



July 16, 2021

## **VIA ELECTRONIC SUBMISSION**

National Institute of Standards and Technology (NIST)  
100 Bureau Drive, Mail Stop 8970  
Gaithersburg, MD 20899-8970

### **Request for Information on Promoting Access to Voting**

The Arizona Center for Disability Law (ACDL) appreciates the opportunity to provide comments to inform the National Institute of Standards and Technology's (NIST) development of recommendations to address the barriers preventing people with disabilities from exercising their right to an accessible, private, and independent vote. Voting is a fundamental right and ensuring that the process is accessible for all voters with disabilities through these recommendations is of critical importance.

ACDL is a non-profit law firm that assists Arizonans with disabilities to promote and protect their legal rights to independence, justice, and equality. We envision a society where people with disabilities enjoy full acceptance without barriers. ACDL is also the designated Protection and Advocacy system for Arizonans with disabilities.

As Arizona's Protection and Advocacy system, ACDL is the Protection and Advocacy for Voting Access (PAVA) program for Arizona under a federal grant created by the Help America Vote Act (HAVA). Through our PAVA program, ACDL seeks to ensure that individuals with disabilities can fully participate in the electoral process including registering to vote, casting a vote, and accessing polling sites. ACDL also works to ensure that people with disabilities have the opportunity to privately and independently cast their ballots. ACDL uses a variety of methods to achieve these goals, including voter education, collaboration with self-advocates and organizations serving people with disabilities, and outreach to election officials.

### **Barriers to Voting Access for People with Disabilities in America**

America's electoral system is complex, extremely localized, and operates in an environment of high expectations. Although voting laws in the United States have changed over time and advanced access for all voters, the nation still has a long way to go in order to ensure that all Americans have equal access to the vote.

Voters across the country are still being denied equal access to the ballot box and this includes voters with disabilities. Laws such as the Voting Accessibility for the Elderly and Handicapped

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Act and the Americans with Disabilities Act are in place to protect the rights of people with disabilities and their access to the vote. Despite these laws, jurisdictions, election officials, and policy makers make routine decisions every election cycle, knowingly or unknowingly, that prevent equal access to voting.

## **Barriers People with Disabilities Encounter when Voting**

In Arizona, people with disabilities often experience barriers to registering to vote, casting a private and independent ballot, accessing polling sites, and receiving appropriate assistance at polling sites. As a result of these barriers, people with disabilities in Arizona are often dissuaded from voting or subjected to voter intimidation. The following is a description of the barriers ACDL has seen voters with disabilities encounter in Arizona:

- **Inaccessible Vote by Mail Election Materials.** Voters who are blind or have visual impairments are not provided accessible vote by mail ballots in Arizona. While Arizona has had a long history of early voting by mail, and a high percentage of voters in Arizona participate in early voting by mail, paper ballots mailed to voters with visual disabilities do not provide for the ability to utilize assistive technology, such as screen readers, to allow the person to vote privately and independently. As a result, blind and low vision voters who wish to participate in early voting by mail must rely on the assistance of others to read the ballot and mark the ballot as instructed by the voter, hoping that the assistant marked the ballot in accordance with the voter's wishes. Additionally, informational materials and other election materials are often not written in plain language, making the written information much more difficult to access and understand for persons who may have intellectual or developmental disabilities.
- **Inaccessible Election Websites.** Several jurisdictions throughout Arizona do not have websites providing voting information that are accessible for people with disabilities, and often the websites lack resources and information for accessibility needs in the electoral process. For example, election websites in a number of jurisdictions do not provide any voter information in American Sign Language (ASL) for voters who are Deaf. ASL and written English are completely different languages, and election websites with information only in written English are barriers for people who are Deaf and rely on ASL to access important voter information. Election websites in Arizona are also often inaccessible to people who are blind and low vision because the websites are designed in a way that is incompatible with screen reader and text-to-speech software. Additionally, election websites for a number of jurisdictions do not provide information to voters with disabilities about critical voter access issues, such as requesting alternative format materials or reasonable accommodations in the voting process.
- **Problems with Accessible Voting Equipment.** One of the most prevalent barriers for Arizona voters with disabilities is the fact that accessible voting machines at polling locations are very often not turned on and kept operational for the duration of the election day. Sometimes accessible voting machines may not even be plugged in. This is a significant barrier because voters with disabilities who need to use the accessible voting machine to vote are then subjected to longer wait times for poll workers to turn on the machines and prepare them for use, resulting in voters with disabilities being dissuaded or intimidated from even attempting to vote. This barrier is made more urgent by the recent U.S. Supreme Court decision upholding Arizona's law requiring that votes cast in

the wrong precinct not be counted. If a voter with a disability lives in a county with the precinct based voting system, and the voter is unable to use an accessible voting machine, this voter would not have the option of going to an alternate polling location and have their vote count.

- **Poll Worker Training & Proficiency Issues.** Due to a lack of training and attention to voter access, many poll workers are not proficient on the operation of accessible voting equipment, including poll workers who do not even know how to turn on the accessible voting machines. This issue often dissuades persons with disabilities from voting for fear of not receiving assistance or instruction on voting using accessible voting machines. Arizona's ban on counting votes cast in the wrong precinct all also makes this barrier more urgent because voters with disabilities would not have the option to vote in a different precinct if poll workers in the voter's home precinct cannot operate the accessible voting machines.
- **Lack of Disability Etiquette.** Disability etiquette is a very important issue to allow persons with disabilities to experience the same level of dignity as those without disabilities. Poll workers in Arizona do not receive adequate training on disability etiquette, which often results in voters with disabilities feeling intimidated. One example that came to ACDL's attention was the case of a poll worker walking through the line at a polling location shouting "handicaps to the front." Language like this has a very stigmatizing effect on persons with disabilities, and can have the effect of intimidating voters with disabilities from even requesting needed accommodations in the voting process.
- **Limited Voting Options.** Although election officials in Arizona are allowed to offer additional voting options, such as special election boards which are bi-partisan teams sent to bring ballots to the location of a person with a disability where needed to allow them to vote, election officials may limit additional voting options within their jurisdiction. As a result, voting options that could provide greater access to voters with disabilities are often limited by jurisdiction, and at times, unlawful restrictions.
- **People in Congregate Settings are Denied the Ability to Access the Electoral Process.** While many individuals with disabilities live independently, others reside in congregate settings in the community (such as group homes), and in other facilities such as nursing homes and residential behavioral health treatment facilities. ACDL has worked with the Arizona Division of Developmental Disabilities as part of our efforts to ensure that residents of developmental disability group homes have access to the electoral process, including registering to vote and casting a private and independent ballot. However, there is a continued need for improved outreach and assistance to voters with physical or behavioral health disabilities who reside in licensed congregate settings. This outreach could be done through the Arizona Department of Health Services, which licenses congregate settings. The Arizona Health Care Cost Containment System (AHCCCS), which is Arizona's Medicaid system, could also conduct this type of voter outreach for residents in contracted congregate settings. Additional efforts also need to be undertaken at the State level to collaborate with County and local election officials to ensure that all eligible voters residing in congregate settings are able to access the electoral process.

- **Guardianship Issues.** In Arizona, there is the option during guardianship proceedings to request a limited guardianship that allows the person with a disability to retain their voting rights. However, persons with disabilities going through a guardianship proceeding must affirmatively request that they retain their right to vote. Although the burden of proving an individual's lack of capacity is on the State and/or individual petitioning for guardianship, the person with a disability has the burden of proving by clear and convincing evidence that they retain sufficient understanding to exercise the right to vote. As a result, persons under guardianship are denied their voting rights by default, unless they provide affirmative proof that they should be allowed to vote.
- **Lack of Commitment.** Many barriers to voting that people with disabilities encounter can be addressed, but addressing such barriers requires investments of additional resources to ensure equal access for voters with disabilities, and a strong commitment by Arizona's election officials at each level of election administration. Most jurisdictions in Arizona have not seen the required level of investment that displays a strong commitment to removing barriers experienced by voters with disabilities.

### **Barriers to Accessible Voting in Native American Nations**

There are currently 22 federally recognized Native American Nations in Arizona<sup>1</sup>, each with its own sovereignty. As a result, there are a number of barriers to accessible voting unique to the Native American Nations within Arizona. The following is a description of some of the issues ACDL is aware of regarding voting access for people with disabilities in Native American Nations.

- **Intergovernmental Coordination.** Native American Nations hold Federal, State, County and Tribal elections on their land. State and County election officials often do not adequately coordinate with Tribal governments to ensure that Native Americans with disabilities have access to the electoral process. The coordination often consists of State and County election officials attempting to dictate to Tribal governments the required steps to ensure accessible elections. Improvements are needed to ensure that State and County election officials collaborate appropriately with Tribal officials, while giving appropriate respect to Tribal sovereignty and the relevant cultural and historical framework. Better collaboration can be accomplished by listening to election officials within Tribal governments, addressing the concerns of Tribal election officials, and working together to find solutions that promote voter access.
- **Infrastructure.** Many Native American Nations are located in very rural areas of Arizona that may lack the adequate infrastructure to assist voters with disabilities in reaching polling locations, or to have access to vote by mail. Due to resource availability and sometimes cultural reasons, roads are often not paved, and can become impassable during storms. Such conditions often make it difficult or impossible for voters with disabilities to reach polling locations. Residents also may not have a physical street address, and multiple families may share the same PO Box. As a result, voting by mail is also not a readily available option for some voters with disabilities. Additionally, voters

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<sup>1</sup> Federally Recognized Tribes in Arizona, University of Arizona, <https://statemuseum.arizona.edu/programs/american-indian-relations/tribes-arizona>, last accessed on July 13, 2021.

with disabilities may have to travel long distances to reach polling locations for in-person voting, or to the closest post office for voting by mail. Lastly, lack of access to reliable internet may also impact the ability of voters with disabilities in Native American Nations to find their polling locations or look up other important voting information online.

- **Polling Location Accessibility.** Polling locations located in Native American Nations are not always accessible for all elections. The lack of adequate resources can cause issues with physical access at polling locations. There can also be other issues related to polling location accessibility as a result of the Americans with Disabilities Act physical accessibility requirements generally not applying to Native American Nations. However, elections on Tribal lands can be made more accessible for persons with disabilities through the provision of appropriate reasonable accommodations to policies and procedures in voting (e.g., curbside voting), even in locations where physical access continues to pose a barrier. These issues can also be addressed through a more collaborative relationship between State, County, and Tribal election officials.

## **Voting Access for People with Disabilities in America**

Despite the voting barriers that exist in America today, people with disabilities cannot and will not be scared off from the ballot box. As the U.S. continues to strive for full realization of equal access, disability advocates applaud the systems and practices that already exist to enable voters with disabilities to mark, verify, and cast their vote privately and independently.

### **ACDL's Work to Help Ensure Access to a Private and Independent Vote**

ACDL conducts voter education events, collaborates with self-advocates and other disability advocacy organizations, and works with election officials to promote access to a private and independent vote for persons with disabilities. The following describes some of the recent work ACDL has done to promote voter access for people with disabilities in Arizona:

- **Voter Education Video Project.** To improve access to the electoral process for persons with disabilities, ACDL partnered with various organizations and individuals to produce three voter education videos. The videos provided information regarding voting options, why voting is important, and provided viewers with a demonstration of Maricopa County's new accessible voting equipment. The Voter Education Video Project was a collaboration between ACDL, community self-advocates, Youth Action Council of Arizona, Southwest Institute for Families and Children, Self Advocates Becoming Empowered (SABE), People First of Arizona, Southern Arizona Association for the Visually Impaired, and the Maricopa County Recorder's Office and Elections Department. The voter education videos were made publicly available on ACDL's and its partners' websites, and information concerning the videos and where to access them was distributed to a variety of stakeholders to amplify the impact of the voter education videos.
- **Voter Education Trainings.** As part of ACDL's efforts to provide statewide voting rights trainings to Arizonans with disabilities, we work in collaboration with several disability organizations to conduct a number of in-person and virtual trainings on voting rights. The trainings and curriculums were designed and implemented to meet the needs of

various disability stakeholder groups, including persons with intellectual/developmental disabilities. Some of the organizations ACDL partnered with to provide voter rights trainings included the Arizona Statewide Independent Living Council (SILC) and the Youth Leadership Forum. Due to the COVID-19 pandemic, the trainings were primarily conducted through a virtual platform, with American Sign Language and Closed Captioning provided.

- **Voting Rights Collaboration with other Disability Organizations.** ACDL collaborates with several disability organizations in Arizona to improve access to the electoral process for persons with disabilities. These activities include: a Virtual Voter Registration Drive Project, activities around National Voter Registration Day and National Disability Voter Registration Week, hosting Disability Roundtables with the Maricopa County Recorder's/Elections Department, a Voter Education Video Project, and Voter Education Trainings for voters with disabilities and the general public. ACDL also is a member of the Arizona Disability Voter Coalition, in which we collaborate with various State agencies, self-advocates, stakeholders, and service providers to advocate for full participation in the electoral process. Additionally, ACDL works with an organization called Self Advocates Being Empowered to conduct post-election voter experience surveys to gain a better understanding of voter access issues facing the disability community.
- **Working with Election Officials.** Maricopa County is home to more than 2.5 million registered voters. Based on federal data, there are more than 500,000 persons with disabilities who are eligible to vote in the County. ACDL has worked extensively with the Maricopa County Recorder's and Elections Department (MCRO/ED) through a Disability Roundtable project, which is aimed at improving access to the electoral process for persons with disabilities in Maricopa County. ACDL and the MRCO/ED co-hosted Disability Roundtable events to facilitate discussion with, and provide feedback to, Maricopa County election officials concerning the needs and concerns of voters with disabilities. MCRO/ED also provided information relevant to voters with disabilities in attendance, in preparation for the 2020 Primary and General Election. At the first Disability Roundtable event, MCRO/ED provided an overview of Arizona's new election laws and the impact of these laws on voters with disabilities. At the second Disability Roundtable event, MCRO/ED provided the disability community with in-depth information on their expanded voting options during the COVID-19 pandemic. The election officials also updated the disability community regarding their efforts to ensure a safe in-person voting experience on Election Day. ACDL has also worked extensively with other election officials in Arizona since the 2020 election, including meeting with the newly-elected Pima County Recorder to discuss the needs of voters with disabilities in the County, and speaking to the staff of the newly-elected Maricopa County Recorder to continue discussion regarding the needs of voters with disabilities.
- ACDL has also submitted comments to the Arizona Secretary of State (the chief election official in Arizona) regarding proposed revisions addressing the needs of voters with disabilities in the Arizona Election Procedures Manual. ACDL further participates regularly in the Arizona Secretary of State's Office Election Officer Certification Training process, and provided a training on ADA requirements for polling places and the election

process for local election officers in Arizona.

## **Recommendations to Improve Voting Access for People with Disabilities in America**

People with disabilities have overcome tremendous odds to participate in elections, but they simply should not have to. Moving forward, America must better address the barriers voters with disabilities encounter while voting. To promote access, jurisdictions, election officials and policy makers must include people with disabilities in the planning process, combining election officials' expertise in administering elections with disability advocates' expertise in providing access.

### **RECOMMENDATIONS TO PROMOTE ACCESS TO VOTERS WITH DISABILITIES**

- *Prioritize disability rights at the forefront to ensure policies and systems enable voters with disabilities to vote privately and interpedently and include people with disabilities in decision making processes.*
- *Promote campaigns to educate voters with disabilities about their right to a private and independent vote and what options are available to them.*
- *Invest in training of election officials and poll workers to ensure they are advocating for and protecting the rights of voters with disabilities.*
- *Increase the number of accessible voting systems/equipment at polling places.*
- *Increase the accessibility of current vote by mail systems, including allowing all voters to vote by mail and offering electronic remote balloting.*
- *Increase options for voters, including online, automatic, and/or same day voter registration, early voting, curbside voting, and ballot drop boxes.*
- *Establish an Office of Accessibility within the Election Assistance Commission to support and oversee state efforts to expand voter accessibility and serve as a resource for advocates and voters.*
- *Create a national resource center on accessible voting to conduct cultural competency trainings for election officials and poll workers to create truly accessible voting systems.*

### **Conclusion**

ACDL applauds NIST for requesting information from the public on ways to promote access to voting in America for people with disabilities. The barriers voters with disabilities face every election cycle are long overdue to be addressed and any and all recommendations must actively include the voices of the disability community in order to be successful and equitable.

Practical solutions, including temporary fixes, to many of the barriers facing voters with disabilities already exist, but America must first begin prioritizing voters with disabilities. NIST's recommendations have the opportunity to truly protect the rights of people with disabilities, but to be successful, the recommendations must actively include access and voters with

disabilities.

People with disabilities will not be overlooked or forgotten and will continue to have their voices heard on Election Day. They cannot and will not be scared off from the ballot box as the U.S. strives for full realization of equal access.

Thank you for the opportunity to comment on promoting access to voting. If you have any questions, please contact J.J. Rico at [jrico@azdisabilitylaw.org](mailto:jrico@azdisabilitylaw.org) or 520-327-9547.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.J. Rico', with a stylized flourish at the end.

J.J. Rico  
Chief Executive Officer  
Arizona Center for Disability Law