

The Americans with Disabilities Act: Does it Secure the Fundamental Right to Vote?

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Abstract

People with disabilities encounter substantial barriers to voting. Narrow interpretations by regulatory agencies and the courts indicate that the ADA will not be able to remove these barriers. Additional policies will be necessary to overcome the structural impediments to exercising the fundamental right to vote.

Full Text

The Americans with Disabilities Act (ADA) has been hailed as "a declaration of equality for persons with disabilities" (West, 1993, p. 3), a far-reaching measure that would grant the long-awaited guarantee of full inclusion in American life. By reaching all activities of state and local governments - including the conduct of elections for officials at all levels of government - the ADA promised to remove barriers to the electoral participation of people with disabilities.

Despite this promise, however, the ADA has, on balance, resulted in only limited systemic social change with respect to the fundamental right to vote. The issues surrounding the electoral participation of people with disabilities are complex and varied, but any examination of the topic must include an assessment of the ADA's role in ensuring voting rights. In this article, we will describe other relevant federal legislation, discuss the requirements of Title II of the ADA, regulatory and administrative guidelines for applying the ADA to voting rights, the voting rights cases that have reached the courts or been settled out of court, and some of the many questions left unanswered about the potential of the ADA to guarantee fair and equal access to the electoral process for individuals with disabilities.

Federal Laws Affecting Voting Rights of People with Disabilities

Several federal statutes are intended to promote the political participation of individuals with disabilities by making registration and voting easier. These include the Voting Rights Act of 1965 (as amended in 1982), which requires that persons who are blind or otherwise disabled "may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or agent of the voter's union" [1]; and the Voting Accessibility for the Elderly and Handicapped Act of 1984, which guarantees the right to participate in federal elections, but only for persons with a "temporary or permanent physical disability" by requiring that auxiliary aids (defined as "instructions, printed in large type..." and "information by telecommunications devices for the deaf") be provided.

The other federal law affecting voting rights of people with disabilities is, of course, the ADA. Title II of the ADA requires that all public entities make "reasonable modifications to rules, policies, or practices" to ensure nondiscrimination in the programs, services, and activities of state and local governments. The Act protects qualified individuals with disabilities, who are defined as persons 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, [meet] the essential eligibility requirements" of the program, service or activity (Americans with Disabilities Act of 1990).

Of the federal laws addressing voting rights for individuals with disabilities, the ADA is the broadest in its intent. Its protections are intended to strike down discriminatory practices in all aspects of state and local government. As Congress stated in the ADA itself, the law was intended "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" (Americans with Disabilities Act, 1990). In contrast, the other federal voting rights statutes are narrower in intent and effect by affecting only federal elections, specifically addressing only the manner by which individuals register to vote, or applying to individuals with only particular kinds of impairments.

Regulations and Guidance for Applying the ADA to the Conduct of Elections

The ADA establishes Congressional intent to transform society so that the individual differences of people with disabilities are accommodated in society, but leaves many questions about such accommodations and the implementation process unanswered. Agencies responsible for implementing

the ADA and the other federal voting rights acts affecting individuals with disabilities have issued regulations, letters of findings, and guidance that aid in assessing the potential and actual effect of the ADA in ensuring accessibility to the electoral process.

Department of Justice Title II Regulations [2]

The Title II regulations issued by the Department of Justice emphasize that the ADA is intended to reach all practices of state and local governments, and describe implementation standards and requirements that appear to strike at the more pernicious practices employed by government entities. In addition to a general prohibition against disability-based discrimination, these include the program accessibility standard and the effective communication standard.

Program accessibility standard. This standard requires governments to ensure that programs, services, and activities, when viewed in their entirety, are readily accessible and usable by people with disabilities, unless to do so would result in a fundamental alteration of the program, service, or activity, or cause an undue financial or administrative burden.

Communication. The effective communication standard requires public entities to take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. The entity must provide auxiliary aids and services where necessary to ensure effective communication, but as with the reasonable accommodation standard, is not required to fundamentally alter the program, service, or activity, or cause an undue financial or administrative burden.

As the subsequent analysis will show, these standards are at the heart of the inadequacy of the Americans with Disabilities Act for addressing the attitudinal and physical obstacles that make the electoral process inaccessible for many individuals with disabilities. The standards do not require that every polling place be accessible to persons with mobility impairments; nor do they require that blind voters be guaranteed the right to cast their vote in secret.

Federal Election Commission Guidance

In 1996, the Federal Election Commission (FEC) issued a report designed to provide information and guidance to election officials regarding the accessibility of the election process. In this publication - which it views as the authoritative statement of what is required under the ADA - the FEC includes

a 1991 letter written in response to Congressional requests for guidance regarding the relationship between the Voting Accessibility for the Elderly and Handicapped Act, the Voting Rights Act, and the ADA.

This letter (reprinted in Federal Election Commission, 1996) addressed two key issues in applying the ADA to the electoral context: (a) the standards for determining accessibility of existing physical facilities; and (b) the nature of the auxiliary aids required for effective communication with persons who have disabilities. The Commission relied on the Department of Justice's (DOJ) implementing regulations for both the VAA and the ADA in making its determinations.

Accessibility standards. In consultation with the Coalition for Voter Accessibility and the National Association of Secretaries of State, the Federal Election Commission recommended accessibility guidelines to the states' chief election officials. These guidelines were subsequently adopted by "approximately 40" of the states (Federal Election Commission, 1996, p. 47). In the FEC's view, these criteria would "provide equivalent access to the facility, therefore satisfy[ing] the requirements of the ADA..." (Federal Election Commission, 1996, pp. 47-48, emphasis in original).

The accessibility guidelines issued by the FEC are 20 pages in length and address primarily the accommodations necessary to achieve physical accessibility for persons with mobility impairments (e.g., providing accessible parking spaces and passenger loading zones, accessible routes to the polling places from public transportation stops, and accessible tables and booths at the polling place; ensuring that the distances within the polling place or between the facility and parking areas are reasonably short). (There is one guideline that calls for elevator "control panels marked with raised letters", which speaks to the accommodation needs of persons with visual impairments.)

Funding accommodations. In a chapter entitled "Funding Accommodations for People with Disabilities", the FEC addresses the issue of paying for accommodations. The FEC notes that "[m]ost states do not budget for these accommodations, so imaginative and innovative funding methods have to be devised" (FEC, 1996, p. 29), and recommends that election officials rely on service clubs (such as the Lions, Kiwanis, or Rotary Clubs), political parties, civic clubs (such as the League of Women Voters), veterans organizations, local disability groups, and schools to meet the "funding challenge" of providing accommodations to the electoral process (FEC, 1996).

This approach reflects the program accessibility standard of ADA's Title II, and the fact that the governmental entities conducting elections typically use sites owned by other private and public entities. Where possible, accessible sites must be chosen as polling places. Where it is not possible to select polling places that are accessible, voters with disabilities must be assigned to a polling place that is accessible. If the polling place is privately-owned, the facility may not be required by the ADA to be accessible. At public facilities, it is that facility that is required by the ADA to be accessible. In either case, the election official does not have the obligation to fund architectural changes necessary to make the polling place accessible (William Kimberling, personal communication, November 16, 1998).

Nature of "auxiliary aids". In weighing the requirements of the older VAA and VRA against the newer ADA, the Commission stated that the ADA imposed new requirements regarding voters who are totally blind. The Commission indicated that states would need to provide "effective means of providing access to the election process such as providing someone qualified to read and to help in the completion of the registration form, to read and to help in the completion of the ballot (should the blind individual not request the assistance of another under Section 208 of the VRA), and to read other public documents" (FEC, 1996, p. 51). These services "need not necessarily include providing taped, recorded, or braille ballots, registration forms, or other public records or documents if the head of the election office has determined in writing that such services would constitute an undue administrative or financial burden" (FEC, 1996, p. 51).

Definition of disability and accommodations. The FEC also briefly addresses types of disabling conditions and the accommodations people with varying kinds of impairments would require. It uses four categories of disability: "impaired vision," "impaired mobility," "impaired communication," and "impaired dexterity" (FEC, 1996, p. 3). It is claimed that "[t]he most noted form of impaired mobility is the wheelchair" (though the report also notes that people with disabilities may use "walkers, canes, prosthetic devices" or have difficulty in walking for a distance or "performing essential transactions while standing") (FEC, 1996, p. 4).

In addressing necessary accommodations for persons with "impaired communication" (which includes both "impaired hearing" and "impaired speech") to participate in the electoral process, the Commission states that "[m]any of the practical problems of those with impaired hearing can be overcome by the same large type instructions suggested above for the visually impaired" (FEC, 1996, p. 4). To accommodate speech impairments,

the FEC recommends "includ[ing] some sensitivity training" in standard training procedures for poll workers and employees (FEC, 1996, p. 4).

Department of Justice Letters of Finding

In addition to the FEC resource manual, the Department of Justice has prepared several Letters of Findings in response to complaints from individuals with disabilities regarding the practices of state and local election officials. These have concerned the modifications necessary to accommodate people who are blind and who have mobility impairments.

Accommodations for blind voters. In one letter, the DOJ was asked to rule on the legality of practices in which election officials provided magnifying lenses and readers to voters with visual impairments, or the assistance of two poll workers or one other person of the voter's choice. In applying the effective communication standard, the DOJ found that a Braille ballot is not required for a voter who is blind; rather, the election official is required only to provide an "equivalent" method of voting, which in this instance, was the assistance of another person of the voter's choice (DOJ Letter of Finding #99, August 25, 1993). Neither the ADA nor the VAA creates a right to a secret ballot, though such a right is established by state law in some states.

Accommodations for voters with mobility impairments. In two other letters, the Department has found that curbside voting, in which an individual with a mobility impairment who cannot enter the polling site because it is inaccessible, is an effective alternative means of providing access, as allowed by the ADA. These letters address practices in Nevada and Colorado. In the Nevada case, the disabled voter had to cast her ballot in a hallway with no privacy. The DOJ found that "taking a ballot outside to a voter who is unable to enter a polling place" does not constitute discriminatory treatment (DOJ Letter of Finding #98, August 19, 1992). The DOJ made a similar finding with respect to Colorado's practice of allowing election officials to provide assistance to a voter with a mobility impairment within 100 feet of the polling place (DOJ Letter of Finding #103, September 30, 1993).

The DOJ has also ruled that curbside voting procedures meet the requirements of the VAA to provide accessible polling places for federal elections. The DOJ found that South Carolina's practice of curbside voting would meet both the ADA's mandate and the VAA's mandate, so long as it was truly effective - that is, given that election officials followed established procedures for implementing curbside voting and did not otherwise deny an

individual with a disability the opportunity to vote. Further, this letter indicates that the VAA allows election officials to provide an alternative means of voting if no accessible polling place is available to that voter (DOJ Letter of Finding #173, August 11, 1995).

The Agencies' Role in ADA Implementation: Creating an Equal Opportunity to Vote?

In evaluating the agencies' approach to implementing the ADA with respect to voting, we raise two concerns and conclude that the federal agencies responsible for interpreting the ADA have taken a disappointingly narrow approach which cannot be entirely explained by the inherent limitations of the act.

Our first concern is that the guidance issued to election officials (especially by the FEC) is characterized by a certain naivete about impairments and how the attitudinal and physical structures of society create disadvantage for individuals with such impairments. The FEC's list of impairments does not include learning disabilities, psychiatric impairments, or developmental disabilities such as mental retardation, suggesting that the FEC is unaware that people with these impairments may encounter barriers to voting. Its statement that the "most noted form of impaired mobility is the wheelchair" is an oddly-constructed sentence that emphasizes the wheelchair at the expense of the person using it, and suggests a lack of familiarity with the language and issues of disability.

Further, the FEC material does not address, or does not adequately address, the need to provide reasonable modifications to accommodate people with such impairments as deafness, learning disabilities, or mental retardation. Its guidance that deaf individuals may be accommodated through the use of "large type instructions" defies understanding. Many deaf individuals whose first language is sign language have difficulty understanding written English. However, a large font size is unlikely to help unless they also have a visual impairment. Moreover, the agency's complete lack of attention to the rules, policies, and practices that create a disadvantage to people with learning disabilities, psychiatric impairments, and developmental disabilities, is an obvious and important omission, suggesting again that the implementing agencies have only a limited appreciation of the extent of discrimination in existing practices and policies.

The second conclusion we reach is of more importance in that it begins to indicate the need for policy reforms that more specifically target discriminatory practices. The application of the program accessibility and effective communication standards to the balancing of rights against the cost of protecting them is inconsistent with the fundamental nature of the right to vote. The program accessibility standard as it has evolved since the passage of the 1973 Rehabilitation Act does not require states or localities to make every polling place accessible; indeed, the FEC's striking recommendation that accessibility costs be funded through donations from the private sector (including local disability groups, most of which have extremely limited budgets) is the illogical conclusion of applying an inappropriate standard for ensuring a fundamental right.

By permitting curbside voting and other alternative means such as absentee ballots, the Department of Justice (and FEC) is acting contrary to the broad antidiscrimination mandate of the ADA. By the states' own admission, some 14% of polling places are not accessible (Federal Election Commission, n.d.), a figure that might be higher if it were based on evaluations conducted by a knowledgeable and disinterested party, and if the assessment of accessibility included criteria relevant to people with impairments other than mobility impairments. Requiring some voters to cast their votes outside (when the weather may be inclement) or by absentee ballot may admittedly be less taxing in a practical sense for some individuals with disabilities, but these measures cannot be evaluated on their practical utility alone. We must also consider the psychological and political effects of these "alternative means." Are they truly equivalent?

Voting curbside makes it difficult for the voter with a mobility impairment to enjoy the communitarian benefits of participating in the electoral process. "Drive by" voting of this sort is a cheapened version of the citizen's ultimate exercise of power and responsibility in a democracy, and does not result in equal benefits for the person with a disability. Worse yet, the DOJ's allowance of curbside voting raises the specter that states will increasingly rely on such practices as a substitute for accessible polling places.

The guidance with respect to voting by people who are blind is also troubling. The FEC's finding that election officials may rule it an "undue administrative or financial burden" to provide "taped, recorded, or braille ballots" for blind voters (FEC, 1996, p. 51) almost assures that blind voters will have no access to a secret ballot in most places. The practice of allowing non-secret ballots also appears to us to violate the ADA's requirement for equally effective communications by allowing election officials to require blind voters to voice

their choices in a public place. Taking such a position with respect to any other group of individuals would likely be roundly denounced and does not further Congressional intent to provide equivalent access to the electoral process for people with disabilities.

By finding that curbside voting (to accommodate persons with mobility impairments) and assisted voting (to accommodate blind persons) are reasonable modifications, the DOJ and FEC have failed to require states to make voting equivalently accessible to individuals with mobility and visual impairments - when states' electoral practices are viewed in their entirety and when electoral practices must make voting readily accessible and usable to people with disabilities. In sum, the agencies' approach to ADA Title II implementation is disappointing. The federal implementing agencies appear to have applied the balancing of burdens and obligations that is inherent in the ADA in a way that simply does not reflect the fundamental nature of the right to vote.

What Do the Courts Say?

To date, there have been only a handful of lawsuits filed under the ADA that address voting rights. All of the plaintiffs involved in these cases have been individuals with physical impairments (typically individuals who use wheelchairs), or persons who are blind. These cases illustrate some of the difficulties facing people with disabilities who seek to use the ADA to ensure their fundamental right to vote.

Plaintiffs have had mixed success in addressing barriers to electoral participation. In *Lightbourn v. County of El Paso, Texas* (1995), a class of disabled plaintiffs filed suit to force election officials to implement corrective action to make polling places accessible to persons with physical and visual impairments. In a sweeping federal district court decision, Texas' Secretary of State was ordered to approve no new voting systems that were not accessible or that did not provide a secret ballot for blind voters; prepare court-approved directives, guidelines, and instructions for local election officials; and devise and implement a monitoring system to ensure ADA compliance. [3] In reaching this result, the court (a) noted that it was not bound by the DOJ Letters of Findings discussed above, (b) rejected the state's claims that to make the requested changes would constitute a fundamental alteration in the state's voting system, and (c) labeled as a "red herring" the state's claim that the cost of ensuring a secret ballot for blind voters would be too expensive. At the remedy phase of trial, the court made 28 supplemental findings of fact

regarding the Secretary's failure to implement the ADA's program accessibility standard, and held that "the right to cast a secret ballot is a fundamental constitutional right in Texas..." (Lightbourn v. Garza, 1996, p. 714).

However, Lightbourn was overturned on appeal on the basis that the Secretary of State has "not denied the plaintiffs the benefit of a program for which he is responsible" (Lightbourn, 1997, p. 428). In other words, though the Secretary was a covered entity, he was not liable. In the state's decentralized voting system, the Secretary did not have a duty to "ensure statewide compliance with the ADA by the political subdivisions that administer elections in Texas" (p. 430-431). After Lightbourn, then, plaintiffs in Texas must file suit against the political subdivisions that are responsible for conducting elections because the subdivisions are the entities which are liable under the ADA.

Persons with visual impairments have contended that the ADA should be interpreted as guaranteeing them the right to cast a ballot in secret. In Lightbourn, where the right of these plaintiffs to a secret ballot and "the right to vote on election day at their local precinct" [4] was established in state law (Lightbourn, 1995, p. 1433), the trial court did not rule on the question of whether the ADA required a secret ballot. [5] In *Nelson v. Miller*, a case arising in Michigan, the federal district court did not find a right to a secret ballot in the ADA or other federal laws addressing voting rights for people with disabilities. The court cited a Senate committee report for the Voting Rights Act of 1965 in which the committee concluded that "the only kind of assistance that will make fully 'meaningful' the voter of the blind...is to permit them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him"; and a committee report regarding the Voting Accessibility for the Elderly and Handicapped Act in which the committee "anticipates that any minimal effect on the privacy of those who are elderly or handicapped is more than offset by the expanded opportunities for participation in the political process" (cited in Nelson, 1996, p. 203). Unlike the Lightbourn court, the Nelson court ruled that state law did not guarantee the right to cast a vote in secret, but provided for the provision of assistance in the marking of a ballot by a blind person [6]. (In an appeal of the trial court's decision, the Department of Justice filed an amicus brief arguing that blind voters "should have the opportunity to prove that there are reasonable modifications of voting procedures that, if adopted by Michigan, would allow them to vote by secret ballot" [Department of Justice, 1997].)

In *McKay v. County Elections Commissioners for Pulaski County, Arkansas*, the parties reached a settlement that required the state to conduct a self-evaluation and develop a corrective action plan. Specifically, the State Board

of Election Commissioners agreed to prepare written directives regarding compliance with Title II and to distribute these to all county election commissioners. The Board also agreed to invite voting systems vendors to submit for approval ADA-compliant voting systems. This voting system must allow blind voters to cast their ballots secretly.

It is perhaps premature to conclude that judicial interpretations of the ADA with respect to voting rights will fail to accord with Congressional intent to instigate remedies for pervasive disability-based prejudice and discrimination. On the one hand, the McKay settlement appears to be far-reaching and consistent with the American tradition of secret voting, although it is still too early to evaluate its ultimate success in overcoming the barriers to electoral participation faced by voters with disabilities. On the other hand, the courts themselves are still grappling with the issue of secret voting, and have not yet addressed many important questions (as we will discuss shortly). The small number of cases, the narrow range of disabilities represented among the plaintiffs, and the relatively limited nature of the challenges give us only a vague notion of how most courts would decide issues.

Unanswered Questions

The case law challenging state election practices under the ADA is of interest as much for what has not been litigated as for what has been. Perhaps the most notable characteristic of these cases concerns the small number of disabling conditions represented by the plaintiffs - mobility impairments and visual impairments. Arguably, the accessibility requirements of individuals with these types of disabilities are more broadly understood and more firmly grounded in legal precedent than the accessibility requirements of persons with other kinds of impairments. The needs of individuals with mobility impairments, particularly wheelchair-users, readily come to mind when the term 'accessibility' is used, and accommodations made to the built environment (widened doorways, curb cuts, and spaces for wheelchairs in sports arenas) are becoming more commonplace. Moreover, national standards for accessibility that are objective and measurable are available and widely used.

The needs of other people with disabilities - and the reasonable modifications required to meet those needs - are not as widely known or accepted. For example, how could the accessibility of the electoral process be assured for individuals who are deaf? Presumably, such a person might require the assistance of an interpreter when registering to vote or when casting a ballot. Interpreting might be necessary to convey unwritten instructions regarding

how to return an absentee ballot application, or to ensure that a deaf person understands an election official's instruction to separate the part of a ballot containing identifying information from the part containing the votes. Interpreting may also be in order when a ballot includes lengthy referenda that may be difficult to understand if an individual has limited reading skills - as do many deaf individuals whose first language is American Sign Language. Requiring that interpreters be available to deaf individuals might also be viewed as consistent with the Voting Right Act's provision that any voter who requires assistance to vote by reason of "blindness, disability, or inability to read or write" may be given assistance by someone chosen by the voter.

Similarly, case law is silent on the modifications required to accommodate persons with learning disabilities, mental retardation, or other impairments that affect the ability to read or interpret written language. Here again, modifying polling place practices to allow an individual of the voter's choice to assist the voter in casting the ballot by reading the ballot and providing unbiased explanations of ballot measures, or allowing an election worker to provide such assistance, may be thought of as consistent with both the ADA's broad intent and the provisions of the Voting Rights Act - if the assistance provided to voters with disabilities is objective, unbiased, and nonpartisan.

However, the accommodations just described, because they involve the assistance of a third party, raise the same privacy concerns as those expressed in the earlier discussions of secret voting for blind persons. The Supreme Court and Congress agree that electors have no right to a secret ballot per se, although some states grant such a right; nonetheless, developments may result in the creation of devices or procedures that allow persons with such impairments to vote independently. For example, one voting system currently available allows a blind voter to use a touch screen with the assistance of an automated telephone message which directs the voter where to touch the screen to register her choices (Terry Davis, personal communication, April 8, 1999). The availability of these devices may ease the way toward recognition that voting independently is consistent with the historical emphasis on a secret ballot. More importantly, the availability of such devices may change the outcome of the undue burden analysis of implementing agencies and the courts, as suggested by the DOJ's amicus brief in *Nelson v. Miller*.

Another pressing question concerns the use of absentee ballots as reasonable modifications. This question is a thorny one for the disability community. On the one hand, federal and state policymakers are moving to promote flexibility in the use of absentee ballots. On the other hand, some

individuals with disabilities view absentee voting as a second-class form of voting - one that may be seen by some state election officials as relieving them of the requirement to make accessible polling places available.

Absentee voting also precludes the possibility that voters may change their minds about issues or candidates based on events occurring in the last days of an election period. From our perspective, it seems fair to encourage the use of absentee ballots as an alternative means of voting (as is happening in many states), but to prohibit states from using absentee ballots as an excuse to avoid finding accessible polling places.

Finally, it is interesting to note that the ADA has not been used to challenge the legality of state laws that prohibit voting by some individuals with cognitive and emotional impairments. Forty-four states currently have constitutional or statutory provisions that may be used to prevent some persons with disabilities from voting based on mental incapacity or incompetency, or because the individual is under guardianship. Putting aside for the moment the serious constitutional questions raised by these laws (see Schriner, Ochs, & Shields, 1997, for a full discussion), it is intriguing that there has been no claim made that they violate the Americans with Disabilities Act.

These unanswered questions illustrate some of the issues that have not yet been addressed by the courts in ADA voting rights cases. Unfortunately, we are not optimistic about the potential for interpretations that are consistent with Congress' intention that the ADA provide broad protections, given the courts' proclivity to misunderstand and underestimate the prejudicial attitudes and discriminatory behavior that affect the lives of people with disabilities (see, for example, Burgdorf, 1997; Mayerson, 1997).

Endnotes

1. The Federal Election Commission (FEC) has made it clear that the VRA is intended to prevent states from restricting individuals with disabilities from getting such assistance: "This provision supersedes any incompatible State law that may restrict the number of voters a person may assist or that may place restrictions, such as on children, on who may enter a polling booth with a voter requiring assistance" (Federal Election Commission, 1996, p. 5).

However, the FEC also states that the VRA does not "preclude obtaining a signed and sworn affidavit from any person providing voter assistance." (Federal Election Commission, 1996, p. 5).

2. Parts of this section are taken verbatim from federal regulations, codified at 28 CFR Part 35.

3. By the time of trial, other defendants (including the El Paso County Republican and Democratic Parties and El Paso County) had reached settlements with plaintiffs or been dismissed as defendants.
4. In the subsequent remedy phase of trial, the court found that the "right to cast a secret ballot is a fundamental constitutional right in Texas..." (Lightbourn, 1996, p. 714).
5. The relevant state statute reads that any approved system of voting in Texas must "preserve the secrecy of the ballot" (V.T.C.A. Election Code sec. 122.01 (a)(1) (Vernon's 1995) cited in *Lightbourn*, 1995, p. 1433).
6. The Michigan statute states "no rule shall be made which provides for reducing the secrecy of the ballot" (M.C.L.A. sec. 168.770a).

References

Americans with Disabilities Act, 42 U.S.C. sec. 12101 et seq. (West, 1993).

Burgdorf, R. L., Jr. (1997). "'Substantially limited' protection from disability discrimination: The special treatment model and misconstructions of the definition of disability." *Villanova Law Review*, 42, 409-585.

Federal Election Commission. (n.d.). *Polling place accessibility in the 1992 general election*. Washington, DC: Author.

Federal Election Commission. (1996). *Innovations in election administration 15: Ensuring the accessibility of the election process*. Washington, DC: Author.

Kilb, L. Title II - "Public Services, Subtitle A: State and local governments' role." In L.O. Gostin & H.A. Beyer (Eds.), *Implementing the Americans with Disabilities Act: Rights and responsibilities of all Americans* (pp. 87-108). Baltimore: Paul H. Brookes.

Kruse, D.L., Schriener, K., Schur, L., & Shields, T. (1999). *Empowerment through civic participation: A study of the political behavior of people with disabilities* (Final report to the Disability Research Consortium and New Jersey Developmental Disabilities Council). Piscataway, NJ: Rutgers University.

Lightbourn v. County of El Paso, Texas (904 F. Supp. 1429, 1995).

Lightbourn v. County of El Paso, Texas (118 F. Supp. 421, 1997).

Lightbourn v. Garza (928 F. Supp. 711, 1996).

Mayerson, A. (1997). "Restoring regard for the regarded as prong: Giving effect to Congressional intent." *Villanova Law Review*, 42, 587-597.

Nelson v. Miller (950 F. Supp. 201 (1996).

Nowak, J.E., & Rotunda, R.D. (1991). *Constitutional law* (4th ed.). St. Paul, MN: West Publishing.

Reynolds v. Sims, 377 U.S. 533 (1964).

Schriner, K., Ochs, L., & Shields, T. (1997). "The last suffrage movement: Voting rights for people with cognitive and emotional disabilities." *Publius*, 27 (3), 75-96.

Shields, T., Schriner, K.F., & Schriner, K. (1998). "The disability voice in American politics: Political participation of people with disabilities in the 1994 election." *Journal of Disability Policy Studies*, 9 (2), 33-52.

Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C.S. sec. 1861 et seq.

Voting Rights Act of 1965 (as amended), 42 U.S.C.S. sec. 1971 et seq.

West, J. (1993). "The evolution of disability rights." In L.O. Gostin & H.A. Beyer (Eds.), *Implementing the Americans with Disabilities Act* (pp. 3-16). Baltimore, MD: Paul H. Brookes.

Williamson, C. (1960). *American suffrage: From property to democracy 1760-1860*. Princeton, NJ: Princeton University Press.

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