*” should not be used.



**Curb Ramps:** Curb ramps or “cuts” are needed to overcome level changes created by curbs. A curb ramp that is ADA compliant must have slopes no steeper than 1 in 12. They may have flared sides that slope as steeply as 1 in 10 if the flare is not directly in the pedestrian path of travel, perpendicular to the curb ramp. Many manufacturers now make portable ramps designed for use at temporary events. It is critical that the ramp be designed not to move or shift from frequent use and is securely attached so a person would not tip over or fall out of a wheelchair or scooter. Many civic organizations have constructed temporary ramps for disability groups at no cost.

**Sidewalks:** Since the law requires accessible routes from parking and other areas, both the design and surface condition of the routes are critical. Routes may have several changes of surface material along the way, for example, grass to gravel to asphalt to concrete to brick. Small abrupt level changes often occur at material changes that may pose tripping hazards or obstacles to someone using a wheelchair. All abrupt vertical changes greater than ½ inch should be repaired or, where appropriate, should have small bevels installed to create gradual transitions.

**Natural Surfaces/Ground and Floor Surfaces:** Gravel, grass, crushed stone or other natural surfaces with loose debris can be hazardous to people that use wheelchairs, walkers, or who have an unsteady gait. There are many products available to provide a safe and stable surface over gravel, sand, grass or wet areas. Synthetic matting, interlocking rubber tiles, portable sidewalk material, as well as low profile, perforated plastic mats or non-slip rubber doormats can be used to provide a safe surface for access to the polling place.



**Grates and Grills:** A grate or grille located in the accessible route must not have any openings wider than ½ inch in the direction of pedestrian travel. Openings any larger can catch the tips of crutches, canes, walkers, and wheelchair casters causing the person to fall or a wheelchair to tip.

**Inside the Building:** Signs inside the building should be simple, very clear and easy to read. The lettering (font used) should be simple, large, and in high contrast with the background. Printed instructions should be at least 18-point type. Pictures or symbols help everyone. For people with vision impairments, voting instructions should be in a “close-up” location. The instructions should be placed in an area low enough to read if sitting in a wheelchair. It would be helpful to have a hand-held magnifying glass for elderly voters or voters with vision impairments to use.

**Carpet:** Soft carpets with thick pads or loose weave carpet is a common problem in many buildings. Where large numbers of people with disabilities are expected, and/or where travel distances over soft carpet are long, some accommodation should be made.

**Doors:** Doors must be wide enough for a wheelchair to pass through, with doors that are easy to open and close. Doors should not be less than 32” wide. In some circumstances, double doors with a middle divider can create a barrier. Doors may be temporarily removed, or door hinges can be replaced with offset hinges that provide greater clearance. Doors should be lightweight, and have proper handles so people who have limited strength or use of their hands can enter. If this is a barrier, doors can be propped open, or poll workers can simply open the door for people who need this accommodation.

**Protruding Objects From Walls:** There should be no objects protruding more than 4” from the wall in the pathway of voters. If an exit sign or fire extinguisher is in the path of travel, it could be hazardous to someone who has a visual impairment. A solution could be to place a chair or plant, or other object directly under the protruding object.

**Non-slip Floors:** Floors should be non-slip and area rugs should either be secure or removed.

**Tables and Seating:** Tables used by people using wheelchairs should be at least 29” high, 30” wide and 19” deep (27” under the table to the floor). Forward and side reach limits of people that use wheelchairs can be critical for using voting machines, switches or other controls. There must also be appropriate clear floor space for approach to the table. Seating should be provided for elderly voters or voters that need to sit down to perform any task such as writing. Chairs with high seats and armrests are preferable.



**Information Tables:** These spaces must be accessible, both in the design and in the information provided. A section of the counter or desk should be available that is no higher than 36” and at least 36 “ long so people seated in wheelchairs and people with short stature can get or review information. Workers located at information or check in tables should have a thorough knowledge of accessible features and services and a general sensitivity to disability issues.



**Voting Materials:** Under HAVA, voting systems, voting mechanisms and the physical act of casting votes by voters, both in-person and absentee must be accessible. Accessible means that voters with disabilities have the same opportunity for participation, including privacy and independence as other voters. Voting materials will have to be provided in alternative formats, which may include audiotape explanations of ballot content and instructions on how to cast a ballot or use a voting machine.

## **2. Personal Access:**

Barriers to voting can include the way election workers interact with elderly voters or voters with disabilities. Many people with disabilities assume that voting at a polling place is inaccessible, and may cast absentee ballots to avoid embarrassment. Voters who are elderly or who have disabilities should be encouraged to participate in the voting process in the manner in which they



choose. Since people with disabilities have different individual needs, it is difficult to predict all accommodations that could be provided. Election officials and workers must be educated in order to understand disability and accommodations.

People with disabilities should be viewed in terms of the whole person and not just the disability. Many people will need extra time to move, speak, perform a task, or participate in the voting process. The behavior of some people with developmental or cognitive disabilities may be unsettling to people unfamiliar with these disabilities. People that are elderly or who have disabilities should be treated with the same dignity and respect as all other voters. Alabama Code § 17-22A-16 entitled, “Obstruction, intimidation, etc., of voting rights of others prohibited” states as follows:

It shall be unlawful for any person to obstruct, intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he or she may choose, or for the purpose of causing such other person to vote for, or not to vote for, any candidate for state or local office or any other proposition at any election.



## V. Disability Awareness

**Mobility Disabilities:** This includes people that have permanent disabilities as well as others who may have a temporary condition such as broken bones, illness, trauma or surgery. People who use mobility aids encounter the most obvious access problems including maneuvering through narrow spaces, going up or down steep paths, moving over rough or uneven surfaces, and using toilet facilities. Other people with mobility disabilities may walk with difficulty and be unable to climb stairs, walk for long distances, climb slopes, or stand for long periods of time.

**Visual Disabilities:** This includes people with partial or total vision loss. Some people with a visual disability can distinguish light and dark, sharply contrasting colors, or large print, but cannot read small print, move freely in dimly lit spaces, or tolerate high glare. Many people that are blind depend on their sense of touch and hearing to perceive their environment and communicate with others. People that are blind may use a cane or have a service animal or assistant to facilitate moving about. Problems faced by people with visual disabilities include orientation, receiving written or graphic information, using controls that are not adequately labeled, and avoiding hazardous protruding objects that they cannot detect.

**Hearing Disabilities:** People with hearing disabilities use a variety of methods to communicate. People with partial hearing loss may depend on hearing aids, or as with many people who are elderly, just need a person to speak

clearly and in a loud voice. Many people who are deaf read lips or use sign language. Some people with hearing disabilities may have service animals that communicate sounds that their owner cannot hear.

**Cognitive Disabilities and Other Hidden Conditions:** There are many other people with disabilities that may not be apparent from a person's outward appearance. These disabilities may affect cognitive and/or learning abilities and may affect understanding, communication, or behavior. Election workers should be considerate of all people whether the disability can be seen or not. People with mental or cognitive disabilities have the same constitutional rights as all other voters. Unless a poll worker has proof that a potential voter has been declared incompetent by a court, the voter must be allowed to vote. (The voter can cast a provisional ballot under HAVA). People that accompany voters with mental or cognitive disabilities should be allowed to assist the voter. Voters with cognitive and mental disabilities may need accommodations including: a) an explanation of instructions in simpler language b) a friend or family member to assist them in casting a ballot.

## VI. Litigation Regarding Voter Access

### 1. Physical Access to Facilities and Voting Procedures:



**Pennsylvania:** A recent example of efforts to access the vote include a lawsuit brought by Pennsylvania P&A, Inc. on behalf of people with disabilities in Philadelphia, a city that has one of the lowest rates of accessible polling places in the nation. This low rate of accessibility is compounded by the fact that, even following the attention from the Florida debacle, the city government recently purchased voting machines that cannot be used by many voters with disabilities. The suit is the first of its kind against a city, and it comes after years of frustration for thousands of Philadelphians who are blind, use wheelchairs, or have limited vision or hand control that makes many machines - including the new optical scan machines that Philadelphia is currently purchasing - useless to them. Strangely, a person in a wheelchair might be able to use these machines but not be able to enter the building itself; a blind person, on the other hand, could walk into the building but couldn't use the machines to cast a secret ballot.

**Arkansas:** After filing a class action lawsuit, the parties settled *Verlon McKay, et al v. County Election Commissioners for Puaski County, et al*. In the settlement, the state Board of Election Commissioners agreed to attempt to ensure that all persons with disabilities who are legally eligible to vote in elections in the State of Arkansas may personally and secretly execute their ballots at the polling facility. As a result of this lawsuit, the State Board of Election commissioners delivered to the Disability Rights Center, counsel for the plaintiffs, its 1999 Report on Americans with Disabilities Act (ADA)

Compliance in polling places throughout Arkansas. The Compliance Report demonstrates the current status of polling place and voting policy compliance with the ADA and simplifies monitoring of compliance. The agreement also required that the State deliver annual reports demonstrating substantial compliance by local election officials.

**Texas:** In 1997 a class action lawsuit was filed alleging failure by the state of Texas to ensure accessibility of polling places on election day for voters with physical disabilities and blind voters. At issue was the applicability of the ADA to state voting regulations. The District Court held that (1) Plaintiffs have a constitutional right to a secret ballot; (2) the ADA applies to the state voting regulations; (3) the system in Texas did not comport with the ADA; (4) the system in place discriminates against persons with disabilities; (5) Texas statute and the ADA requires all polling places to be physically accessible; and (6) voters with visual impairments have a right to a secret ballot and to vote on election day at their local precinct. On appeal, the Fifth Circuit held that the Texas Secretary of State was not responsible for Texas counties compliance with the law. The plaintiffs followed with suits against selected counties across the state regarding secret balloting for those with visual impairments and have reached settlements in nearly all of them. Depending on the type of balloting—punch card, machine, etc.— different systems that accommodate persons with visual impairments have been identified by protection and advocacy experts and adopted by the counties. These successful efforts were followed by the enactment of a state law requiring all voting systems purchased anywhere in the state to be accessible to people with physical disabilities.



## [2. Accessibility for People with Mental Disabilities](#)

**New Jersey:** Protection and Advocacy Systems have been in the lead on attempts to ensure access to the election process by people with mental disabilities. For example, New Jersey P&A, Inc. successfully challenged a judge’s decision not to count absentee ballots cast by residents of a psychiatric hospital. In a decision handed down in May of last year, the state appeals court held that “voters who are involuntarily committed residents of a psychiatric hospital...are presumed competent to vote.” The court noted that unless a group challenging the vote can make a “particular showing of incompetence” even people at a psychiatric hospital have a right to participate in the political process. With 2000 people in the four state-run psychiatric hospitals and many more in group homes and private facilities, the ruling is expected to invite greater participation among

people who have been viewed as disconnected from the political process.

**Maine:** The Disability Rights Center is currently challenging a provision in the Maine Constitution that prohibits individuals under guardianship by reason of mental illness from voting. On November 7, 2000, residents of Maine voted to continue its ban on voters with mental illness even though the legislature overwhelmingly voted to remove it. That fall, plaintiffs filed suit on behalf of three Maine residents who are under guardianship because of mental illness. The suit claims violations of: equal protection, due process, the ADA, and the Rehabilitation Act of 1973. A motion for summary judgment has been filed and a decision is awaited.



## VII. Rhode Island: First State to Make All of Its Voting Places Mobility Accessible

### How they did it:

- The process emphasized collaboration between the election administrators and the disability community.
  - A team of state and local election officials and representatives from the diverse disability community jointly designed the entire project and all materials including the inspection checklist.
  - Over 18 months, a team inspected every polling place. The inspection team consisted of one employee of the city or town election office and an access specialist from the disability community.
  - When an inaccessible polling place was identified, the inspection team jointly decided on the solution. If the polling place needed to be moved, the team identified the new site and negotiated with the owner for its use.
- As a result of the cost conscience knowledge of both team members, the average cost to make all the polling places accessible was less than \$400.



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