



ARTICLE

Contemporary Voting Rights Controversies Through the Lens of Disability

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Abstract. People with disabilities are the ticking time bomb of the electorate. An estimated thirty to thirty-five percent of all voters in the next twenty-five years will need some form of accommodation. Despite the significant and growing population of voters with disabilities, they do not vote in proportion to their numbers. We can consider voters with disabilities as “the canaries in the coal mine,” the people who are an advance warning of the structural difficulties in voting not just for themselves, but also for the system as a whole. Solving problems in voting for people with disabilities will strengthen the entire system and will help improve the voting process for everyone, especially people from disempowered communities. Furthermore, although election law scholars have largely ignored the unique voting problems confronting voters with disabilities, virtually every major voting controversy in contemporary American electoral politics directly implicates issues of disability.

This Article examines the state of disability access to voting in the lead-up to the 2016 election, revealing an electoral problem that has been lurking in the background for far too long. Current debates about access to voting and voter restrictions often ignore the current legal landscape’s disparate effect on those with disabilities. The insights in this Article offer another angle of intervention toward ameliorating the problems in the voting process for disempowered individuals. This call for reform is timely in light of the upcoming presidential election. We tend to think of problems of voting and disability, if we think of them at all, as classic issues of physical access. But in fact, the contemporary problems with respect to voting that preoccupy election lawyers are also heavily implicated by disability and, moreover, are central to the inquiry. This Article reveals those hidden disability implications of our contemporary election law problems.

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Introduction

People with disabilities are the ticking time bomb of the electorate. A group comprising fifty-six million people and counting, it includes people with various types of impairments, from wheelchair users to elderly people with dementia to blind people.¹ An estimated thirty to thirty-five percent of all voters in the next twenty-five years will need some form of accommodation.² Every person is vulnerable to falling into this category, and nearly one in five of us will before we die.³

Despite the significant and growing population of voters with disabilities, they do not vote in proportion to their numbers; surveys indicate that potential voters with disabilities are up to twenty-one percentage points less likely to vote than potential voters without disabilities.⁴ We are missing about three million voters with disabilities because of this participation gap.⁵

We can consider voters with disabilities as the metaphorical “canaries in the coal mine,”⁶ the people who are an advance warning of the structural difficulties in voting not just for themselves, but also for the system as a whole. Solving problems in voting for people with disabilities will strengthen the entire system and will help improve the voting process for everyone, especially people from disempowered communities. Furthermore, although election law scholars have largely ignored the unique voting problems confronting voters with disabilities, virtually every major voting controversy in contemporary American electoral politics directly implicates issues of disability.

This Article examines the state of disability access to voting in the lead-up to the 2016 election, revealing an electoral problem that has been lurking in

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1. Press Release, U.S. Census Bureau, CB12-134, Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports (July 25, 2012), <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>.
 2. *Election Commission Spotlights Progress on Accessible Voting Technologies*, PARALYZED VETERANS AM., <http://www.pva.org/site/apps/nlnet/content2.aspx?c=ajIRK9NJLcJ2E&b=6350111&ct=14751285> (last visited June 6, 2016).
 3. See Press Release, U.S. Census Bureau, *supra* note 1.
 4. LISA SCHUR, REDUCING OBSTACLES TO VOTING FOR PEOPLE WITH DISABILITIES 1 (2013), https://www.supportthevoter.gov/files/2013/08/Disability-and-Voting-White-Paper-for-Presidential-Commission-Schur.docx_.pdf.
 5. Lisa Schur et al., *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 14 ELECTION L.J. 60, 61 (2015).
 6. LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 11 (2002).

the background for far too long.⁷ Current debates about access to voting and voter restrictions often ignore the current legal landscape's disparate effect on those with disabilities. The insights in this Article offer another angle of intervention toward ameliorating the problems in the voting process for disempowered individuals. This call for reform is timely in light of the upcoming presidential election. We tend to think of problems of voting and disability, if we think of them at all, as classic issues of physical access. But in fact, the contemporary problems with respect to voting that preoccupy election lawyers are also heavily implicated by disability and, moreover, are central to the inquiry. This Article reveals those hidden disability implications of our contemporary election law problems.

The Article proceeds in Part I by identifying the large number of potential voters with disabilities. Part II identifies the classic barriers to voting that people with disabilities face and the typical statutory remedies that offer potential solutions. Part III then moves outward to address the contemporary pressing problems of election law and highlights the disability implications of these dilemmas. Finally, Part IV uses a unique dataset of state-by-state data about voting and disability to sift through state data on electoral reform to offer potential remedies.

I. Who Are Voters with Disabilities?

Between one out of seven and one out of five voting-age people has a disability.⁸ This proportion is steadily increasing as the population ages. The elderly population is expected to increase to seventy million by 2030.⁹ People over the age of eighty are projected to be the fastest-growing segment of the

7. See SCHUR, *supra* note 4, at 1 (documenting that surveys have found a participation gap since 1992); see also Daniel P. Tokaji, *Responding to Shelby County: A Grand Election Bargain*, 8 HARV. L. & POL'Y REV. 71, 107 (2014).

8. Schur et al., *supra* note 5, at 60 & n.1. This statistic follows the Rehabilitation Act and Americans with Disabilities Act definition of disability as "a physical or mental impairment that substantially limits one or more [of an individual's] major life activities[.], . . . a record of such an impairment[.], or . . . [an individual] being regarded as having such an impairment." 29 U.S.C. § 705(9) (2014); 42 U.S.C. § 12102(1) (2014). This yields a count of thirty-five million people. According to the 2000 census, about fifty million Americans have a disability. See *Profile of Selected Social Characteristics: 2000*, U.S. CENSUS BUREAU, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF3_DP2&prodType=table (last visited June 6, 2016). The census pools together data on different disability categories, such as hearing difficulties, in order to compile that number. *Disability*, U.S. CENSUS BUREAU, <https://www.census.gov/people/disability/methodology/acs.html> (last updated June 9, 2014).

9. Jessica A. Fay, Note, *Elderly Electors Go Postal: Ensuring Absentee Ballot Integrity for Older Voters*, 13 ELDER L.J. 453, 461 (2005).

U.S. population.¹⁰ By 2060, nearly one-third of eligible voters will be elderly.¹¹ By 2050, over forty percent of the elderly will be nonwhite, up from twenty percent in 2010.¹² Thirty-six percent of the elderly population has a disability.¹³

Statistics are one way of looking at an affected populace. But we can think more holistically, through the approach of disability studies. Rather than focus on individual impairments, disability studies concentrates on the social conditions that give rise to the difficulties that people with impairments have to surmount.¹⁴ A person who uses a wheelchair, for instance, has a very different life in a world that addresses her needs with curb cuts and elevators than one that does not. So the impediments that structure our electoral landscape importantly shape the constituency of the disability community and the barriers that they face as political citizens.

Furthermore, another aspect of a holistic approach is to think more broadly about impairment than the legal definition of disability and investigate how lower-level physical impairments affect the experiences of voters and perhaps trigger barriers in the voting process. For example, in addition to those elderly people with a disability that fall under formal statutory definitions, other elderly people may have physical impairments such as mobility issues that make it hard for them to travel or walk unaided. Thus, they may not be able to vote if they have to wait in a long line. Over one million potential voters have a hand or arm impairment that may make it difficult to manipulate a paper or electronic ballot without an accommodation.¹⁵ Over ten million potential voters have a visual impairment that would make it difficult to read small print on a ballot.¹⁶ These potential voters may not be captured by the statutory definitions of disability, yet they have disability problems nonetheless. Thus, the statistic of fifty-six million people with disabilities is just the tip of the iceberg and captures only the people with the most severe impairments. When we look at the voting process, though, people with lower-level impairments may also have

10. Matthew Petruszak, Note, *Thinning the Gray Vote: State Voter Identification Laws and the Nation's Elderly*, 23 ELDER L.J. 227, 234 (2015).

11. *Id.*

12. *Id.* at 234-35.

13. *Id.* at 248.

14. See, e.g., Sagit Mor, *Between Charity, Welfare, and Warfare: A Disability Legal Studies Analysis of Privilege and Neglect in Israeli Disability Policy*, 18 YALE J.L. & HUMAN. 63, 64 (2006).

15. James Dickson, *Universal Right for All but the Blind: Not-So-Secret Ballot*, ELECTIONS TODAY, Winter 2002, at 6, 6; Michael E. Waterstone, Lane, *Fundamental Rights, and Voting*, 56 ALA. L. REV. 793, 827 (2005).

16. Michael Waterstone, *Constitutional and Statutory Voting Rights for People with Disabilities*, 14 STAN. L. & POL'Y REV. 353, 357 (2003).

difficulties. We can use a disability approach to think about those voters as well.

When we look at the statistics, we see that people with disabilities tend to be among the most disempowered of Americans: they are more likely to be black or brown, elderly, female, unemployed, and poor. People with disabilities are a vulnerable component of a number of cross-cutting identity groups that we care about because they are disempowered communities: the elderly, the poor, people of color, women, and veterans. Thus, they have a host of challenges. When we look at those other communities, in order to help everyone within them, it is imperative to also address disability.

II. Typical Disability Problems and Solutions

Data from the Government Accountability Office (GAO) and other sources indicate a wide participation gap between voters with and without disabilities that is slowly decreasing over time but stubbornly remains at present. It is not a surprise, therefore, that more people with disabilities than without think that the United States has a serious problem with voting procedure.¹⁷

Electoral problems are compounded by the fact that election practice is extremely localized. In one federal election there may be over 10,000 election jurisdictions,¹⁸ 1.4 million poll workers, and over 700,000 voting machines.¹⁹ A voter cannot anticipate that the problems she will face at one polling place will be the same as at another. The anticipation of issues, based on prior experience, can create a “chilling effect” for potential voters who may not want to face an inaccessible polling place or hostile poll workers again.²⁰ Thus, previous problems may create future low participation even if these problems are solved, therefore making it all the more crucial to address barriers as quickly as possible.

17. Dickson, *supra* note 15, at 6; Waterstone, *supra* note 16, at 355.

18. Michael Ellement, *Enfranchising Persons with Disabilities: Continuing Problems, an Old Statute, and a New Litigation Strategy*, 39 T. MARSHALL L. REV. 29, 32 (2013).

19. Christina J. Weis, Note, *Why the Help America Vote Act Fails to Help Disabled Americans Vote*, 8 N.Y.U. J. LEGIS. & PUB. POL’Y 421, 445 (2005).

20. See *United Spinal Ass’n v. Bd. of Elections*, 882 F. Supp. 2d 615, 618 (S.D.N.Y. 2012) (quoting a former Voting Rights Coordinator of the Center for Independence of the Disabled, New York as stating that “[t]hese barriers not only impede access in the moment someone is voting, but also cast a chill on people with disabilities’ willingness to participate in future elections and confront the same kind of discriminatory and humiliating treatment”).

A. Voting Barriers

Voters with disabilities have and do face numerous potential barriers to their political participation. These include problems with access to the voting location itself, difficulties with voting technology, and hostile or ignorant electoral officials.²¹ Impediments vary with the type of physical impairment. A person using a wheelchair, for example, may not be able to access a polling place because of an absence of curb cuts. A person who is blind, on the other hand, cannot use a printed ballot without an alternative.

1. Transportation

Transportation is a significant problem for many people with disabilities. Thirty percent of people with disabilities are unable to drive and for that group, their turnout is fifteen to twenty percent lower than average.²² People with disabilities are more likely to live alone, which makes it harder to find another person for a ride. Also, potential voters with disabilities are disproportionately rural, which can mean a long distance between home and the polling place.²³

2. Polling place impediments

In 2000, the GAO surveyed 496 polling places in 100 counties in 33 states.²⁴ No polling places had voting technology for blind voters.²⁵ Forty-one percent of voters with disabilities voted, as compared to fifty-one percent of all potential voters.²⁶ Eighty-four percent of polling places had at least one

21. Voters with mental disabilities face a much more fundamental problem, in that in the majority of states they face possible disenfranchisement based on their mental status. Because this is a very different—and quite significant—problem, it will not be addressed in this Article, except to flag its importance.

22. Lisa Schur et al., *Enabling Democracy: Disability and Voter Turnout*, 55 POL. RES. Q. 167, 172 (2002).

23. See Petruszak, *supra* note 10, at 249-50.

24. U.S. GEN. ACCOUNTING OFFICE, GAO-02-107, VOTERS WITH DISABILITIES: ACCESS TO POLLING PLACES AND ALTERNATIVE VOTING METHODS 3 n.6, 4 (2001), <http://www.gao.gov/assets/240/232882.pdf>.

25. *Id.* at 7.

26. Waterstone, *supra* note 16, at 355 (“A person was included in the survey as someone with a disability if that person [h]as a disability or health problem that prevents him or her from participating fully in work, school, or other activities; or [r]eports having a physical disability, a seeing, hearing, or speech impairment, an emotional or mental disability, or a learning disability; or [c]onsiders himself or herself to have a disability or says that other people would consider him or her to be a person with a disability.” (alterations in original) (quoting 2000 NATIONAL ORGANIZATION ON DISABILITIES/HARRIS SURVEY OF AMERICANS WITH DISABILITIES 3 (2000)).

impediment.²⁷ These impediments included no accessible parking, no curb cuts, and steep ramps.

By 2012, the picture had improved, but not by much. Thirty percent of voters with disabilities had difficulty voting; by contrast, only eight percent of voters without disabilities faced challenges.²⁸ Forty percent of people with disabilities who had not voted in a polling place in the previous ten years said that they expected to encounter difficulties if they tried to vote at a polling place, as compared to one percent of the comparable group of people without disabilities.²⁹

3. Poll workers

Voters in 2012 related multiple anecdotes on how poll workers impeded their ability to vote. An Arizona voter reported that when he or she “asked to use the accessible voting equipment, they were told no, they did not need it.”³⁰ Poll workers told another Arizona voter that they did not know how to use the accessible equipment.³¹ Arizona and Ohio voters were not able to vote privately. A poll worker in Illinois “told the voter she could not have an assistant help her to vote because she did not look like she had a disability.”³² In Michigan, a nonverbal voter with a physical disability was questioned as to his right to vote by poll workers.³³ A survey of Missouri and Tennessee voters with disabilities concluded that the major problems were inaccessible polling places, lack of knowledge by poll workers about accommodations or disabilities, and discomfort among poll workers to help people use accessible technology.³⁴

B. Potential Remedies

Several statutes currently address voting for people with disabilities, either expressly or implicitly. Generally, these statutes are not designed to address

27. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 24, at 7.

28. Lisa Schur, *Reducing Obstacles to Voting for People with Disabilities 4* (Caltech/MIT Voting Tech. Project, Working Paper No. 116, 2013), <http://vote.caltech.edu/sites/default/files/WP%20116.pdf>.

29. *Id.*

30. NAT'L TECH. ASSISTANCE CTR. VOTING & COGNITIVE ACCESS, SELF ADVOCATES BECOMING EMPOWERED, POST 2012 ELECTION DAY REPORT 7 (2013).

31. *Id.*

32. *Id.* at 8.

33. *Id.*

34. PARAQUAD & RESEARCH ALLIANCE FOR ACCESSIBLE VOTING, RAAV POLL WORKER TRAINING PROJECT 2 (2014), <http://www.eac.gov/assets/1/Page/Paraquad%20RAAV%20Final%20Report.docx>.

voting and disability together due to vagueness, underinclusiveness, an absence of minimal federal standards, and a lack of protection for a secret and independent vote.³⁵ The hodgepodge of statutes, and their lack of enforcement, makes it difficult to address problems of voting with a disability. The newest protection, the Help America Vote Act (HAVA), introduces a more robust norm for voting by people with disabilities,³⁶ but it suffers from the same problem of underenforcement because it does not provide for a private right of action. As a result, it is difficult to rely upon statutory protection to vindicate the political rights of people with disabilities.

1. Voting Rights Act of 1965

The Voting Rights Act (VRA) is a landmark act that is targeted at ending racial discrimination in voting.³⁷ The VRA provides that people with disabilities have the right to receive assistance in voting by a person of their choosing. “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice” except for an employer or union representative.³⁸ The VRA is notable for what it does not include. It lists blindness as a disability but not anything else. It is silent on the issues of voting privately and independently and polling place accessibility. It only applies to federal elections and provides very little guidance on what type of assistance to give.

*Shelby County v. Holder*³⁹ invalidated the coverage formula in section 4 of the Voting Rights Act, which calculated which states and localities were covered under section 5 and thus needed prior approval from the Department of Justice (DOJ) before changing their voting laws.⁴⁰ This formula was intended to prevent new racially discriminatory voting laws in areas with a prior history of such practices. The fear by some voting rights advocates is that these racially discriminatory tactics will increase in the wake of the law’s demise.

Racially discriminatory laws will also implicate disability. Thirty-six percent of Americans with disabilities are black and Latino.⁴¹ According to the

35. See Waterstone, *supra* note 16, at 361; Weis, *supra* note 19, at 425.

36. Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (codified as amended at 52 U.S.C. §§ 20901-145 (2014)).

37. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended in scattered sections of 52 U.S.C.).

38. *Id.* § 10508.

39. 133 S. Ct. 2612 (2013).

40. *Id.* at 2618, 2631.

41. JASON R. WOODLAND, AMERICANS WITH DISABILITIES: CURRENT AND FUTURE LONG TERM SERVICES AND SUPPORT 125 (2007).

GAO, black Americans have higher disability rates than whites.⁴² Among adults, the rate of disability by race ranges from 11.6% for Asian Americans to 29.9% for American Indians and Alaska Natives.⁴³ The highest percentages of people with disabilities are found in Southern states,⁴⁴ where there is a legacy of voting challenges.

2. Section 504 of the Rehabilitation Act of 1973

Prior to the enactment of the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973⁴⁵ was the most robust legal defense for the rights of people with disabilities. It prohibits discrimination on the basis of disability by programs run by federal agencies, programs that receive federal financial assistance, and programs that have federal employees or federal contractors.⁴⁶ It defines disability as “a physical or mental impairment that substantially limits one or more [of an individual’s] major life activities[,] . . . a record of such an impairment[,] or . . . [an individual] being regarded as having such an impairment.”⁴⁷ Section 504 generally disallows the exclusion of people with disabilities from activities that receive federal funding.⁴⁸ Federal courts have held, however, that a plaintiff has to allege that a specific election official or specific program or activity receives federal funding;⁴⁹ the mere fact that a state obtains federal money is insufficient for litigation to occur.⁵⁰ Prior to HAVA, however, little federal funding powered state and local elections, and thus the Rehabilitation Act was not a useful vehicle for litigation.⁵¹

42. *Id.*

43. L.A. Wolf & V.A. Campbell, *Racial/Ethnic Disparities in Self-Rated Health Status Among Adults with and Without Disabilities—United States, 2004-2006*, 57 MORBIDITY & MORTALITY WKLY. REP. 1069, 1071 tbl.1 (2008).

44. Press Release, Ctrs. for Disease Control & Prevention, CDC: 53 Million Adults in the US Live with a Disability (July 30, 2015), <http://www.cdc.gov/media/releases/2015/p0730-us-disability.html>.

45. Pub. L. No. 93-122, 87 Stat. 355 (1973) (codified as amended at 29 U.S.C. §§ 701-797 (2014)).

46. *Id.*

47. 29 U.S.C. § 705(9); 42 U.S.C. § 12102(1) (2014).

48. 29 U.S.C. § 794.

49. *See, e.g.,* Brown v. Sibley, 650 F.2d 760, 769 (5th Cir. 1981).

50. Am. Ass’n of People with Disabilities v. Smith, 227 F. Supp. 2d 1276, 1293 n.22 (M.D. Fla. 2002) (“[A] plaintiff must allege that the specific program or activity with which he or she was involved receives or directly benefits from federal financial assistance.” (quoting Lightbourn v. Cty. of El Paso, 118 F.3d 421, 427 (5th Cir. 1997))).

51. Ellement, *supra* note 18, at 30-31.

3. Voting Accessibility for the Elderly and Handicapped Act of 1984

The Voting Accessibility for the Elderly and Handicapped Act (VAEHA) “promot[es] the fundamental right to vote by improving access for handicapped and elderly individuals to registration facilities and polling places for Federal elections.”⁵² It defines “handicapped” as “having a temporary or permanent physical disability.”⁵³ Telecommunications devices must be provided for deaf voters.⁵⁴ The VAEHA requires accessible polling places and registration facilities for people with disabilities and elderly voters over the age of sixty-five.⁵⁵ If the chief election officer of a district determines that there are no accessible polling places, however, the officer can provide the voter with an alternative means to cast a ballot.⁵⁶ This essentially means that a jurisdiction can bypass access issues and force voters with disabilities to use absentee ballots instead of voting with their peers.⁵⁷ There are no minimum standards for accessibility. That standards are up to state administrator discretion leads to widespread variance across the United States. Furthermore, remedies are limited. Only declaratory injunctive relief is available.⁵⁸ Moreover, plaintiffs must notify the chief election officer before filing an action and then can only file suit forty-five days after notification.⁵⁹ Thus, the burden is on the voter with a disability to identify accessibility issues in advance of the election. Finally, the VAEHA applies only to federal elections.

4. Americans with Disabilities Act

The ADA is the most robust and overarching legal protection for people with disabilities. The ADA uses the same definition of disability as the Rehabilitation Act of 1973: “[A] physical or mental impairment that substantially limits one or more [of an individual’s] major life activities[,] . . . a

52. 52 U.S.C. § 20101 (2014).

53. *Id.* § 20107(4).

54. *Id.* § 20104(a)(2).

55. *Id.* §§ 20102(a), 20107.

56. *Id.* § 20102(b)(2)(B)(ii).

57. As one witness in committee testified, “[i]n order to meet the requirements of [VAEHA], some jurisdictions merely encouraged persons with disabilities to vote by absentee ballot, an approach which is merely a ruse to avoid compliance with the clear intent of the Act which is that voting places be accessible to the disabled.” *Americans with Disabilities Act of 1989: Hearing on H.R. 2273 Before the H. Subcomm. on Select Educ. of the Comm. of Educ. & Labor*, 101st Cong. 40-41 (1989) (statement of Nanette Bowling, staff liaison to the Mayor’s Advisory Council for Handicapped Individuals in Kokomo, Indiana).

58. Pub. L. No. 98-453, § 2, 98 Stat. 1678, 1678 (codified as amended at 52 U.S.C. § 20105(a), (c)).

59. 52 U.S.C. § 20105(b).

record of such an impairment[,] or . . . [an individual] being regarded as having such an impairment.”⁶⁰ Congress listed voting as one of the historic areas of discrimination when enacting the ADA.⁶¹ Government and public institutions, including public accommodations, have to make reasonable modifications to prevent discrimination against people with disabilities.⁶² Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁶³ Title III covers public accommodations, such as the private schools that are not covered under Title II.⁶⁴

The legacy of the ADA with respect to voting protection is mixed. Not all polling places are covered by ADA accessibility requirements if they are in private spaces, for example. Courts have not required that all polling places be deemed accessible or guarantee a secret and independent vote. In *American Ass’n of People with Disabilities v. Shelley*, for example, the court found against an association of blind voters who sought to prevent the removal of voting machines they used to vote privately and independently, holding that while “casting a vote independently and secretly would be preferred over casting a vote with the assistance of a family member or other aide,” the ADA does not require that accommodations are “comparable in every way with the voting rights enjoyed by persons without disabilities.”⁶⁵ Furthermore, localities need

60. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 3, 104 Stat. 337 (codified as amended at 42 U.S.C. § 12102(1) (2014)).

61. 42 U.S.C. § 12101(a)(3). Members of Congress also specifically noted displeasure with voting rights enforcement under the VAEHA, passed just four years earlier. *Americans with Disabilities Act of 1989: Hearings Before the Subcomm. on the Handicapped of the S. Comm. on Labor & Human Res.*, 101st Cong. 183 (1989) (statement of Sen. Durenberger, Chairman, Senate Select Committee on Intelligence) (“We went through this several years ago with the Voting Rights for the Handicapped Act—we are going to make all the voting places in America accessible to persons with disabilities. But we didn’t send along a check or the resources to carry it out. It was sort of an encouragement that we sent along. And I figure there are still a lot of folks in this room who are probably having some difficulty gaining access to polling places.”).

62. 42 U.S.C. § 12182(b)(2)(A)(ii).

63. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, tit. 2, § 202, 104 Stat. 337 (codified as amended at 42 U.S.C. § 12132). A “qualified individual with a disability” under this title is defined as

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Id. § 201(2).

64. *Id.* tit. 3, § 301(7).

65. 324 F. Supp. 2d 1120, 1126 (C.D. Cal. 2004). *But see, e.g.*, *Disabled in Action v. Bd. of Elections*, 752 F.3d 189, 200 (2d Cir. 2014) (“Although [plaintiffs] were ultimately able to

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not have complete compliance if they claim undue financial or administrative hardship.⁶⁶

5. National Voter Registration Act of 1993

The National Voter Registration Act of 1993⁶⁷ (NVRA) requires that states provide voter registration materials in all state offices that offer services to people with disabilities; states must also provide assistance in filling out and transmitting the forms.⁶⁸ Unfortunately, the federal government has not made enforcing section 7, which requires states to provide registration at places such as offices administering public assistance, a priority.⁶⁹ These offices reach people with disabilities who do not have driver's licenses.⁷⁰ While the Act has succeeded in increasing registration of people with disabilities, it has not affected turnout.⁷¹

6. Help America Vote Act of 2002

HAVA was enacted in the wake of the 2000 election debacle and the flawed election procedures in Florida. Its focus is on updating voting machines. Title I provides funds for election improvements, including replacing voting machines.⁷² HAVA released \$3.86 billion in funds to improve voting procedures.⁷³ It does require that each polling place must have at least one

cast their vote with the fortuitous assistance of others, the purpose of the Rehabilitation Act is 'to empower individuals with disabilities to maximize employment, economic self-sufficiency, *independence*, and inclusion and integration into society.' . . . The right to vote should not be contingent on the happenstance that others are available to help." (emphasis in original) (quoting 29 U.S.C. § 701(b)(1)); Cal. Council of the Blind v. Cty. of Alameda, 985 F. Supp. 2d 1229, 1239 (N.D. Cal. 2013) ("[R]equiring blind and visually impaired individuals to vote with the assistance of a third party, if they are to vote at all, at best provides these individuals with an inferior voting experience 'not equal to that afforded others.'" (quoting 28 C.F.R. § 35.130(b)(1)(ii) (2011)).

66. 42 U.S.C. § 12182(b)(2)(A)(iii); Weis, *supra* note 35, at 428.

67. Pub. L. No. 103-31, 107 Stat. 77 (codified as amended at 52 U.S.C. §§ 20501-11 (2014)).

68. *Id.* § 7(a)(4)(A); Ellement, *supra* note 18, at 35-36.

69. See *Cases Raising Claims Under the National Voter Registration Act*, U.S. DEPT JUST., <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act> (last updated Oct. 16, 2015) (listing only four enforcement actions brought by the Department of Justice for violations of section 7 of the NVRA).

70. National Voter Registration Act § 7(a)(2)-(3).

71. Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 WM. & MARY BILL RTS. J. 453, 469-70 (2008).

72. Help America Vote Act of 2002, Pub. L. No. 107-252, tit. 1, §§ 101-02, 116 Stat. 1666 (codified as amended at 52 U.S.C. §§ 20901-02 (2014)).

73. See ELECTION REFORM INFO. PROJECT, ELECTION REFORM BRIEFING: READY FOR REFORM? 4 (2003), http://www.electionline.org/images/Ready_for_Reform.pdf.

voting machine “equipped for individuals for disabilities.”⁷⁴ Title II gives grants for accessible polling places.⁷⁵ Title III gives funds to implement uniform and nondiscriminatory voting standards.⁷⁶ HAVA also establishes the U.S. Election Assistance Commission (EAC), which is described as “an independent, bipartisan commission charged with developing guidance to meet HAVA requirements, adopting voluntary voting system guidelines, and serving as a national clearinghouse of information on election administration.”⁷⁷ The EAC conducts studies of accessible voting practices for people with disabilities.⁷⁸

Part of the design of HAVA is to ensure that voters, including voters with disabilities, can cast votes without assistance.⁷⁹ Thus, voters with disabilities, like their fellow citizens, are entitled to a secret and independent ballot for the first time.⁸⁰ Election officials must provide voting opportunities to people with disabilities “in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”⁸¹ As of 2010, every state had received HAVA funding; thus, they are potentially liable for section 504 suits under the Rehabilitation Act.⁸²

The statute, however, is rife with problems. It does not provide a description of disabled voters and only discusses blind and visually impaired voters specifically.⁸³ HAVA does not provide technical guidelines or minimum national standards for accessibility; thus, states and localities remain a patchwork of standards and practices.⁸⁴ Furthermore, it is silent on absentee voting.

One of the most foundational flaws in HAVA is that there is no private right of action for violations, just injunctive or declaratory relief.⁸⁵ Thus,

74. Help America Vote Act tit. 3, § 301(a)(3)(B).

75. *Id.* tit. 2, § 261.

76. *Id.* tit. 3, § 301.

77. *About EAC*, U.S. ELECTION ASSISTANCE COMM’N, http://www.eac.gov/about_the_eac (last visited June 6, 2016).

78. *Voting Accessibility*, U.S. ELECTION ASSISTANCE COMM’N, http://www.eac.gov/voter_resources/voting_accessibility.aspx (last visited June 6, 2016).

79. Ellement, *supra* note 18, at 52-53; Arlene Kanter & Rebecca Russo, *The Right of People with Disabilities to Exercise Their Right to Vote Under the Help America Vote Act*, 30 MENTAL & PHYSICAL DISABILITY L. REP. 852, 852 (2006).

80. Kanter & Russo, *supra* note 79, at 852-53; Waterstone, *supra* note 16, at 381.

81. Waterstone, *supra* note 15, at 829.

82. *See* Ellement, *supra* note 18, at 58.

83. Weis, *supra* note 35, at 447.

84. Kanter & Russo, *supra* note 79, at 854.

85. Waterstone, *supra* note 16, at 382; Weis, *supra* note 35, at 454-55.

voters have not turned to HAVA in large numbers to vindicate their rights.⁸⁶ The DOJ has given administrative guidance to localities but to date has only brought twelve cases total under the statute, none of which concern disability.⁸⁷

III. Contemporary Controversies in Voting and Disability

Contemporary controversies about voting spill over the pages of newspaper articles, blogs, and court opinions. While advocates and scholars have recognized the effect of these controversies with respect to their disparate impact on voters of color, less attention has been paid to how disability is implicated in these key disputes. Voters with disabilities are implicated in voter fraud. They are disparately impacted by voter identification requirements. Long lines deter them from voting. They disproportionately vote absentee. The current wars are causing their numbers to increase. Their problems with new voting technology affect the design of these machines at their foundations. Thus, fully solving all of these problems will require attention to the issues that voters with disabilities face.

A. Voter Fraud

Voter fraud was one of the animating elements for the Supreme Court in upholding the strict Indiana voter identification rules in *Crawford v. Marion County Election Board*.⁸⁸ Despite allegations of widespread voter fraud,⁸⁹ studies have not found it to be a widespread phenomenon. One study found thirty-one cases of voter fraud out of over one billion ballots cast between 2000 and 2014.⁹⁰

Where voter fraud potentially occurs, though, it is in arenas where people with disabilities predominate, such as with absentee voting in long-term care

86. Daniel Tokaji has concluded: “[T]he volume of litigation under this statute has not been overwhelming. Searching Westlaw’s database of cases, my research assistant and I found a total of 71 cases.” Daniel P. Tokaji, *HAVA in Court: A Summary and Analysis of Litigation*, 12 ELECTION L.J. 203, 204 (2013).

87. *Cases Raising Claims Under the Help America Vote Act*, U.S. DEP’T JUST., <http://www.justice.gov/crt/cases-raising-claims-under-help-america-vote-act> (last updated Aug. 6, 2015).

88. 553 U.S. 181 (2008).

89. See, e.g., HERITAGE FOUND., A SAMPLING OF ELECTION FRAUD CASES FROM ACROSS THE COUNTRY (2015), http://thf_media.s3.amazonaws.com/2015/pdf/VoterFraudCases-8-7-15-Merged.pdf.

90. Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents Out of One Billion Ballots Cast*, WASH. POST: WONKBLOG (Aug. 6, 2014), <http://wpo.st/4d5b1>.

facilities.⁹¹ Long-term care facilities (LTCs) are of particular concern in addressing the problems of voters with disabilities. About 1.4 million people live in nursing homes, not including the people who live in other institutions such as assisted living facilities, retirement communities, and rest homes.⁹²

Despite the decided absence of widespread voter fraud, allegations of fraud have occurred with elderly or disabled residents.⁹³ Political groups may employ “granny farming,” where people with disabilities and the elderly are signed up to vote with premarked ballots without their consent.⁹⁴ People in LTCs may suffer from voter fraud due to interference by third parties.⁹⁵ In LTCs, gatekeeping by administrators can be ad hoc and inconsistent.⁹⁶ A minority of states include in their absentee balloting procedures specific provisions for nursing home residents. One study suggests, however, that many facilities are not aware that they could request voting assistance by election officials for their residents.⁹⁷ The residents, though, want to vote like their fellow citizens outside institutional walls.⁹⁸ Activating their electoral power may spur politicians to pay more attention to these LTC residents, who are comparatively neglected.⁹⁹

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91. See Sean Flynn, Comment, *One Person, One Vote, One Application: District Court Decision in Ray v. Texas Upholds Texas Absentee Voting Law that Disenfranchises Elderly and Disabled Voters*, 11 SCHOLAR 469, 482 (2009); see also GOV'T ACCOUNTABILITY OFFICE, GAO-06-450, ELECTIONS: THE NATION'S EVOLVING ELECTION SYSTEM AS REFLECTED IN THE NOVEMBER 2004 GENERAL ELECTION 18 (2006), www.gao.gov/new.items/d06450.pdf; COMM'N ON FED. ELECTION REFORM, BUILDING CONFIDENCE IN U.S. ELECTIONS 35 (2005) (noting that election fraud is especially likely in absentee voting).
92. AARP, NURSING HOMES FACT SHEET, FS No. 10R, at 1, https://assets.aarp.org/rgcenter/il/fs10r_homes.pdf; CTRS. FOR MEDICARE & MEDICAID SERVS., U.S. DEP'T OF HEALTH & HUMAN SERVS., NURSING HOME DATA COMPENDIUM 2013 EDITION, 2, 168 tbl.3.2.b, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/nursinghomedatacompendium_508.pdf.
93. See Fay, *supra* note 9, at 455-56.
94. “Granny farming” is when political groups take premarked absentee ballots to LTCs. Flynn, *supra* note 91, at 483; Gentry, *Absentee Ballot Fraud Hits Texas, Grannyfarming a Longterm Problem*, NO VOTE BY MAIL PROJECT (Mar. 5, 2008), <http://novbm.wordpress.com/2008/03/05/absentee-ballot-fraud-hits-texas-grannyfarming-a-longterm-problem>.
95. Fay, *supra* note 9, at 462.
96. See Jason H. Karlawish et al., *Addressing the Ethical, Legal, and Social Issues Raised by Voting by Persons with Dementia*, 292 J. AM. MED. ASS'N 1345, 1346 (2004); Nina A. Kohn, *Preserving Voting Rights in Long-Term Care Institutions: Facilitating Resident Voting While Maintaining Election Integrity*, 38 MCGEORGE L. REV. 1065, 1073 (2007).
97. Kohn, *supra* note 96, at 1076.
98. See *id.* at 1072 (explaining that LTC residents desire to vote).
99. See *id.* at 1074. Note that some LTCs prohibit politicians from entering the facility. *Id.* at 1105-06.

B. Voter ID

The League of Women Voters estimates that nearly ten percent of voters with disabilities do not have photo ID.¹⁰⁰ Six million people over the age of sixty-five lack a photo ID.¹⁰¹ While people with disabilities often have Social Security or Medicaid cards, these pieces of identification do not suffice under the new laws.¹⁰² Rural voters face difficulties obtaining voter identification from often-remote government offices.¹⁰³ Poor people, who are also disproportionately people with disabilities, are less likely to have identification.¹⁰⁴ Residency requirements also affect people with disabilities, especially the homeless population, which is disproportionately a disabled population. If people with disabilities live with caretakers, it may be difficult for them to have documentation with their name and address.¹⁰⁵ Taking advantage of disability exemptions for identification requires knowledge by either the person with a disability or a state employee, both of whom may lack the requisite information.¹⁰⁶ People with disabilities may not be able to drive to a driver's license facility, or public transportation may be absent or inaccessible.¹⁰⁷

C. Long Lines

President Obama famously decried long lines for voting during his victory speech after the election: "I want to thank every American who participated in

100. *Voting Is Already Hard for People with Disabilities. Voter ID Laws Make It Even Harder.*, VOX (Apr. 1, 2016, 2:10 PM ET), <http://www.vox.com/2016/4/1/11346714/voter-id-laws-disabilities>.

101. *Oppose Voter ID Legislation—Fact Sheet*, ACLU, <https://www.aclu.org/oppose-voter-id-legislation-fact-sheet> (last visited June 6, 2016).

102. See WENDY R. WEISER & LAWRENCE NORDEN, BRENNAN CTR. FOR JUSTICE, VOTING LAW CHANGES IN 2012, at 4-7 (2011), http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Brennan_Voting_Law_V10.pdf.

103. See Petruszak, *supra* note 10, at 249 (noting that rural voters are disproportionately elderly).

104. BRENNAN CTR. FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 2 (2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

105. *Voters Turned Away Because of Texas Photo ID Law*, BRENNAN CTR. FOR JUST. (Oct. 28, 2014), <https://www.brennancenter.org/blog/voters-turned-away-because-texas-photo-id-law>.

106. *Id.*

107. Shaun Heasley, *Transportation Hurdles Keep Many with Disabilities Homebound*, DISABILITY SCOOP (May 9, 2012), <https://www.disabilityscoop.com/2012/05/09/transportation-homebound/15576> ("[S]ome 31 percent of people with disabilities report having insufficient transportation compared to 13 percent of the general population . . .").

this election, whether you voted for the very first time or waited in line for a very long time. . . . [W]e have to fix that.”¹⁰⁸ Long lines are the culmination of a lack of resources, such as poll workers and voting machines, allocated to particular voting sites.¹⁰⁹ More than five million voters waited more than an hour to vote in 2012.¹¹⁰ An estimated 500,000 to 730,000 votes were lost due to long lines in 2012.¹¹¹

While the press and scholars have discussed long lines, they usually focus on race and highlight that people of color disproportionately face long lines to vote.¹¹² Disability is also implicated in long lines, however, as some racial minorities are disproportionately more disabled than white Americans.¹¹³ As people with disabilities often require more time at the polling place itself because of the need for accommodations,¹¹⁴ long lines add to the “time tax” for voting that disproportionately falls upon people with disabilities.¹¹⁵ Long lines at the polling place are not just an inconvenience; they may make voting an impossibility for some people with impairments such as physical frailty or old age.¹¹⁶ People with post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) may find it intolerable to wait in long lines, which may hurt disabled veterans disproportionately.¹¹⁷ Moreover, many of these impairments

108. *Transcript: Obama’s Victory Speech*, WALL ST. J.: WASH. WIRE (Nov. 7, 2012, 2:41 AM EST), <http://on.wsj.com/TJVu6k>.

109. CHRISTOPHER FAMIGHETTI ET AL., BRENNAN CTR. FOR JUSTICE, ELECTION DAY LONG LINES: RESOURCE ALLOCATION 1 (2014), <http://www.brennancenter.org/sites/default/files/publications/ElectionDayLongLines-ResourceAllocation.pdf>.

110. PRESIDENTIAL COMM’N ON ELECTION ADMIN., THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS 13 (2014), <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

111. CHARLES STEWART III & STEPHEN ANSOLABEHRE, WAITING IN LINE TO VOTE 3 (2013), <https://www.supportthevoter.gov/files/2013/08/Waiting-in-Line-to-Vote-White-Paper-Stewart-Ansolabehere.pdf>.

112. See, e.g., Justin Levitt, “Fixing That”: Lines at the Polling Place, 28 J.L. & POL. 465, 468 (2013); Elora Mukherjee, *Abolishing the Time Tax on Voting*, 85 NOTRE DAME L. REV. 177, 180-81 (2009).

113. See *supra* note 42 and accompanying text.

114. See Douglas M. Spencer & Zachary S. Markovits, *Long Lines at Polling Stations?: Observations from an Election Day Field Study*, 9 ELECTION L.J. 3, 10-11 (2010).

115. See Mukherjee, *supra* note 112, at 180-81 (explaining the concept of the “time tax” in voting).

116. Levitt, *supra* note 112, at 467.

117. See GOV’T ACCOUNTABILITY OFFICE, GAO-14-850, OBSERVATIONS ON WAIT TIMES FOR VOTERS ON ELECTION DAY 2012, at 1 (2014), <http://www.gao.gov/assets/670/666252.pdf> (noting that extended waiting times may “impose hardships on . . . those with disabilities who are physically unable to wait for long periods of time”); INFO. TECH. & INNOVATION FOUND., MAKING VOTING MORE ACCESSIBLE FOR VOTERS WITH DISABILITIES 3 (2012), <http://www2.itif.org/2012-making-voting-accessible-vets>

footnote continued on next page

are invisible to poorly trained workers, who may not identify the voters in long lines in need of assistance.¹¹⁸ Because of poor training, poll workers may not know what accommodations they can employ to help people with disabilities.¹¹⁹ Voters with disabilities may not know to ask for these accommodations either if there is no signage at the polling place.¹²⁰ Long lines make voters less confident in the voting process and that their votes will count.¹²¹

D. Absentee Ballots

People with disabilities are more likely than those without to vote absentee. Forty percent of voters with disabilities use absentee ballots.¹²² The use of absentee ballots in general is on the increase. For example, half of all ballots in California now are absentee, up from 2.6% in 1962.¹²³ Oregon, Washington, and Colorado use an all-mail system for all voters.¹²⁴ States vary in their procedures for obtaining an absentee ballot, from twenty-one states requiring an excuse to twenty states having a no-excuse system to seven states with a permanent no-excuse system and two states having mail-only voting. Requiring an excuse may lead to lower turnout among voters with disabilities.¹²⁵

Voting by mail is not a panacea, however, for the problems that voters with disabilities face. Jessica Fay has compiled examples of absentee ballot manipulation. They include: an elderly woman reporting that a man completed her ballot without her consent or participation, telling her “you’re

-disabilities.pdf (noting that those who suffer from PTSD and TBI may have difficulty with tasks requiring extended concentration).

118. Indeed, Louisiana allows only visibly disabled voters to skip long lines at the polling place. *See infra* Appendix.

119. PEOPLE FOR THE AM. WAY FOUND., *THE NEW FACE OF JIM CROW: VOTER SUPPRESSION IN AMERICA* 14-15 (2006), <http://www.pfaw.org/sites/default/files/TheNewFaceOfJimCrow.pdf>.

120. Ruth Colker, *Ohio's Disabled Voters: Ignored Again*, OHIO ST. U.: MORITZ C. L. (Jan. 18, 2005), <http://moritzlaw.osu.edu/electionlaw/comments/2005/050118.php>.

121. STEWART & ANSOLABEHRE, *supra* note 111, at 3-4.

122. Daniel P. Tokaji & Ruth Colker, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 MCGEORGE L. REV. 1015, 1017 (2007).

123. *Id.* at 1020; Summer Parkerperry, *In California, Election Day Really Is Election Month*, CAPITOL WKLY. (Jan. 4, 2014), <http://capitolweekly.net/california-election-day-election-month>.

124. Tokaji & Colker, *supra* note 122, at 1022; *see infra* Appendix.

125. *See* Tokaji & Colker, *supra* note 122, at 1024 (“[A]llowing voters to obtain permanent absentee status might ease the burden on voting by people with disabilities because they would no longer need to apply for an absentee ballot in each election, although we have not found any empirical research confirming this effect.”).

voting Democratic,” a man marking the ballots of people with physical disabilities contrary to their wishes; and another man punching the ballots of thirty-five seniors at a nursing home.¹²⁶ Joan O’Sullivan notes that Chicago has been subject to multiple accusations of voter fraud in nursing homes, where precinct captains were accused of “assist[ing]” nursing residents to fill out absentee ballots.¹²⁷

States may have procedures that make it difficult or impossible for people with disabilities to vote absentee. Maryland’s program, for instance, was found to violate the ADA and the Rehabilitation Act because disabled voters would find it difficult to mark a hardcopy absentee ballot by hand without assistance.¹²⁸ Maryland did have an online ballot-marking tool that was more accessible but made it available only to overseas and military absentee voters.¹²⁹ People with disabilities can also have difficulty with nonaccessible pre-voting procedures, even if the ballot itself is accessible. For example, in Ohio, voters must complete an absentee ballot application in writing.¹³⁰ Texas may disenfranchise people with disabilities because it limits the number of times a person can witness an application for a ballot if the voter cannot sign his or her ballot because of disability.¹³¹

Voters in LTCs may face difficulties because they may have moved out of their previous electoral district upon moving to the LTC; thus, they need to register again. It can be difficult for people with disabilities to exercise the practice of a secret and independent vote while voting absentee, as their accommodation is probably a third party rather than technology.¹³² Third parties can act as informal gatekeepers,¹³³ pressure residents to vote a particular way, or perpetrate fraud.¹³⁴ Additionally, they could steal the vote of

126. Fay, *supra* note 9, at 454-55.

127. Joan L. O’Sullivan, *Voting and Nursing Home Residents: A Survey of Practices and Policies*, 4 J. HEALTH CARE L. & POL’Y 325, 332 (2001).

128. Nat’l Fed’n of the Blind v. Lamone, 813 F.3d 494, 498-99 (4th Cir. 2016).

129. *Id.* at 499-500.

130. Tokaji & Colker, *supra* note 122, at 1038.

131. Flynn, *supra* note 91, at 471, 474.

132. Tokaji & Colker, *supra* note 122, at 1036, 1038-39.

133. Jason H.T. Karlawish et al., *Identifying the Barriers and Challenges to Voting by Residents in Nursing Homes and Assisted Living Settings*, 20 J. AGING & SOC. POL’Y 65, 72 (2008); O’Sullivan, *supra* note 127, at 341-42 (finding that nursing home staff screened residents before letting them vote).

134. Tokaji & Colker, *supra* note 122, at 1025-26. According to the EAC, when voter fraud occurs, it generally takes place during absentee voting. So if we actually do make polling places more accessible, we could cut down on fraud. U.S. ELECTION ASSISTANCE COMM’N, ELECTION CRIMES: AN INITIAL REVIEW AND RECOMMENDATIONS FOR FUTURE STUDY 7 (2006), http://www.eac.gov/assets/1/workflow_staging/Page/57.pdf.

a resident without her knowledge.¹³⁵ Voters with disabilities can face difficulties with the ballot itself if there are no accommodations, such as with filling it out or sending it in. Absentee voters cannot take advantage of late-breaking news or information about the election.¹³⁶ Additionally, they cannot participate in the widespread civic ritual of voting in public.¹³⁷ Finally, voters may make a mistake in voting that would remain unremedied in the absence of election-official assistance or technology developed to notice mistakes.¹³⁸

E. Voting by the Military and Veterans

Veterans are part of this story as well. While there are robust protections in place to protect the right to vote for active duty service members who must vote absentee, these disappear once service members are discharged and become part of the general population.¹³⁹ An estimated 2.9 million Americans are veterans with disabilities.¹⁴⁰ Over 180,000 Iraq and Afghanistan veterans collect disability benefits.¹⁴¹ Psychological injuries include PTSD and TMI, which can increase the cognitive challenges of voting. It may be difficult for these voters to keep track of a complicated voting process, concentrate, or learn how to use novel voting technology.¹⁴² Compounding these difficulties is the fact that their injuries are not always visible, thus making it more challenging for poll workers.¹⁴³ Physical injuries such as spinal cord injuries and amputations can impair mobility and dexterity.¹⁴⁴ Difficulties that

135. Tokaji & Colker, *supra* note 122, at 1017.

136. *Id.* at 1024.

137. *Id.*

138. *Id.* at 1026-27.

139. Over ninety percent of votes cast under the Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 924 (1986) (codified as amended at 52 U.S.C. §§ 20301-10 (2014)), as amended by the Military Overseas Voter Empowerment Act, Pub. L. No. 111-84, tit. V, subtit. H, 123 Stat. 2318 (2009) (codified as amended at 10 U.S.C. § 1566a and in scattered sections of 52 U.S.C.), were successfully counted by the states. *Paralyzed Veterans of America Participates in EAC Roundtable on Voting Best Practices for Veterans with Disabilities*, PARALYZED VETERANS AM., <http://www.pva.org/site/apps/nlnet/content2.aspx?c=ajIRK9NJLcJ2E&b=6350111&ct=12191069> (last visited June 6, 2016) [hereinafter *Paralyzed Veterans EAC Roundtable*]. The Act, however, does not cover domestic veterans. See 52 U.S.C. § 20303(a)(1).

140. *Number of Disabled U.S. Veterans Rising*, CBS NEWS (May 11, 2008, 3:53 PM), <http://www.cbsnews.com/news/number-of-disabled-us-veterans-rising>.

141. *Id.*

142. *Accessible Voting for Individuals with Disabilities*, PARALYZED VETERANS AM., <http://www.pva.org/site/apps/nlnet/content2.aspx?c=ajIRK9NJLcJ2E&b=6350111&t=12169565> (last visited June 6, 2016).

143. *Paralyzed Veterans EAC Roundtable*, *supra* note 139.

144. *Id.*

veterans face include the fact that their impairments are fairly recent, so they are not used to using assistive technologies.¹⁴⁵ Also, they often are receiving medical care away from their residences and thus have to vote absentee.¹⁴⁶

F. Voting Technology

The main purpose of HAVA was to update the election technology for voting from paper ballots to an electronic system. HAVA requires at least one accessible voting machine in each polling place. The demands on accessible voting technology are numerous and encompass a variety of disabilities, from people who have trouble with dexterity and hand-eye coordination, to people who are blind, to elderly voters who have trouble with new electronic technology. Additionally, there is tension between those who emphasize accessibility to all potential voters and those who prioritize technological security.¹⁴⁷ The accessibility camp would prefer that people use their own technology to access voting, as this would be the most comfortable scenario for the voter and would encompass various types of disabilities.¹⁴⁸ On the other hand, a system without centralized control would introduce a number of technological headaches, such as the possible introduction of computer vulnerabilities.¹⁴⁹ While disability advocates have praised the possibility of voting technology to become more accessible than paper and allow a secret and independent vote for the first time for some voters, people also criticize current technology for its unwieldiness and lack of user-friendliness.¹⁵⁰ Often people with disabilities are left out of the testing process, so they cannot weigh in on the accessibility features that would best suit the disability community.¹⁵¹ Right now, there is no silver-bullet machine that is wholly accessible, comfortable for both voters and poll workers, and technologically secure. In the 2012 election, the National Council on Disability found that

145. INFO. TECH. & INNOVATION FOUND., *supra* note 117, at 4.

146. *Id.*

147. Christopher S. Danielson & Matt Zimmerman, *Electronic Voting: Conflicts Within the General Public and the Disabled Community*, HUMAN RIGHTS MAG., Spring 2005, at 9, 9, http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol32_2005/spring2005/hr_spring05_evoting.html.

148. *See id.* at 10-11.

149. *See id.* at 10.

150. *See, e.g.*, Mindy Sink, *Electronic Voting Machines Let Disabled Choose in Private*, N.Y. TIMES (Nov. 2, 2000), <http://nyti.ms/23YGaTZ>; *Are Electronic Voting Machines Accessible to Disabled Voters?*, PROCON.ORG, <http://votingmachines.procon.org/view.answers.php?questionID=000309> (last updated Apr. 23, 2008).

151. *See* Danielson & Zimmerman, *supra* note 147, at 10 (noting that voting terminals are generally not subject to testing).

forty-five percent of the barriers within the polling place were due to voting machines.¹⁵²

While HAVA addresses user interface with respect to voters, less attention has been paid to interface issues with respect to poll workers. As voting becomes more and more complicated, training issues for poll workers on new technology may become a bottleneck in the system that could lead to fewer workers, long lines, and difficulties in assisting voters with accessibility issues.¹⁵³ Additionally, poll workers may segregate the one HAVA-mandated accessible machine in a corner or may not turn it on until requested by a voter; these actions may suggest to the voter that her needs as a voter are not important and stigmatize her in comparison to other voters.¹⁵⁴

IV. Remedies

A. Doctrinal Change

In the wake of *Crawford*, which held that an Indiana law that required photo identification for voters did not violate the Constitution,¹⁵⁵ and *Shelby County v. Holder*, which invalidated part of the Voting Rights Act,¹⁵⁶ states have been quite aggressive in their attempts to make the electoral process more onerous for voters. Thirty-one states have voter ID requirements.¹⁵⁷ Sixteen states passed stricter voting rules between 2011 and 2013.¹⁵⁸ These new rules produce an array of concerns, and disability touches upon all of them.

Though *Crawford* upheld a strict voter ID requirement for voting, the case itself may offer opportunities for lifting that sanction. The case emerged after Indiana passed a voter identification law that required photo identification. Indigent or certain religious voters could cast provisional ballots, but they had to go to the county seat to execute an affidavit within ten days after the

152. NAT'L COUNCIL ON DISABILITY, EXPERIENCE OF VOTERS WITH DISABILITIES IN THE 2012 ELECTION CYCLE 63 (2013), https://www.ncd.gov/rawmedia_repository/8%2028%20HAVA%20Formatted%20KJ%20V5%20508.pdf.

153. Lauren Watts, Comment, *Reexamining Crawford: Poll Worker Error as a Burden on Voters*, 89 WASH. L. REV. 175, 192-94 (2014).

154. See NAT'L COUNCIL ON DISABILITY, *supra* note 152, at 61-62; see also Paul M.A. Baker et al., (e)Voting for People with Disabilities and the Aging: A Survey of Technological, Social and Process Barriers to Participation 18 (Sept. 3, 2006) (unpublished manuscript), (on file with author) (explaining the potential effect of "meso-level process barriers" resulting from poll worker actions, even in assisting disabled voters).

155. 553 U.S. 181, 204 (2008) (plurality opinion).

156. 133 S. Ct. 2612 (2013).

157. Petruszak, *supra* note 10, at 240.

158. *Id.*

election in order for their votes to be counted.¹⁵⁹ Other voters without photo identification could also cast a provisional ballot, but they had to present photo identification at the circuit county clerk's office within ten days after the election.¹⁶⁰ The challengers to the law argued that the process for obtaining a photo ID was too burdensome and costly for voters, especially poor, disabled, or old voters.¹⁶¹ The State contended that the law was necessary in order to combat voter fraud.¹⁶²

Crawford weighed the burdens on voting imposed by the voter identification law against the state's interest in combatting voter fraud. It found that the law did not impose substantial burdens on *individual* voters. The case suggests, though, that a barrier to voting would be facially unconstitutional if a large group of voters were burdened.¹⁶³ And a barrier might be unconstitutional as applied if a smaller group of voters is severely burdened.¹⁶⁴ The record that was introduced did not satisfy the Court as to the magnitude of the burden on a group of voters, such as people with disabilities. The challengers to the law did not produce for the record any actual potential voters who were not able to meet the law's requirements.¹⁶⁵ The majority opinion did leave open, however, the possibility of presenting a stronger record of the burdens on people with disabilities that voter ID laws would impose.¹⁶⁶ While the Court has been averse to declaring statutes facially invalid,¹⁶⁷ the opinion suggests that the burden of visiting the county clerk's office for every election may be unacceptably burdensome.¹⁶⁸

The key, then, is to convince the Court that both the burden on voters and the size of the affected group are substantial. Thus, advocates could pursue one of two avenues of approach. They could argue that voters with disabilities, as one out of five voters, are a sufficiently large group of voters that laws such as voter ID are facially unconstitutional. Or they could launch as-applied challenges through demonstrating the difficulties that voters with disabilities face. Either one would require developing a record of problems that is currently lacking in the literature, but this type of research may prove legally fruitful. Advocates should emphasize the burden in terms of the time taken and

159. *Crawford*, 553 U.S. at 186.

160. *Id.*

161. *Id.* at 187.

162. *Id.* at 191.

163. *Id.* at 199-200, 203.

164. *Id.* at 199, 202.

165. *Id.* at 187.

166. *Id.* at 200.

167. *See, e.g.,* Wash. St. Grange v. Wash. St. Republican Party, 552 U.S. 442, 444 (2008); Ayotte v. Planned Parenthood of N. New Eng., 546 U.S. 320, 323 (2006).

168. *Crawford*, 553 U.S. at 199 n.19.

difficulty for people with disabilities, who have difficulties with transportation, of obtaining the identification or proving one's identity after the election by traveling to the clerk's office. People with disabilities are more likely to be poor than people without disabilities. Less than half of adults with a disability are employed, in comparison to more than three-quarters of adults without a disability.¹⁶⁹ Of adults who have severe disabilities, 28.6% are poor, as compared to 17.9% of adults with nonsevere disabilities and 14.3% of adults without disabilities.¹⁷⁰ They are also more likely to experience persistent or temporary periods of poverty.¹⁷¹

B. Policy Solutions

While scholars and advocates have produced voluminous amounts of data about voting compiled by states and localities, very little of it addresses voters with disabilities.¹⁷² Innovations by states and localities, though, provide opportunities and new directions for developing best practices for voting. We can sift through the evidence that we do have to see what best practices are so that we improve in the future.

I obtained information from the Secretary of State's election website for each respective state on the following issues: voter identification, the possibility of permanent absentee voter status, curbside assistance availability, line-jumping for elderly or disabled voters, provisions for voting while in an LTC, and whether a voters-with-disabilities section was listed on the main voting webpage. I also noted any miscellaneous provisions, such as whether there was a brochure for voters with disabilities. I then called each Secretary of State's election assistance line to fill in the information unavailable on the website. The results are listed in the Appendix.

The goal of this search was twofold: first, to compile and compare services across states; second, to assess how difficult it is for the typical voter with a disability to access pertinent information on voting. While states vary wildly in the types of provisions they offer to their citizens, on the whole, finding this information in a typical state proved a daunting proposition. Exemplar state websites include Connecticut, California, and Oregon. Eight states do not have any information for voters with disabilities anywhere on their website. An additional eight states make voters hunt for the information they do provide, as it is not listed on the main voting webpage or on the directory under

169. MATTHEW W. BRAULT, U.S. CENSUS BUREAU, P70-131, AMERICANS WITH DISABILITIES: 2010, at 4 tbl.1 (2012).

170. *Id.* at 12.

171. *Id.*

172. *Paralyzed Veterans of America Identifies Continued Barriers to Accessible Voting*, PARALYZED VETERANS AM., <http://www.pva.org/site/apps/nlnet/content2.aspx?c=ajIRK9NJLcJ2E&b=6350111&ct=14555321> (last visited June 6, 2016).

“voters” on the main page. Most state election divisions cheerfully answered questions over the phone about their accessibility provisions, which is a hopeful indicator for a typical voter who calls for information. By contrast, Michigan does not provide a mechanism to call the Elections Division for their Secretary of State. Only one state, Florida, refused to answer questions, instead referring to their website and statutory authority.¹⁷³ Iowa officials not only responded to questions over the phone but also sent additional information via e-mail.¹⁷⁴

The most daunting barrier to obtaining information was the locally driven aspect of voting. When speaking to election officials, they deferred most questions to the county level. This makes it even harder to plan in advance on accessibility measures for the typical voter with a disability and difficult for disability advocates to strategize across county lines. States should instead mandate policies that cover all of their citizens, rather than a privileged few.

Furthermore, polling place accessibility and identification requirements may push voters with disabilities toward absentee voting whether they want to or not. Not every state guarantees that their polling place is accessible or has an easy or convenient way to figure out in advance whether a particular polling place fits the needs of a particular voter. Moreover, the bypass for identification requirements is to encourage people to vote absentee instead. As a minority of states provide permanent absentee status, people with disabilities may face filling out possibly nonaccessible paperwork to vote in isolation from their peers year after year.

Exemplar states include California, which created requirements for physical accessibility.¹⁷⁵ Missouri mails out voter information to people who have registered with the Department of Revenue as drivers with disabilities.¹⁷⁶ States that directly involve disability advocacy groups in creating and testing voting procedures and technology include New York, Virginia, California, Rhode Island, Arizona, Connecticut, Kansas, and Ohio.¹⁷⁷

Potential remedies to voting barriers include accessible public buildings, leasing private accessible spaces, curbside voting, or absentee voting. In 2001, 56% of the time, the solution for inaccessible polling places was curbside

173. Telephone Interview with the Office of the Sec’y of State for Fla., Elections Div. (Feb. 17, 2016).

174. Telephone Interview with the Office of the Sec’y of State for Iowa, Elections Div. (Feb. 17, 2016); E-mail from Peggy Sieleman, Clerk-Specialist, Iowa Sec’y of State, to author (Feb. 17, 2016, 11:06 AM) (on file with author).

175. *See infra* Appendix.

176. *Accessible Voting for Individuals with Disabilities*, *supra* note 142.

177. *See infra* Appendix.

voting.¹⁷⁸ This went down to 45% in 2008. Twenty states still allow curbside voting by state policy; at this point, it may be offered as a courtesy for voters who have difficulty entering the polling place rather than as a substitute for an inaccessible polling place.¹⁷⁹

Allowing possibilities for filing absentee ballot applications via telephone, fax, or the Internet allows more options for people with disabilities, among others.¹⁸⁰ Expanding permanent absentee voter status so that people with disabilities do not have to constantly refile is another solution.¹⁸¹ Seventeen states allow permanent absentee voting status for people with disabilities, which eases the application and registration process for these voters.¹⁸²

A better solution shifts the burden of casting the ballot from the individual voter onto state and local authorities by bringing the polling place to the voter via mobile polling. That would follow the lead of the twenty-three states that have absentee voter procedures for people who live in institutions. New York, for example, triggers mobile polling if twenty-five or more applications originate from the same location. Puerto Rico and Vermont also have mobile polling programs. Oregon uses tablets and portable printers for supervised voting in LTCs.¹⁸³ Lowering the number of votes required for triggering mobile polling, or not requiring a trigger number at all,¹⁸⁴ will facilitate more voting in LTCs. Some states, such as Illinois and Minnesota, ensure that balloting in LTCs is done by election judges drawn from different political parties, instead of the third parties that might invite fraud.¹⁸⁵ LTCs could facilitate voter registration upon admission for new residents so that they are eligible to vote in their new residence in a timely fashion.¹⁸⁶ Also, states can require local election boards to initiate the voting process with LTCs rather than relying upon LTC residents who may not be aware that they are able to vote absentee or in their residence.¹⁸⁷

178. U.S. GENERAL ACCOUNTING OFFICE, GAO-02-107, VOTERS WITH DISABILITIES: ACCESS TO POLLING PLACES AND ALTERNATIVE VOTING METHODS 23 (2001).

179. *See infra* Appendix.

180. Tokaji & Colker, *supra* note 122, at 1040.

181. *Id.*

182. *See infra* Appendix.

183. *Accessible Voting for Individuals with Disabilities*, *supra* note 142.

184. A minority of states provide for voting procedures for all covered LTCs without a triggering circumstance. Amy Smith & Charles P. Sabatino, *Voting by Residents of Nursing Homes and Assisted Living Facilities: State Law Accommodations*, 26 BIFOCAL 1, 4 (2004); *see infra* Appendix.

185. Kohn, *supra* note 96, at 1101-02.

186. *Id.* at 1103-04.

187. Smith & Sabatino, *supra* note 184, at 4.

President Obama formed a Presidential Commission on Election Administration that addressed, among other things, long lines and recommended that voters wait no more than a half-hour to vote.¹⁸⁸ The National Council on Disability also recommends that voters with disabilities could sit within the polling place if there is a long line, in an attempt to ease their physical strain.¹⁸⁹ Eleven states mandate state-level policies that allow voters with disabilities to skip to the front of the line.¹⁹⁰

Election officials can collaborate with Veterans Affairs (VA) facilities to offer assistance, training, and information. They should be cognizant of the fact that VA institutions have injured veterans from an array of localities, and all need help with absentee ballot preparation. The Department of Veterans Affairs can take affirmative steps to aid veteran registration, voting, and outreach. It can allow registration drives within veterans' facilities under the NVRA and increase voting opportunities for veterans residing in veterans' facilities.¹⁹¹ California is an example of successful coordination with disabled veterans. Its efforts include adding a voter registration brochure to the welcome package that all veterans who return from a tour of duty receive and providing voter registration forms to Veterans Homes residents.¹⁹² Half of states work directly with VA facilities for voter education or provide election materials and assistance.¹⁹³ The U.S. Army's Warrior Transition Units give information about voting to disabled service members who are transitioning to civilian life.¹⁹⁴

Projects are underway to create more accessible and secure voting machines for all voters. Notable ones include the Prime III project at Clemson and the RAV project.¹⁹⁵ Los Angeles County has developed its own voting

188. PRESIDENTIAL COMMISSION ON ELECTION ADMIN., *supra* note 110, at 13-14.

189. NAT'L COUNCIL ON DISABILITY, *supra* note 152, at 85.

190. *See infra* Appendix.

191. So far, these steps have been controversial. *See, e.g., Voter Registration for Wounded Warriors: S.3308, the Veterans Voter Support Act. Testimony Before the S. Comm. on Rules & Admin.*, 110th Cong. (2008) (statement of Lisa J. Danetz, Senior Counsel, Demos), <http://www.demos.org/sites/default/files/publications/Voter%20Registration%20for%20Wounded%20Warriors.pdf>; *Correspondence with Federal Agencies*, CAL. SECRETARY ST., <http://www.sos.ca.gov/elections/voter-registration/nvra/correspondence/federal-agencies> (last visited June 6, 2016).

192. *Coordination with California Department of Veterans Affairs*, CAL. SECRETARY ST., <http://www.sos.ca.gov/elections/voter-registration/nvra/correspondence/coordination-ca-veterans-affairs> (last visited June 6, 2016).

193. *Accessible Voting for Individuals with Disabilities*, *supra* note 142.

194. INFO. TECH. & INNOVATION FOUND., *supra* note 117, at 7.

195. *See* TED SELKER ET AL., RESEARCH IN ACCESSIBLE VOTING REPORT 5-6 (2014), <http://www.eac.gov/assets/1/Page/Research%20on%20Accessible%20Voting%20Complete%20Final%20Report1.pdf>; Paul Alongi, *Two States to Use Clemson Voting Technology in Elections*, CLEMSON UNIV.: NEWSSTAND (Jan. 2, 2014), <http://newsstand>
footnote continued on next page

system that began at its foundations with input from voters.¹⁹⁶ Alabama, Alaska, Arizona, Missouri, and North Dakota are leaders in providing electronic balloting and online voting.¹⁹⁷ Additionally, because of the large number of absentee voters, the military has developed technological advances that allow military voters to vote via the Internet.¹⁹⁸

Wisconsin offers a good case study of improvements to the voting process. There are over half a million potential voters with disabilities that live in Wisconsin.¹⁹⁹ The state conducted polling place accessibility audits in nearly every municipality and county in the state.²⁰⁰ These audits revealed 1652 findings of high severity, that is, “problems . . . that, in and of itself, would be likely to prevent a voter with a disability from entering a polling place and casting a ballot privately and independently.”²⁰¹ The average polling place had 4.9 accessibility problems.²⁰² Most of these problems were within the voting area itself.²⁰³ For example, 105 locations did not have a place where voters using wheelchairs could cast a paper ballot.²⁰⁴ Other problems included inaccessible entrances, found in fifty-nine percent of the audited locations.²⁰⁵ These problems have led to solutions that have increased accessibility for people with disabilities overall. For example, a municipality built a new municipal facility as a replacement for its previous inaccessible building.²⁰⁶

[.clemson.edu/mediarelations/two-states-to-use-clemson-voting-technology-in-elections](http://www.clemson.edu/mediarelations/two-states-to-use-clemson-voting-technology-in-elections).

196. See *LA County Seeks Public’s Input on Voting System*, GLENDORA PATCH (Jan. 26, 2012, 4:47 PM EST), <http://patch.com/california/glendora/la-county-seeks-public-s-input-on-voting-system-f8407ef1>.

197. *Electronic Transmission of Ballots*, NAT’L CONF. ST. LEGISLATURES (Mar. 22, 2016), <http://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>.

198. *Military Voting and the Federal Voting Assistance Program: Hearing Before the S. Comm. on Armed Services*, 109th Cong. 13-14 (2006) (statement of David S.C. Chu, Under-Secretary of Defense for Personnel and Readiness, U.S. Department of Defense).

199. WIS. GOV’T ACCOUNTABILITY BD., IMPEDIMENTS FACED BY ELDERLY VOTERS AND VOTERS WITH DISABILITIES 21 (2013), <https://www.supportthevoter.gov/files/2013/08/Wisconsin-GAB-2013-Accessibility-Report.pdf> [hereinafter 2013 WIS. ACCESSIBILITY REPORT].

200. WIS. GOV’T ACCOUNTABILITY BD., IMPEDIMENTS FACED BY ELDERLY VOTERS AND VOTERS WITH DISABILITIES 2 (2015), http://www.gab.wi.gov/sites/default/files/publication/179/2015_accessibility_report_pdf_16501.pdf [hereinafter 2015 WIS. ACCESSIBILITY REPORT].

201. *Id.*

202. *Id.*

203. *Id.* at 7.

204. *Id.*

205. *Id.*

206. 2013 WIS. ACCESSIBILITY REPORT, *supra* note 199, at 18.

Absentee voters in LTCs are allowed to bypass voter ID requirements through the use of special voting deputies.²⁰⁷ Additionally, Wisconsin legislators expanded the number of LTCs served by special voting deputies.²⁰⁸ Furthermore, voters with disabilities can also receive an exemption from signing poll lists before receiving a ballot.²⁰⁹ Between 2014 and 2015, the Election Board conducted a series of training sessions around the state to certify 2550 election workers; “[a] significant portion of this training protocol focused on assisting and working with voters with disabilities.”²¹⁰ The Election Board worked in collaboration with the Wisconsin Disability Vote Coalition (WDVC) to develop educational and get-out-the vote materials for voters and groups with disabilities.²¹¹ The WDVC is comprised of representatives from Disability Rights Wisconsin and the Board for People with Developmental Disabilities in order to “increase voting turnout and participation in the electoral process among members of Wisconsin’s disability community.”²¹² Additionally, the Election Board has formed an Accessibility Advisory Committee derived from advocacy groups to identify and remedy problems with the voting process for voters with disabilities.²¹³ Through its efforts, Wisconsin has managed to eliminate the participation gap for voters with disabilities.²¹⁴

There are possible roadblocks to implementation. Since people with disabilities are a largely untapped electoral bloc,²¹⁵ it may be difficult to persuade politicians to turn their attention in their direction. Improvements are also costly. These include one-time costs, such as improving physical access to the polling place and voting machines, and ongoing costs, such as training and audits. The most expensive improvements, such as voting machines, though, are covered by HAVA. Moreover, as Wisconsin has concluded, implementing physical changes can improve access to government structures not only at election time but also in general. Given that new or renewed government structures must be ADA-compliant anyway, these costs may be inevitable.

207. 2015 WIS. ACCESSIBILITY REPORT, *supra* note 200, at 4.

208. *Id.*

209. *Id.*

210. *Id.* at 18.

211. 2013 WIS. ACCESSIBILITY REPORT, *supra* note 199, at 19.

212. *Id.*

213. *Id.*

214. *Id.* at 21.

215. See Lisa Schur & Meera Adya, *Sidelined or Mainstreamed?: Political Participation and Attitudes of People with Disabilities in the United States*, 94 SOC. SCI. Q. 811, 813 & tbl. (2013).

Conclusion

It is difficult to applaud democratic values when up to one-fifth of the electorate has problems voting. This gap is indicative of what we in other arenas have termed “first generation” problems in voting rights—direct restrictions on people’s ability to vote.²¹⁶ We expected that these problems would be solved with respect to voters of color with the adoption of the Voting Rights Act,²¹⁷ but they are still present if we turn our attention from race to disability. Voters with disabilities not only face harm because they are not able to vote individually, but also because of the blow to their representativeness as a bloc of voters with distinct interests within the political system.²¹⁸

In addition to hurting the system, barriers to voting injure the people who are unable to vote. Potential voters with disabilities want to vote the same way as their fellow citizens—in person at a polling place.²¹⁹ Barriers to voting contribute to the low feelings of political efficacy on the part of people with disabilities.²²⁰ Additionally, they send a message that people with disabilities are not wanted as political citizens.²²¹ This can cause dignitary harm, especially as it is part of a pattern of second-class citizenship.²²² Low political

216. Samuel Issacharoff, *Polarized Voting and the Political Process: The Transformation of Voting Rights Jurisprudence*, 90 MICH. L. REV. 1833, 1838-39 (1992).

217. *Id.*

218. Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663, 1677-78, 1740-43 (2001) (arguing in favor of recognizing the importance of aggregate voting); Samuel Issacharoff & Pamela S. Karlan, *Standing and Misunderstanding in Voting Rights Law*, 111 HARV. L. REV. 2276, 2282 n.30 (1998) (contending that we should think about group political power as well as the individual right to vote).

219. Kay Schriener & Andrew I. Batavia, *The Americans with Disabilities Act: Does It Secure the Fundamental Right to Vote?*, 29 POL’Y STUD. J. 663, 672 (2001); Schur et al., *supra* note 5, at 63 & tbl.2.

220. On the link between feelings of political efficacy and political participation, see SIDNEY VERBA ET AL., *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS* (1995). For its relation to people with disabilities, see Todd G. Shields et al., *Disenfranchised: People with Disabilities in American Electoral Politics*, in *EXPANDING THE SCOPE OF SOCIAL SCIENCE RESEARCH ON DISABILITY* 177 (Barbara M. Altman & Sharon N. Barnartt eds., 2000); Lisa Schur, *Contending with the ‘Double Handicap’: Political Activism Among Women with Disabilities*, 25 WOMEN & POL. 31 (2003); Lisa Schur et al., *Enabling Democracy: Disability and Voter Turnout*, 55 POL. RES. Q. 167 (2002); and Lisa Schur et al., *Generational Cohorts, Group Membership, and Political Participation by People with Disabilities*, 58 POL. RES. Q. 487 (2005).

221. Anne Schneider & Helen Ingram, *Social Construction of Target Populations: Implications for Politics and Policy*, 87 AM. POL. SCI. REV. 334, 334 (1993); Schur et al., *supra* note 5, at 61.

222. Joseph Fishkin, *Equal Citizenship and the Individual Right to Vote*, 86 IND. L.J. 1289, 1296 (2011); Waterstone, *supra* note 16, at 365.

participation continues the system of ableism that has long characterized the second-class citizenship of people with disabilities.²²³ Barriers to the political process are longstanding, and historically, people with disabilities faced express prohibitions on the right to vote. Now, what ties together people across various types of impairments is the social stigma they all face as people with disabilities. An absence of people with disabilities at the polling place is a visual reminder that reinforces stigma and communicates that people with disabilities are not full citizens.²²⁴ Their inclusion in the democratic polity is a foundation for their participation in other arenas of social and civic life, and their lack of it is a fundamental marker of their unequal citizenship.²²⁵ Moreover, as people with disabilities may not have the resources to participate in politics in other ways, such as through campaign contributions, it is even more important to emphasize their right to vote for democratic inclusion purposes.²²⁶

Excluding people with disabilities from the franchise threatens democratic legitimacy and consigns an already-disadvantaged population to second-class citizenship. In fact, voters with disabilities also compose a cross-cutting assemblage of people from other disadvantaged groups of concern such as people of color, veterans, poor people, and the elderly. As disability intersects with other categories of identity, election law scholars who care about those other categories must address disability as well.

As the country keys up for a presidential election, a significant part of the electorate is watching and waiting to see if this election aligns with the ethos of full participation in a secret and independent ballot for all voters. While recent history indicates that this ethos has been unfulfilled for people with disabilities, some state evidence shows new possibilities for fixing this problem for the future.

223. Samuel R. Bagenstos, *Subordination, Stigma, and "Disability,"* 86 VA. L. REV. 397, 479 (2000).

224. See Fishkin, *supra* note 222, at 1296.

225. For emphasis that voting is the right "preservative of all rights," see *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). See also, e.g., *City of Mobile v. Bolden*, 446 U.S. 55, 115 (1980) (Marshall, J., dissenting); *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); Fishkin, *supra* note 222, at 1351-52.

226. See Fishkin, *supra* note 222, at 1352.

Appendix

Alabama

ID required:	Photo ID requested ²²⁷
Permanent absentee status:	No ²²⁸
Curbside assistance:	<i>Unknown</i>
Line-jumping:	Yes ²²⁹
Long-term care provision:	<i>Unknown</i>
Link on main voting page:	No
Miscellaneous:	

No information for voters with disabilities on website.

Alaska

ID required:	ID requested, but photo not required ²³⁰
Permanent absentee status:	No ²³¹
Curbside assistance:	No ²³²
Line-jumping:	Poll worker's discretion ²³³
Long-term care provision:	No ²³⁴
Link on main voting page:	Yes ²³⁵
Miscellaneous:	

Has accessible versions of voter registration form and absentee ballot application online.²³⁶ Has a voter registration and absentee informational video with ASL interpreter.²³⁷

227. *Voter Identification Requirements—Voter ID Laws*, NAT'L CONF. ST. LEGISLATURES (Apr. 11, 2016), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

228. *Absentee and Early Voting*, NAT'L CONF. ST. LEGISLATURES (Mar. 24, 2016), <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

229. Ala. Sec'y of State, *Alabama Voter Guide 2016*, at 7 (2015), <https://www.alabamavotes.gov/downloads/election/2016/2016VoterGuide.pdf>.

230. *Voter Identification Requirements*, *supra* note 227.

231. Telephone Interview with the Office of the Sec'y of State for Alaska, Elections Div. (Feb. 17, 2016).

232. *Id.*

233. *Id.*

234. *Id.*

235. ALASKA DIV. ELECTIONS, <https://www.elections.alaska.gov> (last visited June 6, 2016).

236. *Disabled Voter Assistance*, ALASKA DIV. ELECTIONS, <https://www.elections.alaska.gov/va.php> (last visited June 6, 2016).

237. *Id.*

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Arizona

ID required:	Strict ID, but photo not required ²³⁸
Permanent absentee status:	Yes ²³⁹
Curbside assistance:	Yes ²⁴⁰
Line-jumping:	Varies by county ²⁴¹
Long-term care provision:	Varies by county ²⁴²
Link on main voting page:	Yes ²⁴³

Miscellaneous:

States that “[t]he Arizona Center for Disability Law will run a hotline to address any election concerns for persons with disabilities” and that “[t]he ACDL . . . will file Help America Vote Act (HAVA) complaints.”²⁴⁴

Arkansas

ID required:	ID requested, but photo not required ²⁴⁵
Permanent absentee status:	Varies by county ²⁴⁶
Curbside assistance:	Varies by county ²⁴⁷
Line-jumping:	Varies by county ²⁴⁸
Long-term care provision:	Yes ²⁴⁹
Link on main voting page:	No

Miscellaneous:

No information for voters with disabilities on website.

238. *Voter Identification Requirements*, *supra* note 227. The National Conference of State Legislatures defines a “strict” voter ID law as one that requires a voter without acceptable identification to “vote on a provisional ballot and also take additional steps after Election Day for it to be counted,” such as returning to the election office with acceptable ID. *Id.*

239. *Voting in this Election*, ARIZ. SECRETARY ST., <http://www.azsos.gov/elections/voting-election> (last visited June 6, 2016).

240. *Id.*

241. Telephone Interview with the Office of the Sec’y of State for Ariz., Elections Div. (Feb. 16, 2016).

242. *Id.*

243. *Voting in this Election*, *supra* note 239.

244. *Id.*

245. *Voter Identification Requirements*, *supra* note 227.

246. Telephone Interview with the Office of the Sec’y of State for Ark., Elections Div. (Feb. 16, 2016).

247. *Id.*

248. *Id.*

249. *Id.*

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California

ID required:	No ²⁵⁰
Permanent absentee status:	Yes ²⁵¹
Curbside assistance:	Varies by county ²⁵²
Line-jumping:	Varies by county ²⁵³
Long-term care provision:	Varies by county ²⁵⁴
Link on main voting page:	Yes ²⁵⁵

Miscellaneous:

Conducts a survey of voters with disabilities prior to each election.²⁵⁶ Notifies each registered voter whether his or her polling place is accessible before each election on the sample ballot mailed to each voter.²⁵⁷ Has a statewide Voting Accessibility Advisory Committee (VAAC), which “is designed to advise, assist, and provide recommendations to the Secretary of State’s office as to how voters with disabilities can vote independently and privately” and whose members “have been influential in assisting with numerous projects, including the Polling Place Accessibility Guidelines.”²⁵⁸ States that the VAAC’s members “have helped raise awareness of disability issues through their involvement in the development of the Voter Accessibility Survey and production of the Polling Place Accessibility Surveyor Training Videos.”²⁵⁹

Colorado

ID required:	ID requested, but photo not required ²⁶⁰
Permanent absentee status:	Not applicable
Curbside assistance:	Not applicable
Line-jumping:	Not applicable
Long-term care provision:	Not applicable
Link on main voting page:	Yes ²⁶¹

250. *Voter Identification Requirements*, *supra* note 227.

251. Telephone Interview with the Office of the Sec’y of State for Cal., Elections Div. (Feb. 16, 2016).

252. *Id.*

253. *Id.*

254. *Id.*

255. *Elections and Voter Information*, CAL. SECRETARY ST., <http://www.sos.ca.gov/elections> (last visited June 6, 2016).

256. *Voting with Disabilities*, CAL. SECRETARY ST., <http://www.sos.ca.gov/elections/voting-resources/voters-disabilities> (last visited June 6, 2016).

257. *Id.*

258. *Voting Accessibility Advisory Committee (VAAC)*, CAL. SECRETARY ST., <http://www.sos.ca.gov/elections/vaac> (last visited June 6, 2016).

259. *Id.*

260. *Voter Identification Requirements*, *supra* note 227.

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All voting by mail.²⁶² Has a disability Q&A section on website.²⁶³ Notes that “[s]tate and federal laws require that every polling location be accessible” and urges voters to make their local election officials aware of issues if they find that their polling locations are not accessible.²⁶⁴ States that voters can also file a complaint with the Colorado Secretary of State and provides a link to information about the HAVA complaint process on the Colorado Secretary of State’s website.²⁶⁵

Connecticut

ID required:	ID requested, but photo not required ²⁶⁶
Permanent absentee status:	Yes ²⁶⁷
Curbside assistance:	Yes ²⁶⁸
Line-jumping:	Yes ²⁶⁹
Long-term care provision:	Twenty-voter trigger ²⁷⁰
Link on main voting page:	Yes ²⁷¹
Miscellaneous:	

Encourages voters with disabilities to become poll workers.²⁷² Provides that “[t]he eligibility statement that is part of the registration process must be made available, upon request, in Braille, large print or audio to people with visual disabilities.”²⁷³ Has a “Voters with Disabilities Fact Sheet.”²⁷⁴

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261. *Voters*, COLO. SECRETARY ST., <http://www.sos.state.co.us/pubs/elections/vote/VoterHome.html> (last visited June 6, 2016).
262. *Election Fact Sheet*, COLO. SECRETARY ST., <http://www.sos.state.co.us/pubs/elections/vote/electionFactSheet.html> (last visited June 6, 2016).
263. *Voters*, *supra* note 261.
264. *Electors with Disabilities & HAVA FAQ S*, COLO. SECRETARY ST., <http://www.sos.state.co.us/pubs/elections/FAQs/ElectorsWithDisabilities.html> (last visited June 6, 2016).
265. *Id.*
266. *Voter Identification Requirements*, *supra* note 227.
267. Conn. Sec’y of State, *Voters with Disabilities Fact Sheet (2015)*, http://www.sots.ct.gov/sots/lib/sots/electionservices/voterfactsheets/2015/ct_voters_with_disabilities_fact_sheet_2015.pdf.
268. *Id.*
269. *Id.*
270. *Your Rights as a Voter with a Disability*, CONN. OFF. PROTECTION & ADVOC. FOR PERSONS WITH DISABILITIES, <http://www.ct.gov/opapd/cwp/view.asp?a=1756&q=422996> (last updated Jan. 12, 2016).
271. *Where and How Do I Vote?*, CONN. SECRETARY ST., <http://www.sots.ct.gov/sots/cwp/view.asp?a=3179&q=563116&sotsNav=|> (last updated Aug. 17, 2015).
272. *Your Rights as a Voter with a Disability*, *supra* note 270.
273. *Id.*
274. Conn. Sec’y of State, *supra* note 267.

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Delaware

ID required:	ID requested, but photo not required ²⁷⁵
Permanent absentee status:	Yes ²⁷⁶
Curbside assistance:	No ²⁷⁷
Line-jumping:	No ²⁷⁸
Long-term care provision:	Yes ²⁷⁹
Link on main voting page:	Yes ²⁸⁰

Miscellaneous:

“Most polling places are wheelchair accessible.”²⁸¹ Has an online list of permanent absentee voters.²⁸² Has a Disabilities Law Program, which “receives funding to assist in the implementation of the Help America Vote Act and to ensure the full participation of people with disabilities in the electoral (voting) process” and “can provide education, training and assistance to people with disabilities to promote their participation in elections, including voter registration, training and advocacy informing the community about their rights on Election Day, including the right to accessible polling places.”²⁸³ Has a brochure for voters with disabilities.²⁸⁴

Florida

ID required:	Photo ID requested ²⁸⁵
Permanent absentee status:	<i>Unknown</i>
Curbside assistance:	<i>Unknown</i>
Line-jumping:	<i>Unknown</i>
Long-term care provision:	Yes ²⁸⁶

275. *Voter Identification Requirements*, *supra* note 227.

276. Del. Dep’t of Elections, *Absentee Voting: How to Vote When You Can’t Go to the Polls* (2012), <http://elections.delaware.gov/voter/pdfs/absentee.pdf>.

277. Telephone Interview with the Office of the Sec’y of State for Del., Elections Div. (Feb. 16, 2016).

278. *Id.*

279. *Id.*

280. *Vote Delaware*, ST. DEL., <https://ivote.de.gov/> (last visited June 6, 2016).

281. Del. Dep’t of Elections, *Voting for Citizens with Special Needs* (2012), http://elections.delaware.gov/voter/pdfs/special_needs.pdf.

282. *Permanent Absentee Voter List*, DEL. DEP’T ELECTIONS, <http://elections.delaware.gov/reports/absperm.shtml> (last updated May 18, 2016).

283. Cmty. Legal Aid Soc’y, *Disabilities Law Program, The Right to Vote in Delaware: Information for Delawareans with Disabilities* (2014), <http://www.declasi.org/wp-content/uploads/2014/09/The-Right-to-Vote-in-Delaware-brochure.pdf>.

284. *Id.*

285. *Voter Identification Requirements*, *supra* note 227.

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Link on main voting page: Yes²⁸⁷

Georgia

ID required: Strict photo ID²⁸⁸

Permanent absentee status: No²⁸⁹

Curbside assistance: By county²⁹⁰

Line-jumping: Yes²⁹¹

Long-term care provision: No²⁹²

Link on main voting page: Yes²⁹³

Miscellaneous:

Notes that polling places are required to be accessible and that if a polling place is not accessible, and a voter cannot enter it to cast a vote, local election officials must provide the voter with an alternative method of voting; under Georgia law voters with disabilities may use absentee ballots for this purpose.²⁹⁴

Hawaii

ID required: Photo ID requested²⁹⁵

Permanent absentee status: Yes²⁹⁶

Curbside assistance: Yes²⁹⁷

286. Voters who are in an assisted living facility or a nursing home facility can receive an absentee ballot there, or they may participate in supervised voting if made available per section 101.655 of the Florida Statutes. FLA. STAT. § 101.655 (2015); *Accessible Voting for Persons with Disabilities*, FLA. DIV. ELECTIONS, <http://dos.myflorida.com/elections/for-voters/voting/accessible-voting-for-persons-with-disabilities> (last visited June 6, 2016).

287. “Accessible Voting for People with Disabilities” is under the dropdown “For Voters,” which is on the main page. *For Voters*, FLA. DIV. ELECTIONS, <http://dos.myflorida.com/elections/for-voters> (last visited June 6, 2016).

288. *Voter Identification Requirements*, *supra* note 227.

289. Telephone Interview with the Office of the Sec’y of State for Ga., Elections Div. (Feb. 16, 2016).

290. *Id.*

291. *Georgia Voting Guide*, VOTE411.ORG, http://www.vote411.org/state_guide?state_id=Georgia#.Vr502t-rRHc (last visited June 6, 2016).

292. Telephone Interview with the Office of the Sec’y of State for Ga., *supra* note 289.

293. “Voters with Disabilities” is under “Voter Info.” on the main page. *Elections*, GA. SECRETARY ST., <http://sos.ga.gov/index.php/?section=elections> (last visited June 6, 2016).

294. *Voting Rights*, GA. ADVOC. OFF., <http://thegao.org/what-we-do/programs/hava/voting-rights> (last visited June 6, 2016).

295. *Voter Identification Requirements*, *supra* note 227.

296. Telephone Interview with the Office of the Sec’y of State for Haw., Elections Div. (Feb. 16, 2016).

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Line-jumping: Yes²⁹⁸
Long-term care provision: No²⁹⁹
Link on main voting page: Yes³⁰⁰

Miscellaneous:

States that “[t]o ensure the security and integrity of election related activities at care facilities, staff members are discouraged from participating directly with a voter in the process of registering and/or voting absentee” and that “[s]taff may assist only upon receiving specific authorization from the resident (voter).”³⁰¹

Idaho

ID required: Photo ID requested³⁰²
Permanent absentee status: No³⁰³
Curbside assistance: Yes, if arranged in advance³⁰⁴
Line-jumping: Yes, by custom³⁰⁵
Long-term care provision: Yes, by request of county or voter³⁰⁶
Link on main voting page: Yes³⁰⁷

Miscellaneous:

Provides print, audio, and captioned video versions of operating instructions for voter assistance terminals.³⁰⁸

297. *Voters Requiring Assistance*, HAW. OFF. ELECTIONS, <http://elections.hawaii.gov/voters/i-am-a/voters-requiring-assistance> (last visited June 6, 2016).

298. Telephone Interview with the Office of the Sec’y of State for Haw., *supra* note 296.

299. *Id.*

300. There are subsections called “Voter in a Care Facility” and “Voter Requiring Assistance” under “Voters,” which is on the main page. *Office of Elections*, HAW. OFF. ELECTIONS, <http://elections.hawaii.gov> (last visited Apr. 23, 2016).

301. *Voters in Care Facilities*, HAW. OFF. ELECTIONS, <http://elections.hawaii.gov/voters/i-am-a/voters-in-a-care-home-facility> (last visited June 6, 2016).

302. *Voter Identification Requirements*, *supra* note 227.

303. Telephone Interview with the Office of the Sec’y of State for Idaho, Elections Div. (Feb. 16, 2016).

304. *Accessible Voting*, IDAHO SECRETARY ST., <http://www.idahovotes.gov/access.shtml> (last visited June 6, 2016).

305. Telephone Interview with the Office of the Sec’y of State for Idaho, *supra* note 303.

306. *Id.*

307. IDAHO SECRETARY ST., <http://www.idahovotes.gov> (last visited June 6, 2016).

308. *Accessible Voting*, *supra* note 304.

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Illinois

ID required:	No ³⁰⁹
Permanent absentee status:	Yes ³¹⁰
Curbside assistance:	Yes ³¹¹
Line-jumping:	Yes ³¹²
Long-term care provision:	90% of LTCs are polling places ³¹³
Link on main voting page:	No
Miscellaneous:	
	Provides voter assistance brochure. ³¹⁴

Indiana

ID required:	Strict photo ID ³¹⁵
Permanent absentee status:	<i>Unknown</i>
Curbside assistance:	No ³¹⁶
Line-jumping:	No ³¹⁷
Long-term care provision:	No ³¹⁸
Link on main voting page:	Yes ³¹⁹
Miscellaneous:	
	Has a brochure for voters with disabilities. ³²⁰ Has a brochure on polling place accessibility. ³²¹ Has a brochure on protection and advocacy for voting access (PAVA). ³²²

309. *Voter Identification Requirements*, *supra* note 227.

310. Telephone Interview with the Office of the Sec’y of State for Ill., Elections Div. (Feb. 17, 2016).

311. *Id.*

312. *Id.*

313. *Id.*

314. Ill. State Bd. of Elections, Voter Assistance on Election Day (2015), <http://www.elections.state.il.us/downloads/electioninformation/pdf/assistdisabled.pdf>.

315. *Voter Identification Requirements*, *supra* note 227.

316. Telephone Interview with the Office of the Sec’y of State for Ind., Elections Div. (Feb. 17, 2016).

317. *Id.*

318. *Id.*

319. “Voters with Disabilities” is under “Voter Information Portal,” which is available on the main page. *Voter Information Portal*, IND. ELECTION DIV., <http://www.in.gov/sos/elections/2398.htm> (last visited June 6, 2016).

320. Ind. Election Div., Information for Voters with Disabilities (2007), http://www.in.gov/sos/elections/files/Voters_with_Disabilities_Brochure.pdf.

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Iowa

ID required:	No ³²³
Permanent absentee status:	No ³²⁴
Curbside assistance:	Yes ³²⁵
Line-jumping:	By prior arrangement ³²⁶
Long-term care provision:	Absentee ballot on request ³²⁷
Link on main voting page:	No

Miscellaneous:

Provides additional information on curbside assistance and poll worker training on request.

Kansas

ID required:	Strict photo ID: only permanent advanced voters exempt ³²⁸
Permanent absentee status:	Yes ³²⁹
Curbside assistance:	No ³³⁰
Line-jumping:	No ³³¹
Long-term care provision:	No ³³²

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321. Ind. Election Div., Polling Place Accessibility in the State of Indiana (2010), http://www.in.gov/sos/elections/files/Polling_Place_Accessibility_Brochure.pdf.
322. Ind. Protection & Advocacy Servs., Protection and Advocacy for Voting Access (PAVA) (2006), http://www.in.gov/sos/elections/files/IPAS_PAVA_broch07_06_hi_res.pdf.
323. *Voter Identification Requirements*, *supra* note 227.
324. Telephone Interview with the Office of the Sec'y of State for Iowa, Elections Div. (Feb. 17, 2016).
325. *Accessibility*, IOWA SECRETARY ST., <http://sos.iowa.gov/elections/voterinformation/accessibility.html> (last visited June 6, 2016).
326. Telephone Interview with the Office of the Sec'y of State for Iowa, *supra* note 324.
327. Voters may request an absentee ballot if they live in a designated health care facility or are currently residing in a hospital. Under Iowa law, a bipartisan team of election officials must deliver the absentee ballot to the voter. *Absentee Voting at Health Care Facilities*, IOWA SECRETARY ST., <https://sos.iowa.gov/elections/electioninfo/hcfabsentee.html> (last visited June 6, 2016).
328. *Voter Identification Requirements*, *supra* note 227; *New Voting Laws in Kansas*, DISABILITY RTS. CTR. KAN., <https://www.drckansas.org/drc-programs/voting/new-voting-laws-in-kansas> (last visited June 6, 2016).
329. *New Voting Laws in Kansas*, *supra* note 328.
330. Telephone Interview with the Office of the Sec'y of State for Kan., Elections Div. (Feb. 17, 2016).
331. *Id.*

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Link on main voting page: No

Miscellaneous:

Has a video (with captions) called “Get Ready to Vote in Kansas” that teaches voters with disabilities about election law changes, including photo ID to vote and proof of citizenship to register to vote.³³³ Has a handbook for poll workers that describes requirements for accessibility for people with disabilities and covers voter qualification, accessible parking, curbside voting, entrance and paths, polling area, voting booth, and polling place etiquette.³³⁴ The handbook and video were created by the Disability Rights Center and funded by the Kansas Secretary of State.³³⁵ Has a “Guide to Voting Accessibility” brochure.³³⁶

Kentucky

ID required: ID requested, but photo not required³³⁷

Permanent absentee status: No³³⁸

Curbside assistance: No³³⁹

Line-jumping: No³⁴⁰

Long-term care provision: No³⁴¹

Link on main voting page: No

Miscellaneous:

Has “Americans with Disabilities Act Polling Places: Accessibility Surveys.”³⁴²
The ADA page has a voting information section.³⁴³

332. *Id.*

333. DRC Kansas, *Get Ready to Vote in Kansas!*, YOUTUBE (May 30, 2012), https://youtu.be/KRZL2DS_910.

334. DISABILITY RIGHTS CTR. OF KAN., KANSAS ELECTION OFFICER HANDBOOK FOR DISABILITY ACCESSIBILITY IN VOTING (2012), http://www.kssos.org/elections/12elec/Kansas_Election_Officer_handbook_for_disability_accessibility.pdf.

335. *Id.* at 41; *35th Anniversary—May 2013*, DISABILITY RTS. CTR. KAN., <http://www.drckansas.org/publications/drc-newsletter> (last visited June 6, 2016).

336. Kris W. Kobach, Kan. Sec’y of State, *A Guide to Voting Accessibility* (2016), http://www.kssos.org/forms/elections/A_Guide_to_Voting_Accessibility.pdf.

337. *Voter Identification Requirements*, *supra* note 227.

338. Telephone Interview with the Office of the Sec’y of State for Ky., Elections Div. (Feb. 17, 2016).

339. *Id.*

340. *Id.*

341. *Id.*

342. *Welcome to the State Board of Elections*, KY. ST. BOARD ELECTIONS, <http://elect.ky.gov/Pages/default.aspx> (last visited June 6, 2016).

343. *Disability Voting Information*, KY.’S OFF. FOR AMS. WITH DISABILITIES ACT, http://ada.ky.gov/voting_info.htm (last visited June 6, 2016).

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Louisiana

ID required:	Photo ID requested ³⁴⁴
Permanent absentee status:	Automatic absentee by mail ballot for disabled and senior citizens ³⁴⁵
Curbside assistance:	No ³⁴⁶
Line-jumping:	Yes ³⁴⁷
Long-term care provision:	Yes ³⁴⁸
Link on main voting page:	Yes ³⁴⁹
Miscellaneous:	

Has a "Voting in Louisiana: Additional Voting Information for Disabled, Senior Citizens, and/or Residents of a Nursing or Veterans' Home" pamphlet.³⁵⁰ Pamphlet notes that "[s]tate laws allow voters three (3) minutes to vote," but that if a voter "need[s] assistance in voting or . . . will be using the audio voting keypad, [the voter] will have 20 minutes to vote."³⁵¹

344. *Voter Identification Requirements*, *supra* note 227.

345. *Disability Program for Disabled, Senior Citizens & Residents of Nursing or Veterans' Homes*, LA. SECRETARY ST., <http://www.sos.la.gov/ElectionsAndVoting/Pages/DisabledElderlyCitizens.aspx> (last visited June 6, 2016) ("Louisiana has a new automatic absentee by mail ballot process for the disabled and senior citizens, referred to as the Disability Program. Once an eligible voter applies for the program and the application is accepted by the registrar of voters, an absentee by mail ballot will automatically be sent to the voter for each election.").

346. Telephone Interview with the Office of the Sec'y of State for La., Elections Div. (Feb. 17, 2016).

347. *Vote on Election Day*, LA. SECRETARY ST., <http://www.sos.la.gov/ElectionsAndVoting/Vote/VoteOnElectionDay/Pages/default.aspx> (last visited June 6, 2016) ("A visibly disabled voter and the person assisting him in voting shall go to the front of the line at their polling place.").

348. *Disability Program for Disabled, Senior Citizens & Residents of Nursing or Veterans' Homes*, *supra* note 345 ("The Disability Program also includes an automatic early voting process for residents in nursing or veterans' homes. Once an eligible resident applies for the program and the application is accepted by the registrar of voters, the registrar will notify the voter and go to the nursing or veterans' home to allow the resident to vote early for each election. Voting will be conducted either by paper ballot or voting machine. The automatic early voting process will stop when the voter is no longer a resident of the nursing or veterans' home.").

349. "Disabled and Elderly Citizens" is under "Browse by Audience," which is on the main page. *Browse by Audience*, LA. SECRETARY ST., <http://www.sos.la.gov/ElectionsAndVoting/BrowseByAudience/Pages/default.aspx> (last visited June 6, 2016).

350. Tom Schedler, La. Sec'y of State, *Additional Voting Information for Disabled, Senior Citizens, and/or Residents of a Nursing or Veterans' Home* (2014), <http://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/SOSVotingRightsForTheElderlyAndIndividualsWithDisabilities.pdf>.

351. *Id.* at 5.

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Maine

ID required:	No ³⁵²
Permanent absentee status:	No ³⁵³
Curbside assistance:	Yes ³⁵⁴
Line-jumping:	No ³⁵⁵
Long-term care provision:	Yes, if six or more beds ³⁵⁶
Link on main voting page:	Yes ³⁵⁷

Maryland

ID required:	No ³⁵⁸
Permanent absentee status:	No ³⁵⁹
Curbside assistance:	No ³⁶⁰
Line-jumping:	No, but might be offered a place to sit or a placeholder ³⁶¹
Long-term care provision:	Yes, if twenty-five or more beds ³⁶²
Link on main voting page:	Yes ³⁶³

Miscellaneous:

Provides that if a voter's polling place is not accessible, the voter can vote in person during early voting at an early voting center and does not have to ask to be assigned to another polling place to vote at an early voting center.³⁶⁴ Provides in the alternative that the voter can complete the "Request for Polling Place Change or Absentee Ballot" and submit it to the local board of elections, which will "do its best to change [the voter's] polling place to one that is accessible,"

352. *Voter Identification Requirements*, *supra* note 227.

353. Telephone Interview with the Office of the Sec'y of State for Me., Elections Div. (Feb. 17, 2016).

354. *Id.*

355. *Id.*

356. *Id.*

357. "Accessible Voting Solution" is under "Voter Information," which is on the main page. *Voter Information*, ME. DEPT SECRETARY ST., <http://www.maine.gov/sos/cec/elec/voter-info/index.html> (last visited June 6, 2016).

358. *Voter Identification Requirements*, *supra* note 227.

359. Telephone Interview with the Office of the Sec'y of State for Md., Elections Div. (Feb. 17, 2016).

360. *Id.*

361. *Id.*

362. The local election board contacts the LTC activities director. *Id.*

363. *Election Information*, MD. ST. BOARD ELECTIONS, <http://www.elections.state.md.us> (last visited June 6, 2016).

364. *Access by Voters with Disabilities*, MD. ST. BOARD ELECTIONS, <http://www.elections.state.md.us/voting/accessibility.html> (last visited June 6, 2016).

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though if the polling place cannot be changed, a local election official will notify the voter and send the voter an absentee ballot.³⁶⁵

Massachusetts

ID required:	No ³⁶⁶
Permanent absentee status:	Yes ³⁶⁷
Curbside assistance:	No ³⁶⁸
Line-jumping:	No ³⁶⁹
Long-term care provision:	Yes ³⁷⁰
Link on main voting page:	Yes ³⁷¹

Michigan

ID required:	Photo ID requested ³⁷²
Permanent absentee status:	<i>Unknown</i>
Curbside assistance:	<i>Unknown</i>
Line-jumping:	<i>Unknown</i>
Long-term care provision:	<i>Unknown</i>
Link on main voting page:	Yes ³⁷³
Miscellaneous:	

No phone number provided for the Elections Division.

Minnesota

ID required:	No ³⁷⁴
Permanent absentee status:	Yes ³⁷⁵

365. *Id.*

366. *Voter Identification Requirements*, *supra* note 227.

367. E-mail from Michelle Tassinari, Dir. & Legal Counsel, Elections Div., Mass. Sec’y of State, to author (Feb. 18, 2016, 9:57 AM) (on file with author).

368. *Id.*

369. *Id.*

370. *Id.*

371. “Voting for Persons with Disabilities” is under “Voter Information,” which is on the main page. *Voter Information*, SECRETARY COMMONWEALTH MASS., <http://www.sec.state.ma.us/ele/elevoterinfo.htm> (last visited June 6, 2016).

372. *Voter Identification Requirements*, *supra* note 227.

373. “The Rights of Voters with Disabilities” is listed under “Special Topics” on the “Information for Voters” page, and it is a quick link on the main page. *Elections in Michigan*, MICH. SECRETARY ST., <http://www.michigan.gov/sos/0,4670,7-127-1633---00.html> (last visited June 6, 2016).

374. *Voter Identification Requirements*, *supra* note 227.

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Curbside assistance:	Yes ³⁷⁶
Line-jumping:	No, but will offer seating ³⁷⁷
Long-term care provision:	Yes ³⁷⁸
Link on main voting page:	Yes ³⁷⁹
Miscellaneous:	

States that voters who need to register on Election Day must provide proof-of-residence. As this can be difficult for voters who live in residential facilities, states that such voters can provide proof-of-residence by asking facility staff to go with them on Election Day to “vouch” for the voter (in which the staff swears that they personally know the voter lives in the facility).³⁸⁰

Mississippi

ID required:	Strict photo ID; only exemption is religion ³⁸¹
Permanent absentee status:	Yes ³⁸²
Curbside assistance:	No ³⁸³
Line-jumping:	No ³⁸⁴
Long-term care provision:	No ³⁸⁵

375. Telephone Interview with the Office of the Sec’y of State for Minn., Elections Div. (Feb. 16, 2016).

376. *Get Help Voting*, OFF. MINN. SECRETARY ST., <http://www.sos.state.mn.us/elections-voting/election-day-voting/get-help-voting> (last visited June 6, 2016).

377. Telephone Interview with the Office of the Sec’y of State for Minn., *supra* note 375.

378. By law, city clerks send teams of election judges (poll workers) to nursing homes and hospitals during the twenty days preceding the election. They will distribute absentee ballots to eligible residents of the facility and provide assistance if needed. *I’m in a Nursing Home or Hospital*, OFF. MINN. SECRETARY ST., <http://www.sos.state.mn.us/elections-voting/register-to-vote/im-in-a-nursing-home-or-hospital> (last visited June 6, 2016).

379. “Assistance and Accessibility” is under “Election Day Voting.” *Election Day Voting*, OFF. MINN. SECRETARY ST., <http://www.sos.state.mn.us/elections-voting/election-day-voting> (last visited June 6, 2016).

380. *I’m in a Residential Facility*, OFF. MINN. SECRETARY ST., <http://www.sos.state.mn.us/elections-voting/register-to-vote/im-in-a-residential-facility> (last visited June 6, 2016).

381. *Voter Identification Requirements*, *supra* note 227; *see also* Delbert Hosemann, Miss. Sec’y of State, Mississippi Voter Information Guide (2014), <http://www.sos.ms.gov/elections-voting/documents/voterinformationguide.pdf>. The religious exemption applies only to those whose religion forbids them to photograph their faces for identification purposes.

382. Telephone Interview with the Office of the Sec’y of State for Miss., Elections Div. (Feb. 17, 2016).

383. *Id.*

384. *Id.*

385. *Id.*

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Link on main voting page: No

Miscellaneous:

No information for voters with disabilities on website.

Missouri

ID required:	ID requested, but photo not required ³⁸⁶
Permanent absentee status:	Yes ³⁸⁷
Curbside assistance:	Yes ³⁸⁸
Line-jumping:	Yes ³⁸⁹
Long-term care provision:	Yes ³⁹⁰
Link on main voting page:	Yes ³⁹¹

Montana

ID required:	ID requested, but photo not required ³⁹²
Permanent absentee status:	No ³⁹³
Curbside assistance:	Yes ³⁹⁴
Line-jumping:	No ³⁹⁵
Long-term care provision:	By county ³⁹⁶
Link on main voting page:	Yes ³⁹⁷

Miscellaneous:

Provides that beginning October 1, 2015, voters may apply for an electronic ballot that can be marked on a personal computer, printed, and returned to the election

386. *Voter Identification Requirements*, *supra* note 227.

387. Telephone Interview with the Office of the Sec’y of State for Mo., Elections Div. (Feb. 17, 2016).

388. *How to Vote*, MO. SECRETARY ST., <http://www.sos.mo.gov/elections/goVoteMissouri/howtovote> (last visited June 6, 2016).

389. Telephone Interview with the Office of the Sec’y of State for Mo., *supra* note 387.

390. *Id.*

391. “Accessible Voting” is under “Elections & Voting,” which is on the main page. *Vote Missouri*, MO. SECRETARY ST., <http://www.sos.mo.gov/elections/goVoteMissouri> (last visited June 6, 2016).

392. *Voter Identification Requirements*, *supra* note 227.

393. E-mail from Casey Hayes, Elections Specialist, Mont. Sec’y of State, to author (Feb. 17, 2016, 1:51 PM) (on file with author).

394. *Id.*

395. *Id.*

396. *Id.*

397. *Elections and Government Services*, MONT. SECRETARY ST., <http://sos.mt.gov/elections/index.asp> (last visited June 6, 2016).

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office.³⁹⁸ Makes the “Voter Information Pamphlet” published by the Secretary of State for each state general election available in Braille and audio formats.³⁹⁹

Nebraska

ID required:	No ⁴⁰⁰
Permanent absentee status:	No ⁴⁰¹
Curbside assistance:	Yes ⁴⁰²
Line-jumping:	Yes ⁴⁰³
Long-term care provision:	No ⁴⁰⁴
Link on main voting page:	Yes ⁴⁰⁵

Nevada

ID required:	No ⁴⁰⁶
Permanent absentee status:	No ⁴⁰⁷
Curbside assistance:	By county ⁴⁰⁸
Line-jumping:	By county ⁴⁰⁹
Long-term care provision:	Yes ⁴¹⁰
Link on main voting page:	Yes ⁴¹¹

398. *Voters with Disabilities*, MONT. SECRETARY ST., <http://sos.mt.gov/elections/Disabilities> (last visited June 6, 2016).

399. *Id.*

400. *Voter Identification Requirements*, *supra* note 227.

401. Telephone Interview with the Office of the Sec’y of State for Neb., Elections Div. (Feb. 17, 2016).

402. Neb. Sec’y of State, Election Div., Your Right to Vote (n.d.), http://www.sos.ne.gov/elec/pdf/voter_disability_rights.pdf.

403. Telephone Interview with the Office of the Sec’y of State for Neb., *supra* note 401.

404. *Id.*

405. “Voter Rights” is under “General Voter Information,” which is on the main “Elections” page. *General Voter Information*, NEB. SECRETARY ST., <http://www.sos.ne.gov/elec/genvoterinfo.html> (last visited June 6, 2016).

406. *Voter Identification Requirements*, *supra* note 227.

407. *Absentee Voting*, NEV. SECRETARY ST., <http://nvsos.gov/index.aspx?page=283> (last visited June 6, 2016).

408. Telephone Interview with the Office of the Sec’y of State for Nev., Elections Div. (Feb. 17, 2016).

409. *Id.*

410. *Id.*

411. “Voters with Disabilities” is under “Voters,” which is on the main “Election Center” page. *Voters*, NEV. SECRETARY ST., <http://nvsos.gov/index.aspx?page=71> (last visited June 6, 2016).

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New Hampshire

ID required:	ID required, but photo not required ⁴¹²
Permanent absentee status:	<i>Unknown</i>
Curbside assistance:	<i>Unknown</i>
Line-jumping:	<i>Unknown</i>
Long-term care provision:	<i>Unknown</i>
Link on main voting page:	Yes ⁴¹³
Miscellaneous:	Says that new information is coming. ⁴¹⁴

New Jersey

ID required:	No ⁴¹⁵
Permanent absentee status:	Yes ⁴¹⁶
Curbside assistance:	No ⁴¹⁷
Line-jumping:	No ⁴¹⁸
Long-term care provision:	No ⁴¹⁹
Link on main voting page:	No
Miscellaneous:	

States that “[w]ith the passage of the ‘Help America Vote Act of 2002’ states are required to actively integrate [sic] persons with disabilities into the electoral process. To assist State Board of Elections in this process, The United Spinal Association, a national veterans service and disability rights organization, has produced the booklet titled *Disability Etiquette*. This booklet was designed to help its readers in becoming more aware of what is appropriate conduct when interacting with a person with a disability.”⁴²⁰ Also provides a “Voter Report Form for Polling Place Accessibility Concerns,” which voters can use to

412. *Voter Identification Requirements*, *supra* note 227.

413. “Voters with Disabilities FAQs” is under “Voting in New Hampshire,” which is on the main “Elections Division” page. *Voting in New Hampshire*, N.H. SECRETARY ST., <http://sos.nh.gov/VoteNH.aspx> (last visited June 6, 2016).

414. *Voters with Disabilities: Frequently Asked Questions*, N.H. SECRETARY ST., <http://sos.nh.gov/VotersDisabilityFAQs.aspx> (last visited June 6, 2016).

415. *Voter Identification Requirements*, *supra* note 227.

416. Telephone Interview with the Office of the Sec’y of State for N.J., Elections Div. (Feb. 16, 2016).

417. *Id.*

418. *Id.*

419. *Id.*

420. *Voting Information*, N.J. DEP’T ST., <http://nj.gov/state/elections/voting-information-voting.html> (last visited June 6, 2016).

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electronically submit detailed descriptions of any difficulties they might have experienced while voting, accessing their polling location, or both.⁴²¹

New Mexico

ID required:	No ⁴²²
Permanent absentee status:	No ⁴²³
Curbside assistance:	Yes ⁴²⁴
Line-jumping:	No ⁴²⁵
Long-term care provision:	No ⁴²⁶
Link on main voting page:	Yes ⁴²⁷

New York

ID required:	No ⁴²⁸
Permanent absentee status:	Yes ⁴²⁹
Curbside assistance:	No ⁴³⁰
Line-jumping:	No ⁴³¹
Long-term care provision:	No ⁴³²
Link on main voting page:	Yes ⁴³³

421. *Voter Rights and Accessibility Information*, N.J. DEP'T ST., <http://www.state.nj.us/state/elections/voting-information-voter-rights.html> (last visited June 6, 2016).

422. *Voter Identification Requirements*, *supra* note 227.

423. Telephone Interview with the Office of the Sec'y of State for N.M., Elections Div. (Feb. 17, 2016).

424. *Id.*

425. *Id.*

426. *Id.*

427. "Voters with Disabilities" is under "Voter Information," which is on the main page. N.M. SECRETARY ST., <http://www.sos.state.nm.us> (last visited June 6, 2016).

428. *Voter Identification Requirements*, *supra* note 227.

429. *Absentee Voting*, N.Y. ST. BOARD ELECTIONS, <http://www.elections.ny.gov/VotingAbsentee.html> (last visited June 6, 2016).

430. Telephone Interview with the Office of the Sec'y of State for N.Y., Elections Div. (Feb. 17, 2016).

431. *Id.*

432. *Id.*

433. "Meeting Voter Access Needs" is under "Register to Vote" on the main page. *Register to Vote*, N.Y. ST. BOARD ELECTIONS, <http://www.elections.ny.gov/VotingRegister.html> (last visited June 6, 2016).

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North Carolina

ID required:	Photo ID requested; curbside voters exempted ⁴³⁴
Permanent absentee status:	Yes ⁴³⁵
Curbside assistance:	Yes ⁴³⁶
Line-jumping:	No ⁴³⁷
Long-term care provision:	Yes ⁴³⁸
Link on main voting page:	Yes ⁴³⁹

North Dakota

ID required:	Strict photo ID ⁴⁴⁰
Permanent absentee status:	<i>Unknown</i>
Curbside assistance:	<i>Unknown</i>
Line-jumping:	<i>Unknown</i>
Long-term care provision:	<i>Unknown</i>
Link on main voting page:	No

Miscellaneous:

No information for voters with disabilities on website.

Ohio

ID required:	Strict ID, but photo not required ⁴⁴¹
Permanent absentee status:	<i>Unknown</i>
Curbside assistance:	Yes ⁴⁴²
Line-jumping:	No ⁴⁴³
Long-term care provision:	Yes ⁴⁴⁴

434. *Voter Identification Requirements, supra* note 227; *Exceptions*, N.C. ST. BOARD ELECTIONS, <http://voterid.nc.gov/exceptions.html> (last visited June 6, 2016).

435. Telephone Interview with the Office of the Sec’y of State for N.C., Elections Div. (Feb. 17, 2016).

436. *Id.*

437. *Id.*

438. *Id.*

439. “Voting Accessibility” is under “Voting” on the main page. N.C. ST. BOARD ELECTIONS, <https://www.ncsbe.gov> (last visited June 6, 2016).

440. *Voter Identification Requirements, supra* note 227.

441. *Id.*

442. *Frequently Asked Questions—Voters with Disabilities*, OHIO SECRETARY ST., <http://www.sos.state.oh.us/SOS/elections/Voters/voterswithdisabilities/ADAFAQs.aspx> (last visited June 6, 2016).

443. Telephone Interview with the Office of the Sec’y of State for Ohio, Elections Div. (Feb. 17, 2016).

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Link on main voting page: Yes⁴⁴⁵

Miscellaneous:

Provides that “[i]f you are unable to sign your own name and have no other legal mark, make an ‘X,’ if possible, on the application signature line. The person who witnessed you making that mark must write his or her name beneath the signature line. If you are unable to make an ‘X,’ you must indicate in some manner to the person assisting you that you want to register to vote. The person registering you must sign the application form and attest that you indicated that you want to register to vote.”⁴⁴⁶

Oklahoma

ID required: ID requested, but photo not required⁴⁴⁷

Permanent absentee status: No⁴⁴⁸

Curbside assistance: Yes⁴⁴⁹

Line-jumping: No⁴⁵⁰

Long-term care provision: May vote by absentee ballot⁴⁵¹

Link on main voting page: Yes⁴⁵²

Miscellaneous:

Has a TDD number (a telecommunications device for the deaf, which allows for text over a phone line).⁴⁵³

444. *Id.*

445. “Voters with Disabilities” is under “Voters,” which can be accessed by clicking the “Elections & Voting” tab on the main page. *Voters*, OHIO SECRETARY ST., <http://www.sos.state.oh.us/sos/elections/Voters.aspx> (last visited June 6, 2016).

446. *Frequently Asked Questions*, *supra* note 442.

447. *Voter Identification Requirements*, *supra* note 227.

448. Telephone Interview with the Office of the Sec’y of State for Okla., Elections Div. (Feb. 16, 2016).

449. *Voter Assistance in Oklahoma*, OKLA. STATE ELECTION BD., https://www.ok.gov/elections/Voter_Info/Accessibility_for_Disabled_Voters/index.html (last visited June 6, 2016).

450. Telephone Interview with the Office of the Sec’y of State for Okla., *supra* note 448.

451. *Absentee Voting in Oklahoma*, OKLA. STATE ELECTION BD., https://www.ok.gov/elections/Voter_Info/Absentee_Voting (last visited June 6, 2016) (“Voters in nursing homes in the same county where they are registered voters may vote absentee. They may submit their applications only by mail or fax, or telegraph. An Absentee Voting Board will go to the nursing home a few days before the election to allow these voters to cast their ballots.”).

452. “Accessibility for Disabled Voters” is under “Voter Info” on the main page. OKLA. ST. ELECTION BOARD, <https://www.ok.gov/elections/index.html> (last visited June 6, 2016).

453. OKLA. ST. ELECTION BOARD, *supra* note 449.

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Oregon

ID required:	No ⁴⁵⁴
Permanent absentee status:	N/A
Curbside assistance:	N/A
Line-jumping:	N/A
Long-term care provision:	Yes ⁴⁵⁵
Link on main voting page:	No

Miscellaneous:

All voting by mail.⁴⁵⁶ Has voting instructions for voters with a disability.⁴⁵⁷ Provides voters with disabilities with two options: (1) use a screen reader and other technology to access a ballot at home, which voters with no or limited vision can use to have their ballots and the Voters' Pamphlets read to them (this option requires printing, signing, and returning the ballot); or (2) call any county elections office and ask for assistance, which includes, on request, election workers bringing an electronic tablet that can accommodate multiple disabilities and a portable printer to the voter's home to assist with voting.⁴⁵⁸

Pennsylvania

ID required:	Strict voter ID statute struck down by state supreme court ⁴⁵⁹
Permanent absentee status:	Yes ⁴⁶⁰
Curbside assistance:	By county ⁴⁶¹
Line-jumping:	By county ⁴⁶²
Long-term care provision:	By county ⁴⁶³
Link on main voting page:	Yes ⁴⁶⁴

454. *Voter Identification Requirements*, *supra* note 227.

455. *Services for Voters with Disabilities*, OR. SECRETARY ST., <http://sos.oregon.gov/voting/Pages/disabilities.aspx> (last visited June 6, 2016) ("If requested, election workers will bring an electronic tablet and a portable printer to the voter's home to assist with voting.").

456. *Voting in Oregon*, OR. SECRETARY ST., <http://sos.oregon.gov/voting/Pages/voteinor.aspx> (last visited June 6, 2016).

457. *Voting Instructions for Voters with a Disability*, OR. SECRETARY ST., <http://sos.oregon.gov/voting/Pages/instructions-disabilities.aspx> (last visited June 6, 2016).

458. *Services for Voters with Disabilities*, *supra* note 455.

459. *Voter Identification Requirements*, *supra* note 227; *see* *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *26 (Pa. Commw. Ct. Jan. 17, 2014).

460. Telephone Interview with the Office of the Sec'y of State for Pa., Elections Div. (Feb. 16, 2016).

461. *Id.*

462. *Id.*

463. *Id.*

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Miscellaneous:

Notes that “[i]n some cases, a polling place may not be easily accessible for those with disabilities.”⁴⁶⁵ States that “[a]pplications for alternative ballot must be submitted to [the] County Board of Elections no later than 5 p.m. on the Tuesday before Election Day.”⁴⁶⁶

Rhode Island

ID required:	Photo ID requested ⁴⁶⁷
Permanent absentee status:	Yes ⁴⁶⁸
Curbside assistance:	Yes ⁴⁶⁹
Line-jumping:	Yes ⁴⁷⁰
Long-term care provision:	Yes ⁴⁷¹
Link on main voting page:	Yes ⁴⁷²

Miscellaneous:

Gives out free voter IDs at disability-related facilities.⁴⁷³ Coordinates with Rhode Island Disability Law Center.⁴⁷⁴ Performs demonstrations of voter technology throughout the state.⁴⁷⁵ Provides that any voter who is blind or visually impaired is eligible to request a Braille or tactile mail ballot, which the voter must do forty-five days before an election from their local board of canvassers.⁴⁷⁶ State law mandates that polling places should be accessible; if an assigned polling place is

464. The main page has as a drop-down feature of “I Am,” and a “Citizen with a Disability” is the first option. VOTESPA, <http://www.votespa.com/portal/server.pt/community/home/13514> (last visited June 6, 2016).

465. *Citizen with a Disability*, VOTESPA, <http://www.votespa.com/portal/server.pt?open=514&objID=1174121&mode=2> (last visited June 6, 2016).

466. *Voting by Alternative Ballot*, VOTESPA, <http://www.votespa.com/portal/server.pt?open=514&objID=1174089&mode=2> (last visited June 6, 2016).

467. *Voter Identification Requirements*, *supra* note 227.

468. *Accessible Voting*, R.I. DEP’T ST., <http://sos.ri.gov/divisions/elections/Voters/accessible-voting> (last visited June 6, 2016).

469. Telephone Interview with the Office of the Sec’y of State for R.I., Elections Div. (Feb. 17, 2016).

470. *Id.*

471. *Vote by Mail*, R.I. DEP’T ST., <http://sos.ri.gov/divisions/elections/Voters/vote-by-mail> (last visited June 6, 2016) (“Anyone applying for a mail ballot from a nursing home, convalescent home, or similar institution will have their ballot delivered by a bipartisan pair of supervisors appointed by the State Board of Elections. The bipartisan pair will provide assistance as needed and serve as witnesses for the voter.”).

472. “Accessible Voting” is under “Voters,” which is on the main “Elections” page. *Voters*, R.I. DEP’T ST., <http://sos.ri.gov/divisions/Elections/Voters> (last visited June 6, 2016).

473. Telephone Interview with the Office of the Sec’y of State for R.I., *supra* note 469.

474. *Id.*

475. *Id.*

476. *Id.*

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not accessible, the local board of canvassers must provide an alternative means for voters to cast their ballots on Election Day.⁴⁷⁷

South Carolina

ID required:	ID requested, but photo not required ⁴⁷⁸
Permanent absentee status:	No ⁴⁷⁹
Curbside assistance:	Yes ⁴⁸⁰
Line-jumping:	No ⁴⁸¹
Long-term care provision:	No ⁴⁸²
Link on main voting page:	Yes ⁴⁸³
Miscellaneous:	
	Has videos on polling place accessibility and on the voting process for people who are deaf or hard of hearing. ⁴⁸⁴ Has section for voters who are deaf or hard of hearing. ⁴⁸⁵ Has large-print voter registration application. ⁴⁸⁶

South Dakota

ID required:	Photo ID requested ⁴⁸⁷
Permanent absentee status:	No ⁴⁸⁸
Curbside assistance:	No ⁴⁸⁹
Line-jumping:	No ⁴⁹⁰
Long-term care provision:	No ⁴⁹¹
Link on main voting page:	Yes ⁴⁹²

477. *Id.*

478. *Voter Identification Requirements*, *supra* note 227.

479. Telephone Interview with the Office of the Sec’y of State for S.C., Elections Div. (Feb. 16, 2016).

480. *Voters with Disabilities*, S.C. ST. ELECTION COMMISSION, http://www.scvotes.org/voters_with_disabilities (last visited June 6, 2016).

481. Telephone Interview with the Office of the Sec’y of State for S.C., *supra* note 479.

482. *Id.*

483. “Voters with Disabilities” is under “Voters,” which is on the main page. S.C. ST. ELECTION COMMISSION, <http://www.scvotes.org> (last visited June 6, 2016).

484. *Voters with Disabilities*, *supra* note 480.

485. *Id.*

486. *Id.*

487. *Voter Identification Requirements*, *supra* note 227.

488. Telephone Interview with the Office of the Sec’y of State for S.D., Elections Div. (Feb. 16, 2016).

489. *Id.*

490. *Id.*

491. *Id.*

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Miscellaneous:

Has a link to a brochure by the U.S. Election Assistance Commission with ten tips for voters with disabilities.⁴⁹³

Tennessee

ID required:	Strict photo ID ⁴⁹⁴
Permanent absentee status:	Yes ⁴⁹⁵
Curbside assistance:	No ⁴⁹⁶
Line-jumping:	Yes ⁴⁹⁷
Long-term care provision:	Yes; mandatory for licensed LTCs ⁴⁹⁸
Link on main voting page:	No

Texas

ID required:	Strict photo ID ⁴⁹⁹
Permanent absentee status:	No ⁵⁰⁰
Curbside assistance:	Yes ⁵⁰¹
Line-jumping:	<i>Unknown</i>
Long-term care provision:	<i>Unknown</i>
Link on main voting page:	Yes ⁵⁰²

Miscellaneous:

“[B]ecame the first state to require that all new voting systems be accessible to voters with disabilities and provide a practical and effective means for voters with disabilities to cast a secret ballot” on September 1, 1999.⁵⁰³

492. “Polling Place Accessibility” is under “Voting,” which is on the main “Elections & Voting” page. *General Voting Information*, S.D. SECRETARY ST., <https://sdsos.gov/elections-voting/voting/default.aspx> (last visited June 6, 2016).

493. *Polling Place Accessibility*, S.D. SECRETARY ST., <https://sdsos.gov/elections-voting/voting/polling-place-accessibility.aspx> (last visited June 6, 2016).

494. *Voter Identification Requirements*, *supra* note 227.

495. Telephone Interview with the Office of the Sec’y of State for Tenn., Elections Div. (Feb. 16, 2016).

496. *Id.*

497. *Id.*

498. *Id.*

499. *Voter Identification Requirements*, *supra* note 227.

500. *See When*, VOTETEXAS, <http://www.votetexas.gov/voting/when/#helpful-hints-on-voting-early-by-mail> (last visited June 6, 2016) (providing that elderly voters and voters with disabilities can submit annual applications to vote by mail).

501. *Voters with Special Needs*, VOTETEXAS, <http://www.votetexas.gov/voters-with-special-needs> (last visited June 6, 2016).

502. VOTETEXAS, <http://www.votetexas.gov> (last visited June 6, 2016).

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Utah

ID required:	ID requested, but photo not required ⁵⁰⁴
Permanent absentee status:	Yes ⁵⁰⁵
Curbside assistance:	By county ⁵⁰⁶
Line-jumping:	By county ⁵⁰⁷
Long-term care provision:	By county ⁵⁰⁸
Link on main voting page:	No
Miscellaneous:	
	Has no information for voters with disabilities on website. Has a video under “Pollworker Training” on assisting voters with disabilities. ⁵⁰⁹

Vermont

ID required:	No ⁵¹⁰
Permanent absentee status:	No ⁵¹¹
Curbside assistance:	Yes ⁵¹²
Line-jumping:	<i>Unknown</i>
Long-term care provision:	<i>Unknown</i>
Link on main voting page:	Yes ⁵¹³
Miscellaneous:	
	Has a “Voter’s Guide for People with Disabilities” that has not been updated since 2012. ⁵¹⁴ Has a “Disability Etiquette—A Guide to Respectful Communication” brochure. ⁵¹⁵ Has a vote-by-phone system that voters can try out in advance. ⁵¹⁶

503. *Voters with Special Needs*, *supra* note 501.

504. *Voter Identification Requirements*, *supra* note 227.

505. Telephone Interview with the Office of the Sec’y of State for Utah, Elections Div. (Feb. 17, 2016).

506. *Id.*

507. *Id.*

508. *Id.*

509. *Assisting Voters with Disabilities*, VOTE UTAH, <http://vote.utah.gov/vote/menu/pollworker-training.html> (last visited June 6, 2016).

510. *Voter Identification Requirements*, *supra* note 227.

511. *See Absentee Voting*, VT. SECRETARY ST., <https://www.sec.state.vt.us/elections/voters/absentee-voting.aspx> (last updated Mar. 1, 2016).

512. *Accessibility*, VT. SECRETARY ST., <https://www.sec.state.vt.us/elections/voters/accessibility.aspx> (last updated Feb. 29, 2016).

513. “Accessibility” is under “Voters,” which is on the main “Elections” page. *Voters*, VT. SECRETARY ST., <https://www.sec.state.vt.us/elections/voters.aspx> (last updated May 20, 2016).

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Virginia

ID required:	Strict photo ID ⁵¹⁷
Permanent absentee status:	No ⁵¹⁸
Curbside assistance:	Yes ⁵¹⁹
Line-jumping:	No ⁵²⁰
Long-term care provision:	No ⁵²¹
Link on main voting page:	Yes ⁵²²

Washington

ID required:	ID requested, but photo not required ⁵²³
Permanent absentee status:	N/A
Curbside assistance:	N/A
Line-jumping:	N/A
Long-term care provision:	By county ⁵²⁴
Link on main voting page:	Yes ⁵²⁵

Miscellaneous:

All voting by mail.⁵²⁶ Makes accessible formats of the voters' pamphlet available online.⁵²⁷ Has disability advisory committees by county.⁵²⁸

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514. DISABILITY RIGHTS VT., VOTER'S GUIDE FOR PEOPLE WITH DISABILITIES (2012), https://www.sec.state.vt.us/media/54048/Voting-Guide_Disabilities_2012_Web.pdf.
515. James C. Condos, Vt. Sec'y of State, Disability Etiquette (2014), <https://www.sec.state.vt.us/media/603727/Disability-Etiquette-SOS-Brochure-with-DRVT-Edits-Final-7-16-14-Lori.pdf>.
516. *Accessibility*, *supra* note 512.
517. *Voter Identification Requirements*, *supra* note 227.
518. See *Voters with Special Needs*, VA. DEP'T ELECTIONS, <http://elections.virginia.gov/registration/voters-with-special-needs/index.html> (last visited June 6, 2016).
519. *Id.*
520. Telephone Interview with the Office of the Sec'y of State for Va., Elections Div. (Feb. 16, 2016).
521. *Id.*
522. VA. DEP'T ELECTIONS, <http://elections.virginia.gov> (last visited June 6, 2016).
523. *Voter Identification Requirements*, *supra* note 227.
524. Telephone Interview with the Office of the Sec'y of State for Wash., Elections Div. (Feb. 17, 2016).
525. "Voter with a Disability" is in "Voter Resources" under "Voters," which is on the main "Elections & Voting" page. *Voters*, WASH. SECRETARY ST., <https://www.sos.wa.gov/elections/voters> (last visited June 6, 2016).
526. *Frequently Asked Questions on Voting by Mail*, WASH. SECRETARY ST., http://www.sos.wa.gov/elections/faq_vote_by_mail.aspx (last visited June 6, 2016).

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West Virginia

ID required:	No ⁵²⁹
Permanent absentee status:	Yes ⁵³⁰
Curbside assistance:	Yes ⁵³¹
Line-jumping:	<i>Unknown</i>
Long-term care provision:	No ⁵³²
Link on main voting page:	Yes ⁵³³

Miscellaneous:

Provides that “[a]ny voter who requests assistance in voting but who is believed not to be qualified for assistance shall, nevertheless, be permitted to vote a provisional ballot with the assistance of any person herein authorized to give [it].”⁵³⁴ Has a “Voters with Disabilities Flyer.”⁵³⁵

Wisconsin

ID required:	Strict photo ID ⁵³⁶
Permanent absentee status:	Yes ⁵³⁷
Curbside assistance:	Yes ⁵³⁸
Line-jumping:	No ⁵³⁹

527. *Voters with Disabilities*, WASH. SECRETARY ST., https://wei.sos.wa.gov/agency/osos/en/voters/Pages/voters_with_disabilities.aspx (last visited June 6, 2016).

528. *Disability Advisory Committees*, WASH. SECRETARY ST., https://wei.sos.wa.gov/agency/osos/en/voters/Pages/disability_advisory_committees.aspx (last updated Feb. 21, 2012).

529. *Voter Identification Requirements*, *supra* note 227.

530. W. Va. Sec’y of State, *West Virginia Voters with Disabilities* (n.d.), <http://www.sos.wv.gov/elections/Documents/West%20Virginia%20Voters%20with%20Disabilities.pdf>.

531. Voters may “vote from an automobile outside the polling place or precinct by the absentee balloting method if . . . the polling place is not accessible and no voters are voting or waiting to vote inside the polling place.” *Voters with Disabilities*, W. VA. SECRETARY ST., http://www.sos.wv.gov/elections/Vote/Pages/Voters_Disabilities.aspx (last visited June 6, 2016).

532. Telephone Interview with the Office of the Sec’y of State for W. Va., Elections Div. (Feb. 17, 2016).

533. *Elections*, W. VA. SECRETARY ST., <http://www.sos.wv.gov/elections/pages/default.aspx> (last updated Apr. 27, 2016).

534. *Voters with Disabilities*, *supra* note 531.

535. W. Va. Sec’y of State, *supra* note 530.

536. *Voter Identification Requirements*, *supra* note 227.

537. *Information About Voting*, MY VOTE WIS., <https://myvote.wi.gov/Voter/InformationAboutVoting.aspx> (last visited June 6, 2016).

538. *Id.*

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Long-term care provision: Yes⁵⁴⁰
Link on main voting page: Yes⁵⁴¹

Wyoming

ID required: No⁵⁴²
Permanent absentee status: No⁵⁴³
Curbside assistance: By county⁵⁴⁴
Line-jumping: By county⁵⁴⁵
Long-term care provision: By county⁵⁴⁶
Link on main voting page: No

Miscellaneous:

No information for voters with disabilities on website.

539. Telephone Interview with the Office of the Sec’y of State for Wis., Elections Div. (Feb. 17, 2016).

540. Yes, per five registered voters and one absentee voter request at the LTC. *Id.*

Municipal clerks appoint Special Voting Deputies to conduct in-person absentee voting at nursing homes prior to Election Day. The date and time of the voting will be posted at the nursing home. Special Voting Deputies may also be appointed to conduct in-person absentee voting at other care facilities, including community-based resident facilities, retirement homes, residential care apartment complexes, and adult family homes licensed or certified by the state.

Information about Voting, supra note 537.

541. “I’m a Voter with a Disability” is under “Information About Voting,” which is under “Regular Voter” on the main page. *Information About Voting, supra* note 537.

542. *Voter Identification Requirements, supra* note 227.

543. Telephone Interview with the Office of the Sec’y of State for Wyo., Elections Div. (Feb. 17, 2016).

544. *Id.*

545. *Id.*

546. *Id.*