

**OVERSIGHT OF THE AMERICANS WITH
DISABILITIES ACT OF 1990: THE CURRENT STATE
OF INTEGRATION OF PEOPLE WITH DISABILITIES**

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL
RIGHTS, AND CIVIL LIBERTIES
OF THE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

WEDNESDAY, OCTOBER 20, 2021

Serial No. 117-41

Printed for the use of the Committee on the Judiciary



Available via: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2022

48-275

COMMITTEE ON THE JUDICIARY

JERROLD NADLER, New York, *Chair*
MADELEINE DEAN, Pennsylvania, *Vice-Chair*

ZOE LOFGREN, California	JIM JORDAN, Ohio, <i>Ranking Member</i>
SHEILA JACKSON LEE, Texas	STEVE CHABOT, Ohio
STEVE COHEN, Tennessee	LOUIE GOHMERT, Texas
HENRY C. "HANK" JOHNSON, JR., Georgia	DARRELL ISSA, California
THEODORE E. DEUTCH, Florida	KEN BUCK, Colorado
KAREN BASS, California	MATT GAETZ, Florida
HAKEEM S. JEFFRIES, New York	MIKE JOHNSON, Louisiana
DAVID N. CICILLINE, Rhode Island	ANDY BIGGS, Arizona
ERIC SWALWELL, California	TOM McCLINTOCK, California
TED LIEU, California	W. GREG STEUBE, Florida
JAMIE RASKIN, Maryland	TOM TIFFANY, Wisconsin
PRAMILA JAYAPAL, Washington	THOMAS MASSIE, Kentucky
VAL BUTLER DEMINGS, Florida	CHIP ROY, Texas
J. LUIS CORREA, California	DAN BISHOP, North Carolina
MARY GAY SCANLON, Pennsylvania	MICHELLE FISCHBACH, Minnesota
SYLVIA R. GARCIA, Texas	VICTORIA SPARTZ, Indiana
JOE NEGUSE, Colorado	SCOTT FITZGERALD, Wisconsin
LUCY McBATH, Georgia	CLIFF BENTZ, Oregon
GREG STANTON, Arizona	BURGESS OWENS, Utah
VERONICA ESCOBAR, Texas	
MONDAIRE JONES, New York	
DEBORAH ROSS, North Carolina	
CORI BUSH, Missouri	

PERRY APELBAUM, *Majority Staff Director & Chief Counsel*
CHRISTOPHER HIXON, *Minority Staff Director*

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

STEVE COHEN, Tennessee, *Chair*
DEBORAH ROSS, North Carolina, *Vice-Chair*

JAMIE RASKIN, Maryland	MIKE JOHNSON, Louisiana, <i>Ranking Member</i>
HENRY C. "HANK" JOHNSON, JR., Georgia	
SYLVIA R. GARCIA, Texas	TOM McCLINTOCK, California
CORI BUSH, Missouri	CHIP ROY, Texas
SHEILA JACKSON LEE, Texas	MICHELLE FISCHBACH, Minnesota
	BURGESS OWENS, Utah

JAMES PARK, *Chief Counsel*

C O N T E N T S

WEDNESDAY, OCTOBER 20, 2021

	Page
OPENING STATEMENTS	
The Honorable Steve Cohen, Chair of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties from the State of Tennessee	2
The Honorable Mike Johnson, Ranking Member of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties from the State of Louisiana	4
The Honorable Jerrold Nadler, Chair of the Committee on the Judiciary from the State of New York	5
WITNESSES	
Ms. Patricia Lee, Lumberton, North Carolina	
Oral Testimony	7
Prepared Testimony	9
Ms. Regina Kline, Founder and CEO, SmartJob, LLC	
Oral Testimony	10
Prepared Testimony	12
Ms. Karen Harned, Executive Director, National Federation of Independent Business	
Oral Testimony	22
Prepared Testimony	24
Ms. Michelle Bishop, Voter Access and Engagement Manager, National Disability Rights Network	
Oral Testimony	32
Prepared Testimony	34
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
An article entitled, "Texans with disabilities fear voting will get harder for them as special session on GOP restrictions nears," The Texas Tribune, submitted by the Honorable Sylvia Garcia, a Member of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties from the State of Texas for the record	58
Materials submitted by the Honorable Sheila Jackson Lee, a Member of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties from the State of Texas for the record	
An article entitled, "Black students and students with disabilities remain more likely to receive out-of-school suspensions, despite overall declines," Child Trends	70
An article entitled, "Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing," Click2Houston	76
APPENDIX	
An letter from the Consortium for Citizens with Disabilities, submitted by the Honorable Steve Cohen, Chair of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties from the State of Tennessee for the record .	90

OVERSIGHT OF THE AMERICANS WITH DISABILITIES ACT OF 1990: THE CURRENT STATE OF INTEGRATION OF PEOPLE WITH DISABILITIES

Wednesday, October 20, 2021

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND
CIVIL LIBERTIES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to call, at 10:02 a.m., in Room 2141, Rayburn House Office Building, Hon. Steve Cohen [Chair of the Subcommittee] presiding.

Present: Representatives Cohen, Nadler, Cohen, Raskin, Ross, Johnson of Georgia, Garcia, Bush, Jackson Lee, Johnson of Louisiana, Fischbach, and Owens.

Staff Present: Jordan Dashow, Professional Staff Member; Cierra Fontenot, Chief Clerk; John Williams, Parliamentarian and Senior Counsel; Gabriel Barnett, Staff Assistant; Merrick Nelson, Digital Director; James Park, Chief Counsel; Will Emmons, Professional Staff Member/Legislative Aide; Matt Morgan, Counsel; James Lesinski, Minority Counsel; and Kiley Bidelman, Minority Clerk.

Mr. COHEN. Blast off. I am not Jeff Bezos. I am Congressman Steve Cohen, and this is start of the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties. Today's most important hearing is on the Americans with Disabilities Act, the great Act of the 1990s, the ADA. The Committee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

I welcome everyone to today's hearing on Oversight of the Americans with Disabilities Act of 1990, and the current State of integration of people with disabilities. This is an Act that I think Steny Hoyer was the sponsor and a great patron. I recognize Mr. Hoyer at this time.

I would like to remind Members, we have an email address which you know, and you hear innumerable times, where you can share distribution of exhibits, letters, written materials, et cetera. So, you have got that address.

Also, I would like to ask Members and Witnesses, both those in person and those appearing remotely, to mute your microphones

when you are not speaking. This will help prevent feedback and other technical issues. You may unmute yourself at any time you seek recognition. I will now recognize myself for an opening statement.

Hailed by many as the most significant and comprehensive civil rights statute since the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 was enacted with overwhelming bipartisan support. The late Senator Edward Kennedy, a lion of the Senate, if not the lion of the Senate, dedicated champion of civil rights, and one of the two chief sponsors of the ADA, noted that in passing the legislation, Congress affirmed its commitment to remove the fiscal barriers and antiquated social attitudes that have condemned people with disabilities to second class citizenship for far too long.

The bill's Chief House sponsor, now Majority Leader Steny Hoyer, said in 1990 before the ADA was signed into law that the day the President signed the bill would be Independence Day for those who have been disabled. Both Senator Kennedy and Representative Hoyer were right. President George H.W. Bush declared as he signed the ADA into law, let the shameful wall of exclusion of people with disabilities finally come tumbling down.

The ADA has improved lives of millions of individuals with disabilities by explicitly prohibiting discrimination on the basis of disability, and by providing standards for legal recourse for confronting such discrimination when it occurs. The idea that we had a period in our history when we didn't have sufficient parking for people with disabilities, curb cuts, banisters to help people get up and down stairs, it is hard to imagine. It goes way beyond that, of course.

This nation has made progress in the last 31 years toward achieving the ADA's goals of ending discrimination against and segregation of people with disabilities. The law has yet to achieve its full promise. Indeed, we could devote numerous hearings to many different aspects of the ADA and the various remaining areas that prevent disabled persons from enjoying the full blessings of American life.

It has been a decade since this Subcommittee last took a comprehensive look at the State of ADA's implementation. Given the breadth of potential topics, we have chosen to concentrate today on the ADA's integration mandate as a starting point, because community integration is a core goal of the ADA overall.

We will look at title II of the ADA and the enforcement and implementation of the Supreme Court's *Olmstead* decision. Additionally, we will examine longstanding barriers to voting accessibility for people with disabilities. title II of the ADA provides an individual with a disability shall not be denied the chance to participate in or benefit fully from the services, programs, or activities of public entities, which include, of course, State, local, and Federal governments.

More than 20 years ago, the Supreme Court declared in the *Olmstead* case that unnecessary institutionalization of people with disabilities violated title II of the ADA and that States must ensure that individuals receive services in the least proscriptive setting possible. Yet, thousands of individuals with disabilities still find themselves in situations with their only option for receiving hous-

ing and treatment services are in institutional settings isolated from the community.

People with disabilities continue to face discrimination in the form of over-institutionalization, and the COVID-19 pandemic has further exacerbated this problem. As of June 2021, over 180,000 people living in institutional settings have died during the pandemic. The pandemic has underscored the urgent need to fully implement *Olmstead* and to ensure that the States transition to providing home and community placement services.

I don't know if it is based on anything with ADA, but it certainly comes from that spirit. We have in our Build Back Better bill funding for people to remain in their homes when they get older, which is not necessarily, I guess, part of the ADA. As you get older, that is a disability of disabilities too, and you should have home healthcare and be able to stay in your home. That is something that crosses political borders.

Another core goal of the ADA is to ensure that people with disabilities can obtain economic self-sufficiency. *Olmstead* requires States to provide employment services in the most integrated setting appropriate to the individual's needs. Yet, persons with disabilities continue to face discrimination in the provision of employment-related services. Many persons with disabilities continue to be employed in sheltered workshops where they are segregated from the rest of the community, and they often earn a subminimum wage, because that is the setting where the State provides employment services. These environments do not aid people with disabilities in achieving competitive, integrated employment which should be the goal. The goal is difficult because it is hard to judge, but we need to look at it.

The Department of Justice plays an important role in ensuring State employment services comply with *Olmstead*. In 2017, however, then-Attorney General Jeff Sessions rescinded the Department's guidance document describing the application of *Olmstead* to State and local government employment services and systems. There was no explanation of or justification for rescinding this, and other critical ADA-related guidance. The department should reinstate and strengthen the *Olmstead* guidance so it may transition away from providing employment services and sheltered workshops, and instead, provide supported employment in the community and allow people with disabilities to earn a competitive wage while developing job skills.

Also, of critical importance to integrating people with disabilities in American society is the right to participate in our democracy. Yet, 31 years after the ADA's enactment, people with disabilities continue to face significant barriers to access the vote. We certainly hope our minority Members don't find any new ideas for voting laws when we discuss these disabilities with significant barriers. These barriers create physical barriers to in-person voting locations as well as impediments to voting by mail that particularly undermine voting access for blind and low-vision voters and voters with limited manual dexterity.

In 2020, many States implemented changes to voting laws in response to the COVID-19 pandemic that while improving voting access ability also highlighted the fact that people with disabilities

still face numerous and longstanding barriers to voting. While the COVID pandemic voting reforms proved to be an unexpected boon to voter accessibility in the 2020 election, States are now poised now to erase the gains made by voters with disabilities, but also to erect additional barriers to voting. This Subcommittee is dedicated to ensuring States do not erode the ability of people with disabilities to vote.

More than 30 years after the ADA's enactment, the law's implementation has fallen short of its full potential. Many challenges remain to fully achieve the ADA's goal of ending disability-based discrimination and the exclusion of people with disabilities from American society. It is a difficult balancing act, and we hope that—we know we will hear from the experts on where it falls, and what we can do to fulfill the purposes of the law and its intent. This hearing will do that. I welcome our Witnesses, and I look forward to their testimony.

It is now my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Louisiana, the State where it is good to be a football coach who has got a good buyout, Mr. Johnson, for his opening statement.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair. It is a sore subject. It is too soon.

I appreciate everyone participating in the hearing today, and I note that we have a sign language interpreter, Mr. Stubbs, who is trying to keep up with how fast we speak, so we appreciate that. I will be cognizant of it. We all should.

The Americans with Disabilities Act was passed by Congress in 1990 and signed into law by President George H.W. Bush. It was a big achievement. For 30 years, the ADA's purpose has been to, "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Obviously, that is a noble goal that I think probably all Americans agree with. Of course, we should all strive to ensure people with disabilities can live in their communities and work in their chosen professions to the fullest extent possible.

In the more than 30 years since the ADA was passed, however, it has become very clear that the law, subsequent regulations, and jurisprudence, have convoluted things to the point where small businesses simply have no clear guidance on what exactly is required of them. Instead of successfully codifying the golden rule of treating our neighbors as we want to be treated, the ADA has resulted in a compilation of vague and often complex standards and balancing tests. This has led to bad outcomes for individuals with disabilities and for businesses which are struggling to comply.

As we hear from our Witnesses today, people with disabilities still face obstacles in their daily lives. Meanwhile, businesses don't know what they must do to comply with this Federal law. As one legal commentator has remarked, "Because the ADA requirements are both obscure and voluminous, and even compliance experts do not agree amongst themselves how much accommodation counts is enough, potential violations can be found at most businesses." Businesses regularly face so much uncertainty in how the ADA will be enforced, they are put in the impossible position of complying

without even knowing what compliance means. If businesses mistakenly get it wrong, too bad for them. They are punished anyway.

It must become simpler than that, and this dilemma must be resolved in the best interest of all Americans, and everyone involved. Until it is, I fear that we will continue to fall short of the ADA's goal of eliminating discrimination against individuals with disabilities, and we will put millions of business owners, employers, job creators who are operating in good faith, in this continued impossible situation.

We do thank our Witnesses for appearing today, and we look forward to your testimony.

With that, Mr. Chair, I yield back.

Mr. COHEN. Thank you, Mr. Johnson.

Are there any opening statements from Chairs, or do we introduce—oh. Mr. Nadler. You are here. Sorry. I don't go to my right very often. You are welcome.

Chair NADLER. Thank you, Chair Cohen, and thank you to all our Witnesses for joining us today.

In considering the current state of integration of people with disabilities into their communities, today's hearing provides us an important opportunity to examine the extent to which the ADA has ensured that people with disabilities have access to housing, employment, and voting rights as the law intends.

The ADA is one of the nation's most important civil rights laws. Thirty-one years ago, on a bipartisan basis, Congress passed this historic law to, "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." While the ADA has helped break down many barriers facing people with disabilities, our nation has yet to achieve the law's promise of full integration.

Notably, the Supreme Court, in its landmark 1999 decision in *Olmstead v. LC*, held that title II of the ADA which provides that people with disabilities must have the chance to participate in or benefit fully from the services of public entities and the DOJ's regulations in interpreting that provision prohibited the unjustified segregation of people with disabilities. Such unjustified segregation, the Court held, constituted discrimination, and required that States, should an individual not oppose it, must provide community-based services to people with disabilities in the most integrated setting appropriate.

The importance of the *Olmstead* decision to the disability community cannot be overstated. Transitioning people from congregate institutional living or treatment settings has enabled people with disabilities to live better, more independent lives as individuals with the dignity that they deserve, which is one of the core purposes of the ADA. Twenty-two years of experience with *Olmstead* has not only demonstrated that States can comply with the decision, but also that *Olmstead* has made State service systems better and more responsive to the individual needs of the people they serve.

Moreover, the COVID-19 pandemic has underscored the urgency and necessity of implementing *Olmstead*. The COVID-19 pandemic has disproportionately impacted people with disabilities, partly due to their overconcentration in congregate settings such as nursing

homes or other assisted care facilities. According to *The New York Times*, as of June 1st of this year, over 184,000 deaths have been reported among residents of nursing homes and other similar congregate facilities. The pandemic has made implementing *Olmstead* literally a life-or-death matter.

To promote State compliance with *Olmstead*, Congress should create incentives for States to expand their community service systems. The American Rescue Plan provided a one-year incentive to States to expand home- and community-based services by providing an increase in Federal Medicaid funding matching for those services. The Build Back Better Act would also make a similar incentive permanent, provided that States meet certain conditions. I hope this will be enacted into law soon.

It is also important to recognize that the segregation of people with disabilities is not just limited to where they live or receive treatment, but it can also manifest in where they work. Another one of the core purposes of the ADA is to ensure that people with disabilities can achieve economic self-sufficiency and independence. If the majority of people with disabilities are not part of the labor force, and a significant number of those who are employed work in sheltered workshops where they are relegated to performing menial tasks below their capability, sometimes for subminimum wages and segregated from the wider community.

To fully realize the ADA's integration mandate, we must also ensure that State employment service systems comply with *Olmstead*. Rather than provide services in segregated settings cut off from the rest of the community, State employment services should transition to providing supported employment in the community to ensure that people with disabilities can develop the skills necessary to achieve competitive, integrated employment, and economic self-sufficiency.

Last, but certainly not least, ensuring that people with disabilities are integrated into the community requires that they are fully able to participate in the electoral process. Indeed, as I have stated before, the right to vote is instrumental in securing and defending all other rights. Yet, over 30 years after the ADA's passage, people with disabilities still face too many longstanding obstacles to exercising their right to vote.

Many of the changes to our voting laws in the wake of the COVID-19 pandemic made the 2020 election more accessible to people with disabilities than past elections. While that perhaps unexpected progress is welcome, it only highlights the continuing and persistent barriers that people with disabilities face when voting. Moreover, as this Subcommittee learned during its oversight hearings on the Voting Rights Act this past summer, the current attack on voting rights includes a rollback of those positive voting law changes and would institute additional barriers to voting that disproportionately impact voters with disabilities and especially voters of color with disabilities.

Congress took an important step when it passed the ADA in 1990, but as a nation, we still have a long road ahead to achieving the goal of full community integration. We must continue to ensure robust enforcement of the ADA and compliance with the *Olmstead* decision across the board.

Again, I thank Chair Cohen for holding this hearing, and I look forward to hearing from our Witnesses. With that, I yield back the balance of my time.

Mr. COHEN. Thank you, Mr. Chair.

We will now go into our series of statements from our Witnesses, and I shall introduce them before they start their statements. We thank you for participating today and introduce—your statements will be entered in the record in their entirety. You have five minutes to summarize your written statement or to provide it here today. There is a timer in the Zoom view that should be visible at the bottom of your screen if you are with us on Zoom. It shows you how much time you have left to help stay within that time that should be visible at the bottom of your screen.

I would like to remind all the Witnesses appearing that you have a legal obligation to provide truthful testimony and answers to the Subcommittee and that any false statements you make today may subject you to prosecution under United States Code. Our first Witness is Ms. Patricia—everybody mute.

I think we got that. Our first Witness is Patricia Lee. Ms. Lee is a resident of Lumberton, North Carolina. She formerly was a resident of an assisted living facility, and she faced many obstacles to rejoining her community because of mental disability and a history of substance abuse. Because of the ADA, she received necessary resources that empowered her to move into her own house in her local community. She has accomplished many milestones in pursuit of her goals such as driving a car and finding a career, and she is here to share her story with the Subcommittee. Ms. Lee, you are recognized for five minutes.

STATEMENT OF PATRICIA LEE

Ms. LEE. Thank you. Good morning. My name is Patricia Lee. I live here in North Carolina, and I am here to talk about how the Americans with Disabilities Act significantly changed my life.

Because of the Americans with Disabilities Act, I have had an equal opportunity to turn my life around. I have a history of substance abuse and mental health diagnoses, and I found myself in a situation where the only housing I could obtain was an assisted-living facility. This was put into place by my doctor because I was going to end up on the streets where I would probably begin using again. The doctor thought that the assisted-living facility would be able to treat my mental health diagnosis as well as maintain my recovery.

The assisted-living facility was very depressing. If you know anything about people who are in recovery, it is very important that we don't experience severe depression. This makes people more likely to use again. The only good thing about that place was that my mother was in the room next to me, and the most depressing aspect was the way I saw the staff treat other people. It was just too much negativity to be around.

I honestly thought that my end result was an assisted-living facility. A lawsuit found that mental health services in North Carolina were violating the Americans with Disabilities Act, and not providing needed services for people with mental health diagnosis to be successful in the community.

To meet the terms of the lawsuit, East Point came in and asked me, did I want to live on my own? I didn't think that was an option for me anymore. East Point helped me get a house that I still live in. They showed me the house, and I approved of it. There was a chance that someone else could have gotten it, so I looked at a duplex as well.

Once I moved in, I decided to set a goal to get an emotional support animal, and that is how I got my dog, Lady. I receive mental health services from Stephens Outreach Center, and transition support from East Point and others that include a therapist, peer support, a specialist, rental assistance, and any other support needed to help me set my goals and reach my goals. My faith has played a large role in my recovery as well. Through my faith, I have a family who is always there. My faith in Jehovah has helped me persevere.

When I was living in the assisted-living facility, I received less services for my mental health, and there were always appointments that were canceled and never rescheduled while I was in the assisted-care home. The appointments were even set beyond my control. So, now, I receive all the support I need from the Community inclusion Pilot Program with East Point and Alliance of Disability Advocates of North Carolina.

I had a goal of paying off my court fees that I got when I was not in recovery and getting my driver's license reinstated. I have been able to pay off the debts completely. When I got one of the last debts paid off, I was suddenly told of a class that I needed to take to get my driver's license. This was devastating, as I had been saving just to pay off the court fees, and now I had to pay a thousand dollars to take the class. Fortunately, it was around the same time that a program called Freedom Funds was available. Freedom Funds helped me with this expense, and I have completed the class, and now I only have to take my test.

Freedom Funds comes from the community inclusion services. This program has enabled me to move out of the facility and into my own house. I still receive needed services such as counseling, peer support, and anything I need to reach the goals that I have set for myself. I have successfully lived independently for almost four years now. Through mental health services in the community, I still have the support that empowers me to reach my goals. Thank you.

[The statement of Ms. Lee follows:]

Patricia Lee Testimony

Good morning, my name is Patricia Lee. I live in North Carolina. I'm here to talk about how the Americans with Disabilities has significantly changed my life. Because of the Americans with Disability Act, I had had an equal opportunity to turn my life around. I have a history of substance abuse and mental health diagnosis. I found myself in a situation where the only housing I could obtain was an Assistive living facility. This was put into place by my doctor because I was going to end up on the streets where I would probably began using again. The doctor probably thought the Assistive living facility would be able to treat my mental health diagnosis, as well as maintain my recovery.

The assisted living facility was very depressing. If you know anything about people who are in recovery, it is very important that we do not become depressed. This makes people more likely to use again. In the facility, I had to eat what and when they told me to. I had to go to bed at a certain time. The only good thing about that place was my mother was in the room next to me. The most depressing aspect was the way I saw the staff treat other people. It was just too much negativity to be around.

I honestly thought that the end result was an assisted living facility for me. A lawsuit found that mental health services in North Carolina were violating the Americans with Disabilities act and not providing needed services for people with mental health diagnosis to successfully in the community. To meet the terms of the lawsuit agreement, NC developed the TCLI program. When I was in the nursing home Eastpointe came in and said 'do you want to live on your own?' I didn't think that was an option for me anymore. Eastpointe helped me get a house that I still live in. They showed me the house and I approved of it. There was a chance that someone else could have gotten the house, so I looked at a duplex as well. Once I moved in the house, I decided to set a goal to get an Emotional Support Animal. That is how I got my dog Lady. I receive mental health services from Stevens Outreach Center, Eastpointe provides transition services, and others that include a therapist, peer support specialist, rental assistance, and any other support needed to help me set, and reach my own goals. My faith has played a large role in my recovery as well. Through my church I have a family who is always there. My faith in Jehovah has helped me persevere. When I was living in the assisted living facility, I received less services for my mental health. There were always appointments that were canceled and never rescheduled while residing at the Adult Care Home (ACH). The appointments were even set beyond my control. So, now I receive all the support I need from Alliance of Disability Advocates of NC and Eastpointe.

I had a goal of paying off my court fees I got when I was not in recovery., and getting my drivers license reinstated. I have been able to pay off the debts completely. When I got one of the last debts paid off, I was suddenly told of a class I needed to take in order to get my drivers license. This was devastating as I had been saving just to pay off the court fees, and now I had to pay \$1000 dollars in order to take the class. Fortunately, it was around the same time that a program called Freedom Funds was available. Freedom funds helped me with this expense. I have completed the class and now I only have to take my test. Freedom Funds came from the community inclusion services program.

This program has enabled me to move out of the facility, and into my own house. I still receive needed services such as counseling, peer support, anything that I need to reach the goals that I set for myself. I have successfully lived independently for 3 years. Through mental health services in the community, I still have the support that empowers me to reach my goals."

Mr. COHEN. Thank you, Ms. Lee. I appreciate your testimony and your success and your opportunity to have your home and what you need.

Our next Witness is Regina—she goes by Gina Kline. Ms. Kline is the founder and CEO of SmartJob, a global company with the core mission of closing the disability wealth gap by making jobs smarter through expanded investment, access to financial services, and better public policy. Ms. Kline previously served as Senior Counsel to the Assistant Attorney General for Civil Rights during the Obama Administration where she provided legal and policy counsel regarding efforts to implement the ADA. She filed and resolved the nation's first cases under title II of the ADA and the Supreme Court's *Olmstead* decision to challenge segregated work settings. She received her degrees from the University of Maryland School of Law, making Steny Hoyer very proud, and from Columbia University, making Chair Nadler proud.

Ms. Kline, you are recognized for five minutes. There you go.

STATEMENT OF REGINA KLINE

Ms. KLINE. I hope that I have corrected my Zoom problem. Thank you very much, and I am very happy to be here.

People with disabilities are a constituency that includes nearly one in five Americans. This constituency comprises nearly half of those Americans that live in long-term poverty. We are talking about nearly two-thirds of working age people with disabilities who are, in fact, not employed. So, in short, this is an unemployment crisis of profound proportions, and it has direct ramifications for the economy.

Crucially, in the United States, this disability unemployment crisis has been deepened by public spending, namely, the significant overreliance of State and local government on service systems that structure employment in employment service delivery for people with disabilities in separate, segregated employment settings apart from mainstream, competitive employment and typical jobs in the open market. This violates the mandates of the Federal civil rights laws that were just explained, namely, the Americans with Disabilities Act and the Supreme Court standard that was set forward in the *Olmstead v. LC* decision.

While plaintiffs' counsel and the Department of Justice have worked vigorously over roughly the past decade to rectify these failures through enforcement of title II of the ADA and *Olmstead*, there is much work left to be done in the country.

There is a multibillion-dollar public service system that largely still significantly relies on separate segregated, both employment and day settings, for service delivery in lieu of investment in integrated alternatives that includes supported employment services and the types of support that Americans with disabilities need to find, obtain, and sustain typical employment in the community.

This bitter reality remains, and so the core recommendations that I provided in my much longer written testimony include that the DOJ reinstitute and reinstate this critical guidance that explains title II of the ADA and *Olmstead* to public entities. That guidance that was rescinded roughly five years ago provided tech-

nical assistance and understanding to State and local governments as to how to comply with these core requirements of the ADA.

The second recommendation is to encourage States to make use of American Rescue Plan dollars to fund critical home- and community-based services to support the population of Americans with disabilities who can and want to work to transition into typical employment at this crucial and pivotal moment in the pandemic instead of being reinstitutionalized or returning to separate, segregated settings where, typically, there is the payment of subminimum wages and a lack of training and support to reenter the market.

Finally, the DOJ should continue to prioritize and vigorously enforce title II of the Americans with Disabilities Act and the *Olmstead* decision as applied to employment. I do not have knowledge of any recent enforcement actions from the DOJ applying title II of the ADA to employment. However, I am aware of some truly amazing and considerable progress as it relates to enforcement of existing consent decrees.

So, those are the recommendations, and this is an issue of critical importance to millions of Americans with disabilities who now, during the pandemic, for the first time in quite a while, have the opportunity to reassess whether they can and want to work and need the support from State and local governments to work.

[The statement of Ms. Kline follows:]



Congressional Testimony of Regina Kline, Esq.

Founder and CEO of SmartJob LLC

U.S. House Judiciary Committee, Subcommittee on the Constitution

Submitted: October 18, 2021

Thank you for inviting me to participate in today's hearing. My name is Regina Kline, and I am the Founder and CEO of SmartJob LLC, the first global company dedicated to closing the disability wealth gap— and catalyzing employment— through impact investment. At SmartJob, we are working to unleash the tremendous untapped talent of people with disabilities onto the capital markets, including by driving impact investments and philanthropic capital infusions into disability-led solutions and entrepreneurs across the world who have created products, services, and solutions that will reduce the low labor force participation of people with disabilities, address poverty, and increase upward mobility.

Prior to founding SmartJob, I served as a Partner at the law firm of Brown, Goldstein & Levy, LLP, in Baltimore, Maryland and Washington, DC, and served as both a litigator and co-lead of Inclusivity, the firm's strategic consulting practice, where I represented and provided advice to a range of clients on matters involving the employment of persons with disabilities across the United States. I formerly served as Senior Counsel to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, where I provided legal and policy counsel regarding efforts to implement the Americans with Disabilities Act ("ADA") and *Olmstead v. L.C.*'s mandate for community integration in, among other things, employment.

As a DOJ Trial Attorney, I was lead counsel and filed two of the Department's first cases, *U.S. v. Rhode Island and City of Providence* and *U.S. v. Rhode Island*, challenging unnecessary segregation of people with disabilities in state-funded employment programs and reached the nation's first statewide settlement agreements to transform employment programs to serve people with disabilities in competitive integrated employment. During the same period, I participated as a counsel of record, with co-counsel from the Center for Public Representation, Disability Rights Oregon, and two private law firms in the *Lane v. Kitzhaber / United States v. Oregon* matter which, similarly, resulted in a landmark settlement agreement to transform Oregon's employment service system for people with disabilities. Collectively, the three cases resulted in injunctions requiring that approximately 11,565 people with disabilities receive the services and supports that they need to leave segregated subminimum wage employment and transition to competitive integrated employment within ten years.

It is a special privilege to offer testimony to the Committee on the topic of enforcement of the ADA and the *Current State of Integration of People with Disabilities*, and to do so with particular attention to the subject of employment.

The past nineteen months have been an inflection point in our national history, both for the enduring public health crisis posed by a global pandemic, but also by the truths it has revealed about our labor market and the global economy. While the economy struggles to rebound, many industries are experiencing a pressing labor shortage for multiple reasons; among them, that workers covet additional flexibility and autonomy in their jobs, seek to minimize adverse consequences imposed on their health by certain workplace settings and practices, and have shifted expectations for the way they will work after recognizing the precariousness of continued participation in labor market sectors and industries that offer low wages, fewer worker protections, and have been upended by automation and the ever-changing demands of the technological knowledge-based economy. In short, the pandemic has magnified that the long-term economic prospects of millions of Americans depend on and will be aided

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

by newfound flexibility and adaptability in modes of working, access to technology, and new skills training that will allow them to join new and emerging industries.

The irony of these pandemic-era revelations is that the group that meaningfully pioneered and perfected remote and flexible work, adaptations to the workplace and modes of working, to improve access to employment— that is, people with disabilities—remain among the most conspicuously unemployed and underemployed people in the United States, and the world, at the precise moment that the economy is showing signs of shifting into a golden era of flexible work. More to the point, people with disabilities have received the least investment in the solutions needed to participate in such future-proofed work and the rapidly changing economy.

The statistics exemplify the scope of the problem. People with disabilities, a constituency that includes nearly 1 in 5 Americans¹, comprise roughly half of those living in long-term poverty in the United States.² Nearly two-thirds of working-age people with disabilities are not employed.³ People with disabilities are vastly overrepresented in the retail and manual skills industries most subject to disruption and vastly underrepresented in the industries experiencing the most growth in the economy.⁴ In global terms, more than one billion people in the world live with disabilities⁵, leaving a multi-trillion dollar hole in global GDP due to the social exclusion of people with disabilities. In short, this is an unemployment crisis of profound proportions with direct ramifications for the capital markets and the global economy.

To join the future of work, people with disabilities require both public and private investment in the solutions, including technologies, innovations, and integrated services and supports, required to participate in today's rapidly changing economy and workforce.

Crucially, in the United States, the disability unemployment crisis has been deepened by public spending— namely, the significant overreliance of state and local governments on service systems that structure employment service delivery for people with disabilities in separate, segregated settings— apart from competitive mainstream and typical employment-- in violation of the mandates of federal civil rights law. While to correct these failures, over the past decade, the Department of Justice and private plaintiffs have been assertive in enforcing the ADA and *Olmstead v. L.C.* with incredible success, both legally and practically, the lion share of public spending on disability employment and day services, through the government's multi-billion dollar services system, continues to be invested in segregated employment and non-work services and settings with, in relative terms, few material gains in labor market participation of people with disabilities in the mainstream economy.

¹ U.S. Census Bureau, <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html> (last visited October 17, 2021).

²² *National Disability Policy: A Progress Report*, National Council on Disability, page 21, available at: https://ncd.gov/sites/default/files/NCD_A%20Progress%20Report_508.pdf.

³ See *2020 Progress Report on National Disability Policy: Increasing Disability Policy*, National Council on Disability, page 22, available at: https://ncd.gov/sites/default/files/NCD_Progress_Report_508_0.pdf.

⁴ *Id.* at 23-24.

⁵ See United Nations Fact Sheet, <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html> (last visited October 17, 2021).

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

One common feature of segregated employment settings draws particular attention to how misaligned segregation is with the ADA's explicit goal of economic self-sufficiency. Over the past eight decades millions of Americans with intellectual and developmental disabilities ("I/DD"), who are blind, who have significant psychiatric disabilities, or have other significant disabilities have been left out of the open marketplace often to earn just pennies per hour in segregated settings, often for decades at a time, based on the erroneous assumption that disability inherently creates insurmountable barriers to productivity. Many others are served in day programs that do not offer any type of employment service at all, and receive no encouragement or assistance to secure employment.

Nearly eighty-three years ago, as part of the New Deal reforms, it became accepted that this justified the need for wages to be downwardly adjusted to sub-minimum wages⁶ and for such persons to participate in work settings with only other people with disabilities, except for paid staff. These institutional settings are most commonly referred to as "sheltered workshops." These assumptions have been perpetuated even though many people in segregated work settings can and want to work in the community and could do so with accommodations, training, technology, and supports designed to remove barriers to entry, as opposed to receive the kinds of services offered in segregated settings that ensure their near-terminal separation from competitive employment and ongoing economic apartheid. If the goal of sheltered workshops is ostensibly to train and support people with disabilities to eventually participate in mainstream employment, then such programs have a 95% fail rate, as only approximately 5% of sheltered employees ever transition from such programs to the open market.⁷

While some service providers and families have long expressed fear that dependence on segregated service settings, including sheltered workshops, is a necessary feature of everyday life and work for some people with disabilities, the past nineteen months have offered an alternative point of view. During the global pandemic, many state employment service systems, and service providers operating within them, temporarily suspended the employment services provided in segregated settings, including in sheltered workshop settings that pay people subminimum wages. They did so because, as advocates have long known, congregation itself can be a threat to individuals' safety, and most certainly during a public health emergency precipitated by a contagious airborne virus. As I then learned firsthand from people with disabilities (and as was reported to me by other disability rights lawyers, advocates, and family members in the field), after the segregated employment settings suspended services, many people with disabilities experienced the first opportunity in their adult lives to evaluate whether they were fully realizing their full employment potential by participating in such programs and settings. For some, this experience revealed that they do not, in fact, have an inherent dependence on segregation, but instead may have "ended up there" because of a lack of previous opportunities to meaningfully evaluate alternatives and a dearth of available supports in the community (like job developers, job coaches, and benefits planning counselors) to work in typical employment settings. It has long been documented that a great many people with disabilities who receive services in segregated employment settings can and want to work in the community in competitive integrated employment. But the bitter reality remains, as state and local governments have serially overinvested in

⁶ See "Section 14(c)" of the Fair Labor Standards Act, 29 U.S.C. § 214(c).

⁷ *National Disability Employment Policy: From the New Deal to the Real Deal: Joining the Industries of the Future*, National Council on Disability (October 11, 2018), Page 34, available at: https://ncd.gov/sites/default/files/Documents/NCD_Deal_Report_508.pdf (last visited October 17, 2021).

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

segregated employment settings, the lack of public investment in integrated alternatives continues to relegate people with disabilities to segregated settings by default, even at a time when there are many unfilled jobs in the economy that such persons could perform.

I. Disability-Related Civil Rights Protections and Employment

For the past half century, the United States has championed the civil rights of individuals with disabilities including by signing into law federal protections that have allowed such persons to be free from unnecessary institutionalization, social isolation, and segregation and to fully participate in all aspects of community life, including where such persons live, learn, work, and interact with peers. The United States has accomplished this through seminal statutes and regulations including Title XIX of the Social Security Act of 1965 (“Medicaid Act”), the Rehabilitation Act of 1973 (“Rehab Act”), the Education for All Handicapped Children of 1975 (EHCA), the Individuals with Disabilities Education Act of 1997 (“IDEA”), the Developmental Disabilities Act of 1984 (“DD Act”), and finally and importantly, the ADA. In 1999, the United States Supreme Court’s *Olmstead v. L.C.* decision, and later the enactment of the Workforce Innovation and Opportunity Act of 2014 (“WIOA”) have clarified and expanded these rights.

These significant advancements were accompanied by rising expectations for people with disabilities, alongside the promise of equality of opportunity, a free and appropriate public education in the least restrictive environment, access to health care, services, and supports in their homes and communities rather than in institutions, and freedom from discrimination in all aspects of community life. Today young people with disabilities come of age in an America where they expect to live at home, go to school with non-disabled peers, navigate sidewalks, buildings, and access public transportation free from physical and architectural barriers, and be fully integrated into the fabric of the community.

The culmination of these rights to education, healthcare, independent living, and community access is the **economic self-sufficiency** of people with disabilities and their emergence as employees, taxpayers, and consumers in the mainstream economy. Crucially, one of the primary purposes of the ADA was to remove barriers to work, including discrimination and segregation, to assist people with disabilities to “move proudly into the economic mainstream of American life.”⁸ It is important to remind the committee, that the last half century has taught us that full inclusion of people with disabilities is more than merely being physically present in the community, it is most certainly *economic*. Yet now millions of those in, or at risk of, segregated work settings across the country lack the economic security to enjoy the full range of opportunities and benefits derived from being physically present in the community. And the global economy is sorely missing such persons’ economic and social contributions. Discussions of the ADA cannot begin and end with the freedom from discrimination once already on-the-job, they must also include *equity* and the corresponding inclusion most fundamentally bestowed by allowing those historically separated from labor market participation to enter employment with the right supports.

⁸ President George H.W. Bush, “Statement on the Signing of the Americans with Disabilities Act” (Washington, DC, July 26, 1990).

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

II. The Requirements of the ADA and *Olmstead v. L.C.*

Federal law requires that states and local governments provide employment services in the most integrated setting appropriate to individuals' needs. The underlying legal mandate of this requirement is explicitly embedded in the ADA, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d) (the "integration mandate"); and strengthened by the Supreme Court's interpretation in *Olmstead v. L.C.*, 527 U.S. 581 (1999). The integration mandate has been one of the most important aspects of the ADA. Segregation and isolation of people with disabilities has curtailed their opportunities to participate in virtually all aspects of everyday life, including employment, educational, social and cultural, and other activities.

Lane v. Kitzhaber/ United States v. Oregon established that "the risk of institutionalization addressed in *Olmstead* ... includes segregation in the employment setting," rejecting the argument that *Olmstead* only applied to segregated residential institutions.⁹ The ADA's integration mandate requires employment service systems to allow those who are qualified for, and who do not oppose doing so, to receive employment supports in the most integrated setting appropriate to their needs.

Thus, it is enshrined in federal law that public entities must transition and rebalance employment service systems away from significant over-reliance on segregated employment and day settings to the exclusion of integrated alternatives like supported employment services provided in competitive integrated employment. In doing so, states will allow individuals a meaningful opportunity to access services in the most integrated setting appropriate; or in other words, competitive integrated employment (*i.e.* typical jobs in the community).

Other federal laws and requirements stand in harmony with the ADA and *Olmstead*. For example, Section 511 of WIOA is intended to ensure that all people with disabilities are given opportunities to work in competitive integrated employment and to limit the placement of individuals in subminimum wage sheltered workshops. Thus, it has become the explicit policy of the federal government to intercept young people with disabilities before they enter segregated employment settings to ensure that they are first given a meaningful choice to work in competitive integrated employment. Likewise, the Center for Medicare and Medicaid Services ("CMS") has also weighed in on this issue. The HCBS Settings Rule applies to all HCBS settings, both residential and day settings (including employment settings). Among other things, the Rule requires that the setting is integrated and supports access to the greater community and provides opportunities to seek employment in competitive integrated employment.

A. Application of the ADA and *Olmstead* to Employment

Under the ADA and *Olmstead*, no one who wants to work should be compelled to go into a segregated employment setting to do so because those supports do not exist or are not otherwise

⁹ *Lane v. Kitzhaber*, 841 F. Supp.2d 1199, 1205 (2012) ("Those same criticisms apply equally to offering no choice of employment services other than working in a sheltered workshop. ... [This case] seeks to ensure the provision of available employment-related services in order to prevent unnecessary segregation in employment. Although the means and settings differ, the end goal is the same, namely to prevent the 'unjustified institutional isolation of persons with disabilities.' Thus, this court concludes that the risk of institutionalization addressed in [] *Olmstead* ... includes segregation in the employment setting.").

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

available elsewhere in the service system. Yet this has been precisely the lived experience of millions of Americans with disabilities for decades. People with disabilities who can and want to work have been relegated to separate rather than typical employment settings often for no other reason than because that is where public entities have made services and supports most available to them.

In *Lane v. Kitzhaber (Brown)/ United States v. Oregon*, a class comprised of thousands of individuals with disabilities in or at risk of entering sheltered workshops filed a lawsuit against the state of Oregon, alleging that people with disabilities who can and want to work in competitive integrated employment were forced to receive employment services in Oregon sheltered workshops because Oregon's system significantly over-relied on segregated employment settings and had under-invested in services and supports (like job developers, job coaches, benefits counselors) that would allow such persons to participate in competitive integrated employment.

Likewise, DOJ investigated and filed a lawsuit against the state of Rhode Island for its significant over-reliance on sheltered workshops.¹⁰ The lawsuit, like the one filed in Oregon, was premised upon DOJ's findings that people can and want to work in competitive integrated employment but were forced to receive employment services in segregated sheltered workshops because of Rhode Island's over-investment in those settings and under-investment in integrated alternatives.

These actions in Oregon and Rhode Island resulted in three landmark ADA court-ordered settlement agreements within the span of three years: *United States v. Rhode Island and City of Providence* (2013); *United States v. Rhode Island* (2014); and *Lane v. Brown/ United States v. Oregon* (2015).¹¹ Under these settlement agreements, both states agreed to no longer purchase or fund sheltered workshop placements for new entrants to workshops, including transition-age youth; to increase technical assistance resources; career planning and development services; and to overhaul youth transition services. The settlements also brought about new person-centered planning processes for people with disabilities, and the use of evidence-based practices in finding, obtaining, and sustaining employment. In sum, Oregon committed to providing 8,115 people with disabilities with the services and supports they need to leave segregated employment and transition to competitive integrated employment over 7 years; likewise, Rhode Island committed to transitioning 3,450 people with disabilities over 10 years.

To illustrate what excessive reliance on segregation in employment settings looks like, one should examine the state of affairs in Oregon and Rhode Island's service systems at the time that these cases were initiated. In Oregon at the time of the U.S. Department of Justice's ("DOJ") Letter of Findings (2012), approximately 61% of individuals with intellectual or developmental disabilities ("I/DD") receiving employment services from the state system did so in sheltered workshops versus less than

¹⁰ See Findings Letter from DOJ to Rhode Island (January 6, 2014) and Complaint (April 8, 2014), available at: https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state.

¹¹ See *United States v. Rhode Island and City of Providence* Interim Settlement Agreement (2013), https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri; *United States v. Rhode Island* (2014) Settlement Agreement, https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state; and *Lane v. Brown/ United States v. Oregon* Consent Decree (2015), https://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane.

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

16% of service recipients who did so in jobs in the community.¹² Likewise, in Rhode Island at the time of the DOJ's Letter of Findings (2014), approximately 80% of individuals with I/DD that received services from the employment and day service system did so in segregated settings including sheltered workshops, while just 12% reported that they participated in jobs in the community.¹³ In both cases, the DOJ found that such excessive and unjustified reliance on segregated settings, in lieu of integrated alternatives, violated Title II of the ADA and *Olmstead*.

Nearly a decade after the Department of Justice made its first findings applying the ADA and *Olmstead* to employment, and years after the resulting landmark consent decrees, Oregon and Rhode Island reflect considerable progress and promise for efforts to allow those who can and want to work to receive the supports they need to move from segregated to integrated employment settings. For example, at the time of entry of the Consent Decree, approximately 2,700 people with disabilities in Oregon worked in segregated sheltered workshops and now there are none.¹⁴ Correspondingly, at the time of entry of the Oregon Consent Decree just 300 people worked in typical jobs in the community and received publicly-funded supported employment services whereas just prior to the pandemic approximately 1,700 people with disabilities did.¹⁵

Similarly, in 2012, at the time of the DOJ's findings in Rhode Island, 2,572 people with disabilities reported participating in facility-based day programs and another 839 people with disabilities participated in sheltered workshops (a total of 3,411 people in segregated settings).¹⁶ At the same time, just 383 individuals participated in typical jobs in the community with supported employment services.¹⁷ Yet, years later, and just prior to the pandemic improvements were reported, as 614 people reported that they participated in individualized integrated paid employment or self-employment, 1,212 people reported participating in facility-based day programs, and just 14 people, or less than one half of one percent (0.4%) participated in segregated work settings.¹⁸

Although DOJ has continued to work implementing the agreements in these cases alongside private plaintiffs and the involved states, it has not yet— to my knowledge— initiated new enforcement actions under Title II of the ADA and *Olmstead* as applied to employment settings. The legal rationale presented in these cases, of course, applies to all Title II covered entities, meaning other state and local government employment and day service systems. As a result of the legal landscape, some other states have made considerable progress in recent years in transitioning their service systems away from significant reliance on segregated settings and taken concrete affirmative steps to invest in the services and supports necessary to allow people to work in competitive integrated employment. In addition, states like Maryland, Oregon, Alaska, Illinois, and New Hampshire, and cities like Seattle, have officially eliminated the payment of subminimum wages in their systems.

¹²See Findings Letter from DOJ to Oregon (June 29, 2012), https://www.ada.gov/olmstead/documents/oregon_findings_letter.pdf.

¹³ See *supra* note 10.

¹⁴ 2020 Report to the Court, Fifth Report of Independent Reviewer, Cathy Ficker Terrill, J.D. March 2021.

¹⁵ *Id.*

¹⁶ *Supra* note 10.

¹⁷ *Id.*

¹⁸ See Sherlock Center at Rhode Island College, Day & Employment Survey data, *available at*: <https://w3.ric.edu/sherlockcenter/publications/statewideannualsummary2020.pdf>.

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

B. Persistent Trends and Segregated Landscape of Public Employment Service Systems

Even despite the considerable progress brought about by legal challenges over the past decade applying the ADA and *Olmstead* to public employment systems, namely *United States v. Oregon/Lane v. Kitzhaber (Brown)*; *United States v. Rhode Island*, and *United States v. Rhode Island and City of Providence*, overall data reflect that many state employment systems continue to remain over reliant on providing services in segregated employment and day settings and have taken few if any actions to meaningfully address this imbalance, placing them at-risk of lawsuits under Title II of the ADA and *Olmstead*.

One September 2018 report by prominent disability researchers made this point plain as it related to people with intellectual and developmental disabilities:

While many policymakers, providers, families and advocates recognize the benefits of employment for people with IDD, rates of integrated employment among people with IDD receiving services are low and *have remained essentially unchanged for the past 10 years*. (emphasis added).¹⁹

Another study demonstrated that reliance on segregated facility-based and non-work services may be actually growing. Daria Domin and John Butterworth of the Institute for Community Inclusion at the University of Massachusetts Boston stated of 190 U.S. community rehabilitation providers, only 17.5 percent of 33,874 adults with I/DD served during the FY 2014-2015 year worked for pay in individual jobs with supports, while at the same time, participation in facility-based and non-work services was growing nationally.²⁰ This is concerning when considered in light of recent National Core Indicators data that demonstrates that a significant portion of individuals in segregated employment and day settings, including people in sheltered workshops, want to work in competitive integrated employment.²¹

Moreover, there are additional signs that public spending is out of step with the changing nature of work and the kinds of investment necessary to prepare people with disabilities for the mainstream economy. For example, despite overall spending of \$71.7 billion on vital services and supports for people with intellectual and developmental disabilities, approximately \$16 million— or less than 1% of that overall spending— is spent on technology.²² Accordingly, many such persons with disabilities lack

¹⁹ Dorothy Hiersteiner & John Butterworth, “Working in the Community—Update 3, The Status and Outcomes of People with IDD in Integrated Employment,” (Institute for Community Inclusion, UMass Boston)

²⁰ See *supra* note 7, NCD *New Deal to Real Deal Report* at page 27 (citing and explaining Domin and Butterworth data).

²¹ John Butterworth and Dorothy Hiersteiner, *How Many People with Intellectual and/or Developmental Disabilities Want a Job in Their Communities?*, 64 Data Note (2019), https://www.statedata.info/sites/statedata.info/files/files/DN_64_F.pdf (last visited October 17, 2021).

²² Larson, S.A., Butterworth, J., Winsow, J., Tanis, S., Lulinski, A., and Smith, J., *30 Years of Community Living for Individuals with Intellectual and/or Developmental Disabilities (1987-2017)*, Washington, DC: Administration on Community Living, U.S. Department of Health and Human Services, available at: <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/30%20Years%2013-21.pdf> (last visited October 17, 2021).

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

access to even the most basic type of technology infrastructure relative to work that would allow them to compete for open market positions.

III. Recommendations for Continued Enforcement of the ADA and *Olmstead* v. L.C. in Employment

To contribute to the continued success of Title II ADA and *Olmstead* enforcement, it is recommended that:

1. DOJ Reinstate Title II ADA and *Olmstead* Employment Guidance: The Committee should recommend that the DOJ reinstate a critical guidance that was issued almost exactly 5 years ago in October 2016 on the subject of the application of Title II of the ADA and *Olmstead* to state employment service systems. The guidance was based on existing case law and settlement agreements and was framed as a tool for states and stakeholders to collaborate in rebalancing employment service systems. The guidance was rescinded by the DOJ in December 2017, in what is documented to have been at the urging of sheltered workshop providers.²³ At the time, over 200 disability organizations sent a letter to DOJ opposing the withdrawal of the guidance.²⁴ To date, the guidance remains withdrawn. Congress delegated the authority to DOJ in implementing the ADA to provide guidance and technical assistance to regulated entities. Title II regulated entities across the U.S. can only stand to benefit from the reinstatement of this guidance, as it provides clear examples and technical assistance in understanding the meaning of existing law.
2. Recommend that States Use American Rescue Plan Act (ARPA) Funds to Comply with ADA/*Olmstead*: Under the American Rescue Plan Act (and the HCBS Infrastructure Improvement Program), states now have additional funds to meet the growing demands for HCBS services stemming from the disproportionate number of COVID-19 cases and deaths among people in congregate care settings. In particular, ARPA provides an additional 10 percentage point increase in federal matching funds for state spending on HCBS from April 2021 through March 2022, an estimated \$11.4 billion increase.²⁵ States should use some of these funds to shift their systems to comply with the requirements of Title II of the ADA and *Olmstead*, so those persons with disabilities that can and want to work, and who are at serious risk of being referred to or returning to institutional isolation in segregated work or day settings, can receive the supports they need to instead enter the mainstream economy and competitive integrated employment.

²³ See August 2017 letter from ACCSES to Associate Attorney General Brand, available at: https://gallery.mailchimp.com/83f2bf25c4391de9e70589b76/files/dbae7e0b-3ac5-4fc4-b480-8914c611984e/ACCSES_Comment_Aug_14_2017_DOJ_Docket_No_OLP_164_003_.pdf (last visited October 17, 2021).

²⁴ CCD Letter to Hon. John Gore (Jan. 8, 2018), <https://centerforpublicrep.org/wpcontent/uploads/2017/12/letter-to-DOJ-re-withdrawal-of-guidance-1-5-18.pdf> (last visited October 17, 2021).

²⁵ See *How Could \$400 Billion New Federal Dollars Change Medicaid Home and Community-Based Services?*, Kaiser Family Foundation (July 16, 2021), available at: <https://www.kff.org/medicaid/issue-brief/how-could-400-billion-new-federal-dollars-change-medicaid-home-and-community-based-services/> (last visited October 17, 2021).

Kline Testimony
 U.S. House Judiciary Committee
 Subcommittee on Constitution
 October 18, 2021

3. The DOJ should continue to prioritize enforcement of Title II of the ADA and *Olmstead* with regard to employment. The DOJ should be supported to continue to enforce the ADA and *Olmstead* as applied to employment and day service systems.

At SmartJob, although still a relatively new company, our team has already identified, researched, evaluated, and/or met with hundreds of entrepreneurs and innovators from the United States and throughout the world who are building viable solutions to close the disability wealth gap and catalyze employment through their private early-stage companies. By this I mean, they are entrepreneurs led by the lived experiences of disability who are ideating, creating, and bringing to market the next generation of universally designed technologies, solutions, services, and modes of working. Their products and services have the potential to make employment more flexible, adaptable, and accessible for people with disabilities, and for everyone else too. With access to investment capital, these solutions, and others like them, have the potential to help build an inclusive workforce and to catapult those left out of the open market back in.

Many in the field of impact investment would agree with my conclusion that facilitating investment in these dynamic and innovative entrepreneurs and companies requires that diligence and evaluation be predicated not simply on the fundamentals of financial evaluation of a given company but also the potentiality for the particular product or service to yield *measurable and concrete social impact outcomes* like the overall number of people working at higher wages, in new and emerging industries, on meaningful career paths, or who are acquiring new skills and credentials. Investors largely self-correct when the desired outcomes are not achieved by way of their investment. Those of us operating in the private markets certainly wish public investments would take a similar approach with regard to disability employment. Currently, the vast majority of disability public service dollars expended are not in alignment with the outcome of meaningful labor market participation, muting the potential economic and social contributions that people with disabilities could bring to bear on the market.

Mr. COHEN. Thank you.

Our next Witness is Karen Harned. She is Executive Director of the National Federation of Independent Businesses Small Business Legal Center, a post that she has held since 2002. In that role, she comments regularly on small business cases before Federal and State courts. Prior to joining NFIB, she was in private practice and worked for U.S. Senator Don Nickles of Oklahoma as Assistant Press Secretary. She earned her J.D. from the George Washington University School of Law and her B.A. from the University of Oklahoma.

Ms. Harned, you are recognized for five minutes.

STATEMENT OF KAREN HARNED

Ms. HARNED. Thank you, Chair Cohen, Ranking Member Johnson, and the Members of the Subcommittee. On behalf of NFIB, thank you for asking me to testify regarding the Americans with Disabilities Act.

Small business owners are proud of the commitment they have made to accommodate the disabled. NFIB members have spent millions of dollars constructing and/or renovating their businesses to remove barriers and provide accessible accommodations. Unfortunately, many small business owners do still struggle to understand when and what structural and online changes are required due to the highly technical nature of the ADA standards for brick-and-mortar businesses, no legal standards for websites, and enforcement that is primarily done through private lawsuits.

When it comes to regulations, small business owners bear a disproportionate amount of the regulatory burden. The small business owner is the chief compliance officer for her business, and consequently, faces significant head winds when navigating any regulatory regime, particularly one as complex as the ADA.

Title III prohibits discrimination based on disability in places of public accommodation, but many small business owners rent space in facilities and buildings that were constructed decades ago, and subject to the ADA's barrier removal requirement. DOJ has, in practice, defined a barrier as any element of a public accommodation that does not comply with the extensive and detailed requirements of the ADA standards for acceptable design. This is a document that even a lot of lawyers have trouble understanding. To comply, small business owners have to hire an ADA consultant to determine what barriers exist, and an ADA lawyer to determine when barrier removal is readily achievable.

Adding to the confusion, many State and local building codes continue to allow for the grandfathering of older facilities, but the 2010 ADA standards do not. So, it is easy to see why the owner of a small book shop on Main Street can think she is complying the law and up to code, but really be in violation of the technical ADA requirements for barrier removal.

When it comes to websites, the text of the ADA provides no clear guidance on its applicability to the internet, so the courts have been forced to weigh in. While they have generally found that the ADA applies to websites, they disagree on just what is required, and neither Congress nor DOJ have stepped in to answer this important question. Private groups have filled the void with what are

known as web content accessibility guidelines. These are extremely technical and could cost thousands of dollars or even more to implement.

Given the lack of clear standards for barrier removal and website accessibility, the primary method of title III enforcement has been through private plaintiffs in the courts. The year 2021 marks a record high for this type of litigation, which is often motivated by financial gain instead of accessibility for the disabled. The high costs associated with litigation does nothing to improve access for disabled customers, but a lawsuit over the slightest deviation from complicated ADA guidelines, or worse, website standards that don't even exist, can prove disastrous for the millions of small businesses across the country who do not have compliance officers or attorneys on staff.

NFIB strongly encourages Congress to enact the ADA Education and Reform Act of 2017 that was introduced in the last Congress. It would provide small business owners time to remedy alleged ADA violations before being forced into a settlement or a legal challenge. Congress also should pass legislation clearly defining its intent with regards to websites under the ADA.

Accessibility makes good business sense. The ADA needs to be clarified and enforced in a manner that benefits the disabled by providing access without putting well-meaning small business owners out of business.

Thank you for the opportunity to testify today, and I look forward to any questions that you may have.

[The statement of Ms. Harned follows:]

TESTIMONY BEFORE THE UNITED STATES CONGRESS
ON BEHALF OF THE
NATIONAL FEDERATION OF INDEPENDENT BUSINESS



Statement for the Record of Karen R. Harned
NFIB Small Business Legal Center
Before the
U.S. House of Representatives
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on Judiciary
Hearing on "*Oversight of the Americans with Disabilities Act of 1990: The
Current State of Integration of People with Disabilities.*"
Wednesday, October 20, 2021

NFIB
555 12th Street, NW, Suite 1001
Washington, DC 20004

Chairman Cohen, Ranking Member Johnson, and members of the subcommittee,

On behalf of NFIB, I appreciate the opportunity to submit for the record this testimony for the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties hearing entitled, "*Oversight of the Americans with Disabilities Act of 1990: The Current State of Integration of People with Disabilities.*"

My name is Karen Harned, and I serve as the executive director of the NFIB Small Business Legal Center. NFIB is the nation's leading small business advocacy association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB proudly represents approximately 300,000 members nationwide from every industry and sector.

The NFIB Small Business Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses.

Small business owners are proud of the commitment they have made to accommodate the disabled. Since the passage of the Americans with Disabilities Act in 1990, NFIB members have spent millions of dollars constructing and/or renovating their businesses to remove barriers and provide accessible public accommodations.

Unfortunately, thirty-one years after the enactment of the ADA, many small businesses lack clarity about their current obligations under the Act in a changing world. They struggle to understand when and what structural and online changes are required due to the highly-technical nature of the ADA standards as promulgated for brick-and-mortar businesses, no legal standards regarding website accessibility, and private lawsuits as the chief method for enforcing the law.

In my testimony, I will dive deeper into the issues small businesses confront when trying to comply with the ADA and possible solutions.

Complex Regulatory Regimes, Like the ADA, Are Particularly Difficult for the Small Business Owner to Navigate

It is critical that the subcommittee understand the significant headwinds small business owners face when complying with any regulatory regime, particularly one as complex as the regulations that implement the ADA.

When it comes to regulations, small businesses bear a disproportionate amount of the regulatory burden.¹ This is not surprising since it's the small business owner, not one of a team of "compliance officers" who is charged with understanding new laws and regulations, filling out required paperwork, and ensuring the business complies with new federal mandates. The small business owner is the compliance officer for her business and every hour that she spends understanding and complying with federal regulation is one less hour she has available to service customers and plan for future growth.

In a Small Business Poll on regulations, NFIB found that almost half of small businesses surveyed viewed regulation as a "very serious" (25 percent) or "somewhat serious" (24 percent) problem.² NFIB's survey was taken at the end of 2016, and, at that time, 51 percent of small business owners reported an increase in the number of regulations impacting their business over the last three years.³

Compliance costs, difficulty understanding regulatory requirements, and extra paperwork are the key drivers of the regulatory burdens on small business.⁴

Understanding how to comply with regulations is a bigger problem for those firms with one to nine employees, since 72 percent of small business owners in that cohort try to figure out how to comply themselves, as opposed to assigning that responsibility to someone else.⁵

NFIB's research shows that the volume of regulations poses the largest problem for 55 percent of small employers, as compared to 37 percent who are most troubled by a few specific regulations.⁶

¹ Babson College, *The State of Small Business in America 2016*, available online at <https://bit.ly/3j9STV6>; Crain, Nicole V. and Crain, W. Mark, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business*, (September 10, 2014), available online at <http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf>.

² Holly Wade, *Regulations*, Vol. 13, Issue 3, 2017, 6, available online at <http://411sbfacts.com/files/Regulations%202017.pdf> (last visited May 16, 2018).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 10.

⁶ *Id.* at 9.

With that as background, I now turn to the small business experience of trying to understand and comply with the accessibility requirements set forth in Title III of the Americans with Disabilities Act.

Difficulty and Expense of Complying with Barrier Removal Obligations

The ADA was enacted “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities [and] to ensure that the Federal Government plays a central role in enforcing the standards” 42 U.S.C. 12101 (b) (2) and (3). Unfortunately, the current regulatory regime does not fulfill the objective of the law.

Title III of the ADA prohibits discrimination on the basis of disability in the activities of places of public accommodations (businesses that are generally open to the public and that fall into one of 12 categories listed in the law, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors’ offices) and requires newly constructed or altered places of public accommodation -- as well as commercial facilities (privately owned, nonresidential facilities such as factories, warehouses, or office buildings) -- to comply with the ADA Standards.⁷

Many small business owners rent space in buildings and facilities that were constructed decades ago. Consequently, they are subject to the ADA’s barrier removal requirement. The theory behind barrier removal sounds simple: remove barriers where the removal is “easily accomplishable and able to be carried out without much difficulty or expense.”⁸ The reality is that barrier removal is confusing, difficult, and expensive, due to the U.S. Department of Justice’s broad view of what constitutes a barrier and the lack of useful guidance on what kind of barrier removal is readily achievable.

DOJ has, in practice, defined a barrier as any element of a public accommodation that does not comply with the extensive and detailed requirements of the detailed ADA Standards for Accessible Design -- a document that even most lawyers have trouble understanding.⁹ To comply, small business owners would have to hire an ADA consultant to figure out what barriers exist in their facility. After making that determination, small business owners must hire lawyers specializing in the ADA to advise them about which barrier removal is “readily achievable,” since the

⁷ 42 U.S.C. 12181 *et seq.*

⁸ *Id.* at 12181 (9).

⁹ Dept. of Justice, “2010 ADA Standards for Accessible Design” (Sept. 10, 2010), (“2010 ADA Standards”), which updated the “1991 ADA Standards for Accessible Design” (July 1, 1994).

complicated multi-factor test must be applied on a case-by-case basis. Indeed, a review of the little case law on barrier removal shows that even an experienced ADA attorney would have difficulty giving a definitive answer about what barrier removal is readily achievable in many cases.

Adding to the confusion, many state and local building codes continue to allow for the “grandfathering” of older facilities. But the 2010 ADA Standards do not. Therefore, it is easy to see why the owner of a small book shop on Main Street can think she is complying with the law and “up to Code,” but really be in violation of the technical ADA requirements for barrier removal.

Therefore, thirty-one years later, it remains very difficult for small business owners to understand existing obligations under the ADA because the requirements are numerous, highly technical, and not always well-known. The ADA Standards and the Revised ADA Guidelines are clearly written by and for ADA technicians, architects, building code inspectors, and lawyers, not for the business owners who must follow them.

ADA Website Accessibility – A World of Confusion

Each day more and more businesses across the country engage in online commerce -- a trend that only grew during the pandemic. As detailed in our recent white paper, “The ADA and Small Business: Website Compliance Amid a Plethora of Uncertainty,” unlike their brick-and-mortar business, no legal standards exist regarding whether the ADA requires businesses to make their websites accessible and, if it does, what standards must be met.¹⁰

Given the ADA’s absence of clear textual guidance on its applicability to the internet, the courts have been forced to weigh in. As we note in our paper, courts have generally found, “full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation” in the ADA applies to business websites.¹¹ But they disagree on just *what is required* and neither Congress nor the DOJ have stepped in to answer this important question.¹²

¹⁰ Rob Smith, “The ADA and Small Business Website Compliance Amid a Plethora of Uncertainty” (July 2021), available online at <https://bit.ly/3n8W0xG>.

¹¹ *Id.* at 5.

¹² *Id.* at 3-4, 7-8.

While Congress could amend the ADA to provide clarity and protect small business from ADA compliance lawsuits, it has failed to do so. And, although the ADA originally vested in the Attorney General the power to issue regulations interpreting, implementing, and enforcing the Act's mandate,¹³ the agency has not proposed, much less issued regulations.

Private groups have stepped in to fill the void. "The Web Accessibility Initiative develops web accessibility guidelines, technical specifications, and educational resources to help make the web accessible to people with disabilities."¹⁴ Putting aside the fact that these Web Content Accessibility Guidelines (WCAG) have already been updated three times since December 11, 2008, they are extremely technical and can cost thousands of dollars or more to implement.¹⁵

ADA Enforcement Through Private Litigation

Although the DOJ is charged with enforcing Title III of the ADA,¹⁶ the primary method of enforcement has been through private plaintiffs in the courts. According to the attorneys at Seyfarth Shaw, who have tracked Title III ADA lawsuits for several years, 2021 marks a record high for this type of litigation.¹⁷

NFIB supports the integration of people with disabilities into our society and condemns bad actors getting a free pass when it comes to ADA compliance. However, the reality is the lack of clear standards for barrier removal and website accessibility often results in predatory litigation motivated by financial gain instead of accessibility for the disabled. The problem is real and has been well documented.¹⁸

¹³ 42 U.S.C. 12186(b); 42 U.S.C. 12188(b).

¹⁴ Shawn Lawton Henry, *How WAI Develops Accessibility Standards Through the W3C Process: Milestones and Opportunities to Contribute* (2006), <https://www.w3.org/WAI/standards-guidelines/w3c-process/> (updated Nov. 2, 2020).

¹⁵ Shawn Lawton Henry, *Web Content Accessibility Guidelines (SCAG) Overview* (2005), <https://www.w3.org/WAI/standards-guidelines/wcag/> (updated Apr. 29, 2021).

¹⁶ 42 U.S.C. 12186(b); 42 U.S.C. 12888(b).

¹⁷ Minh Vu et al., *ADA Title III Federal Mid-Year Lawsuit Numbers At An All-Time High* (Aug. 18, 2021),

<https://www.adatitleiii.com/2021/08/ada-title-iii-federal-mid-year-lawsuit-numbers-at-an-all-time-high/>

¹⁸ Allen Martin, "Serial Plaintiff Turns California ADA Lawsuits Into A Lucrative Cottage Industry" (August 2, 2021),

<https://sanfrancisco.cbslocal.com/2021/08/02/serial-plaintiff-turns-california-ada-lawsuits-into-lucrative-cottage-industry/>

Lauren Markham, "The Man Who Filed More Than 180 Disability Lawsuits," *New York Times* (July 21, 2021)

https://www.nytimes.com/2021/07/21/magazine/americans-with-disabilities-act.html?mc=aud_dev&ad-keywords=auddevgate&gclid=Cj0KCQjwtrSLBhCLARISACH6RmiloD7RBSIQXMeMiA9h_Ql0WNfJ5GKr1wiOKX3IG4a2N1HekLwXjsJaAo0gEALw_wcB&gclid=aw.ds (updated Aug. 29, 2021); Sam Stanton, "Serial ADA Filer in California Submits 1,000

Complaints After Indictment on Tax Charges," (June 22, 2021) <https://www.sacbee.com/news/local/article250786089.html>;

Emily Mibach, "Judge Quickly Stops Frequent ADA Plaintiff From Suing Three Local Businesses," *Palo Alto Daily Post* (July 13, 2020); <https://padailypost.com/2020/07/13/judge-quickly-stops-frequent-ada-plaintiff-from-suing-three-local-businesses/>;

In addition to these reports, over my nineteen years at NFIB I have heard from countless members who have been hit by these lawsuits. Here's a recent story I received highlighting the issues associated with website accessibility and the litigation that follows.

I am a small business, employing only 13 people full time (with an additional 10 employees seasonally). We roast, season, package, and ship Gourmet Virginia Peanuts. We are located in what is categorized as an economically depressed area.

I have two websites on which I sell our roasted peanuts. I have been sued by two different plaintiffs represented by two different New York City law firms in New York Federal Court. Both are class action lawsuits requesting jury trial on the grounds that neither of my websites are accessible to blind people. My lawyers are saying that there is no standard listed in the ADA, but that judges in New York are interpreting the law to include websites as "places of public accommodation," which would, therefore, fall under Title III of the ADA.

I have always been one to study up and follow the laws as it pertains to my business -- we try to do things the right way. In this instance, there is NOTHING in the ADA that specifically addresses web sites. More concerning is that the ADA does not lay out specifically what standard a website has to meet. My biggest concern (apart from the out-of-pocket expense my lawyers are recommending I settle for), is that the settlement will lay out a standard I have to meet to be compliant. What happens if the DOJ sets a different standard? How am I, as a business owner, supposed to be compliant with a standard that does not yet exist? And how can I be sued for that? I have tried to warn anyone I know who sells online that these lawsuits are being filed, but a few of my competitors have already been served with the exact same lawsuits from the same plaintiffs.

It is all very frustrating for me, as you can see. Thank you for your efforts and thank you for listening.

The high cost associated with litigation that results from confusion over ADA requirements does nothing to improve access for disabled customers. But litigation over even the slightest deviation from complicated ADA guidelines or worse, website “standards” that don’t even exist, can prove disastrous for NFIB members and the millions of small businesses across the country, who do not have compliance officers or attorneys on staff.

Solution

As we look past problems and toward solutions, NFIB strongly encourages Congress to enact legislation that was introduced in the last Congress, the ADA Education and Reform Act of 2017. This legislation would provide small business owners time to remedy alleged Americans with Disabilities Act (ADA) violations before being forced into a settlement or a legal challenge. The legislation would give well-meaning small business owners, who have no in-house compliance officers or lawyers and may not even know where to go for outside counsel, a chance to remedy an alleged ADA violation before being sued for noncompliance.

Finally, Congress should pass legislation clearly defining its intent with regards to websites under the ADA. Small business owners need a clear and easy-to-understand standard in order to comply with the law and avoid opportunistic lawsuits.

Conclusion

Accessibility makes good business sense. Small businesses understand the importance of ensuring access for people with disabilities. A small business cannot afford to lose an employee and it cannot afford to turn away a customer. But small businesses also cannot afford the costs associated with hiring an ADA consultant or defending the business against a lawsuit. The ADA needs to be clarified and enforced in a manner that benefits the disabled by providing access without putting well-meaning small business owners out of business.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Mr. COHEN. You are welcome. Thank you very much.

The final Witness is Michelle Bishop. Ms. Bishop is the Voter Access and Engagement Manager of the National Disabilities Rights Network where she is responsible for coordinating voting rights initiatives in every U.S. State, district, and territory, as well as providing training and technical assistance on the nationwide network of the national disabilities rights groups and members regarding voting rights and access for voters with disabilities. She received her Master of Social Work and Social Economic Development from the Brown School of Washington University in St. Louis, and a Bachelor of Arts in Sociology and English Literature from the State University of New York at Geneseo.

Ms. Bishop, you are recognized for five minutes.

STATEMENT OF MICHELLE BISHOP

Ms. BISHOP. Good morning and thank you for the opportunity to testify today representing NDRN, the National Disability Rights Network, which is the nonprofit membership organization for the Federally mandated Protection Advocacy or PNA network.

The United States Government Accountability Office has studied polling place accessibility for 20 years. In 2000, GAO found that only 16 percent of polling places had an accessible path of travel from parking to the voting station, 27 percent in 2008, and 40 percent in 2016, still less than half. Voting stations and equipment dropped from 54 percent accessible to 35 percent in 2016. Combining this data, only 17 percent of America's polling places are accessible. As I have stressed to Members of Congress before, America's polling places are woefully, inexcusably, unjustly out of compliance with the ADA.

Alarmingly, 13 States closed an overwhelming 1,688 polling sites in just six years, often blaming the ADA. NDRN examined this issue in depth and found that jurisdictions that settled with DOJ in the last several years were working to find innovative solutions to avoid poll closures while increasing accessibility. Alternatively, jurisdictions that closed polling places citing the ADA typically were not under a settlement agreement with DOJ and could not provide proof of inaccessibility.

Turning our attention from in-person to remote voting, traditional vote by mail systems is not and have never been accessible to voters of disabilities who cannot privately and independently mark, verify, and cast a paper ballot. Increasingly, people with disabilities have been given access to electronic ballot delivery systems typically reserved for military and overseas voters protected by UOCAVA. This is a promising practice, but these systems often require of voter to print and return a paper ballot, reintroducing an accessible paper to the process.

Pivoting now from these longstanding accessibility barriers to take a closer look at 2020, the pandemic created shortages of polling places and poll workers which complicated in-person voting. Elections officials found themselves unprepared for a significant increase in voting by mail. As nursing homes were forced to close their doors, guidance from the Centers for Medicare and Medicaid services reinforced the obligation to staff to facilitate voter participation among residents. However, relying on an overworked staff

on the front lines of a global pandemic revealed how genuinely tenuous voter access is for residents of long-term care facilities.

Smart jurisdictions made rapid changes to their election policies to meet these demands which had a side effect of improved access ability. Forty-two States offered a significant period of early voting. Some States also implemented curbside voting or extended it to all voters, opened up absentee voting processes, allowed voters to use electronic ballot delivery, and all but 10 States offered ballot drop boxes, the most in any American election.

In the aftermath of COVID-19 creating more accessible elections, States across the U.S. have seen legislation introduced that threatens the progress made during the 2020 election cycle. By October 2021, 19 States have enacted 33 laws that will negatively impact the accessibility of the vote, including reducing locations or hours for polling places, increasing the number of voters per precinct, limiting early voting, prohibiting curbside and drive-through voting, preventing distribution of food and water to voter lines, shortening the window to apply for a vote by mail ballot and timelines for ballot return, creating stricter signature match requirements for vote-by-mail ballots, imposing limits on drop boxes, making it more difficult to remain on absentee voter lists, or limiting who can assist a voter to return a ballot.

Ultimately, the ADA has been and continues to be the gold standard in protecting the right to vote for people with disabilities. Congressional funding is sorely needed to help election administrators to improve accessibility and for the PNAs to provide them with invaluable consultation. In this vein, Congress must Act now to reintroduce and pass the PAVA Inclusion Act and provide the last two excluded PNAs with desperately needed HAVA funding, a simple and no cost legislative fix.

Congress must amend the Freedom to Vote Act to allow voters with disabilities an exemption from nationwide paper ballot mandates that will disenfranchise them. Creating a legislative carveout for people with disabilities, in addition to a periodic reauthorization or a sense of Congress to reconsider the need for a paper ballot mandate, will allow voters with disabilities who need it most to access the same technologies we allow for UOCAVA voters. We are willing to take a limited, calculated risk to ensure that our deployed military will have their voices heard on Election Day. We must be willing to do the same for people with disabilities.

Finally, Congress must now Act to pass the John Lewis Voting Rights Advancement Act to prevent known discriminatory practices. These problems are solvable, and after 30 years of the ADA, there is no excuse for not having addressed them. I have said it to the Subcommittee before, but it bears repeating. We call them Americans with disabilities because they are, first and foremost, Americans, and America's democracy is only as good as its ability to hear the voices of all Americans. Thank you.

[The statement of Ms. Bishop follows:]



**House Committee on the Judiciary - Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Oversight of the Americans with Disabilities Act of 1990:
The Current State of Integration of People with Disabilities
Wednesday, October 20, 2021 at 10:00am**

**The Americans with Disabilities Act: The Current State of Access for Voters with Disabilities
Michelle Bishop - Voter Access & Engagement Manager, National Disability Rights Network**

Chairperson Cohen, Vice Chair Ross and Ranking Member Johnson, thank you for the opportunity to testify today regarding oversight of the Americans with Disabilities Act (ADA) and the voting rights of people with disabilities.

National Disability Rights Network and the Protection & Advocacy Systems

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) systems for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the US territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the American Indian Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP Network is the largest provider of legally based advocacy services to people with disabilities in the United States. Through the Protection and Advocacy for Voter Access (PAVA) program, created by the Help America Vote Act (HAVA), the P&As have a federal mandate to “ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places”¹ and are the leading experts on access to the vote for people with disabilities in the United States.

I am the Voter Access & Engagement Manager for NDRN, where I am responsible for supporting civic engagement and voting rights advocacy in every state, the District of Columbia, Puerto Rico, and the other territories, as well as providing training and technical assistance to NDRN’s nationwide network regarding voting rights and access for voters with disabilities. I also work in coalition with other civil rights organizations to ensure strong federal policy regarding voting rights and election administration.

¹ <https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

Voters with Disabilities

The United States Census Bureau has reported up to 56.7 million people with disabilities live in the community, totaling approximately 19 percent of the non-institutionalized US population². The Centers for Disease Control and Prevention and Pew Research Center believe that number is closer to 25 percent, or one in four Americans.³⁴ Further, the School of Management and Labor Relations at Rutgers University projected that there were 38.3 million people with disabilities eligible to vote in the United States, one-sixth of the total American electorate, during the 2020 Election.⁵

The disability community is diverse. People who identify as LGBTQIA+ are more likely to have a disability.⁶ A quarter or more of American Indians/Alaska Natives and Black adults have a disability.⁷ People with disabilities are disproportionately low-income, and are unemployed, underemployed, or not participating in the workforce at a rate of approximately three-fourths of the entire disability community.⁸

Additionally, people with disabilities are politically active. Pew reported that people with disabilities pay more attention to presidential elections and that election results matter more to people with disabilities when compared to people without disabilities.⁹ Despite the size, diversity, and political commitment of the disability community, America's electoral system remains largely inaccessible and has a long history of excluding people with disabilities.

Barriers for Voters with Disabilities Are Persistent

Voting in Person

The United States Government Accountability Office (GAO) has studied polling place accessibility for 20 years. During an initial 2000 survey, the GAO found that only 16 percent of the polling places surveyed had an accessible path of travel, defined as from parking to the voting station.¹⁰ This percentage increased to 27 percent in 2008¹¹ and to 40 percent in 2016¹². 40 percent, being the all-time high, means that less than half of America's polling places were architecturally accessible during the 2016 election. Yet as polling places slowly become more accessible, the actual voting stations within them are becoming less accessible. In 2008, 46 percent of voting booths were inaccessible.¹³ In 2016, inaccessible voting stations jumped to 65 percent.¹⁴ Overall, voting booths were less likely to be set up to ensure voter privacy, set up for wheelchair access, have headphones readily apparent for audio balloting, or even be turned on for voters to use.¹⁵ In 2016, GAO combined architectural access data with voting station data to find that only 17 percent of America's polling places could be considered fully accessible

² <https://www2.census.gov/library/publications/2012/demo/p70-131.pdf>

³ <https://www.cdc.gov/media/releases/2018/p0816-disability.html>

⁴ <https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

⁵ https://smr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_electorate_projections_2020.pdf

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490559/>

⁷ <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>

⁸ <https://disabilitycompendium.org/annualreport>

⁹ <https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

¹⁰ <https://www.gao.gov/new.items/d02107.pdf>

¹¹ <https://www.gao.gov/assets/300/296294.pdf>

¹² <https://www.gao.gov/assets/690/687556.pdf>

¹³ <https://www.gao.gov/assets/300/296294.pdf>

¹⁴ <https://www.gao.gov/assets/690/687556.pdf>

¹⁵ <https://www.gao.gov/assets/690/687556.pdf>

for voters with disabilities.¹⁶ As I have stressed to members of Congress before, America's polling places are woefully, inexcusably, unjustly out of compliance with the ADA.

In the face of inaccessible polling places, curbside voting has become a critical accommodation for voters with disabilities, and many states already provide curbside voting according to their individual state statutes. Even when not written into state election law, curbside voting may be used as a stop-gap measure for voters with disabilities to cast their ballots until an inaccessible polling place can be brought into compliance with the ADA. This practice is allowed by the ADA¹⁷ as a temporary measure and may be included in polling place accessibility settlements and memoranda of agreement between the US Department of Justice (DOJ) and individual voting jurisdictions. Even in jurisdictions that feel confident their polling locations are ADA compliant, curbside voting is an important accommodation for voters for whom getting in and out of the car, walking any length of distance, or standing for any amount of time can be difficult.

The ADA is clear that curbside voting is an allowable accommodation and should include: "(1) signage informing voters of the possibility of voting curbside, the location of the curbside voting, and how a voter is supposed to notify the official that she is waiting curbside; (2) a location that allows the curbside voter to obtain information from candidates and others campaigning outside the polling place; (3) a method for the voter with a disability to announce her arrival at the curbside (a temporary doorbell or buzzer system would be sufficient, but not a telephone system requiring the use of a cell phone or a call ahead notification); (4) a prompt response from election officials to acknowledge their awareness of the voter; (5) timely delivery of the same information that is provided to voters inside the polling place; and (6) a portable voting system that is accessible and allows the voter to cast her ballot privately and independently."¹⁸

Polling Places Closures

Over the course of the last several election cycles, mass polling place closures have significantly impacted access for voters with disabilities. In *Blocking the Ballot Box: Ending Misuse of the ADA to Close Polling Places*, NDRN examined the issue of polling place closures, ADA compliance, and the United States DOJ enforcement of the ADA in depth.¹⁹ Our report finds that voting jurisdictions that settled with the DOJ in the last several years as a result of inaccessible polling places were overwhelming not closing their polling locations. Rather, they were working collaboratively with DOJ to find innovative solutions, including same-day modifications and developing low-cost solutions for permanently modifying inaccessible locations. Alternatively, jurisdictions that closed or attempted to close a significant percentage of their polling places citing the ADA typically were not under a settlement agreement or investigation by the DOJ and could not provide ADA accessibility surveys or any coordination with the P&A or other disability advocacy organizations to resolve access barriers.

The Leadership Conference on Civil and Human Rights, in *Democracy Diverted: Polling Place Closures and the Right to Vote*, found that thirteen states closed an overwhelming 1,688 polling sites in just six years.²⁰ The Leadership Conference and NDRN reports are picking up on an alarming trend occurring

¹⁶ <https://www.gao.gov/assets/690/687556.pdf>

¹⁷ https://www.ada.gov/ada_voting/ada_voting_ta.htm

¹⁸ https://www.ada.gov/ada_voting/ada_voting_ta.htm

¹⁹ <https://www.ndrn.org/resource/blocking-the-ballot-box/>

²⁰ <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

across the US - falsely blaming polling place closures on the ADA. Jurisdictions with mass poll closures in Mississippi, Georgia, and Louisiana offered “lack of ADA compliance” as a pretext for polling place closures, despite their admitted lack of understanding of the ADA’s provisions, failure to provide ADA surveys of the polling places in question, and grossly inflated cost estimates for bringing polling places into compliance with the ADA.²¹

Disability rights advocates and the DOJ do not advocate for the closure of inaccessible polling places, and this measure should always be used as a last resort. Rather, the DOJ has actively promoted, even in jurisdictions with which they have settled lawsuits for failure to comply with the ADA at polling locations, temporary same-day modifications, curbside voting as a stop-gap measure, and other low-cost best practices to ensure accessibility at polling places.²²

Impact of Voter Identification (ID) Laws

According to the National Conference of State Legislatures, 35 states currently require individuals to show some form of ID at their polling places.²³ The Brennan Center for Justice indicates that over 22 states in 2017 saw the introduction of at least 39 pieces of legislation to impose voter ID requirements or impose even stricter requirements over existing ones.²⁴ The University of Wisconsin – Madison found that 6 percent of registrants that did not vote in 2016 were blocked by the lack of correct ID.²⁵ An additional 11.2 percent of eligible registrants were deterred from voting because of confusion surrounding the voter ID law.²⁶ Strict voter ID requirements create new hurdles to voter participation with the added effect of confusion as a deterrent to voters.

Rutgers has calculated that 7.5 percent of people with disabilities do not have a state-issued photo ID, compared to 4.8 percent of people without disabilities.²⁷ The difference is statistically significant. This disparity also extends to older adults – potential voters typically over-represented among people with disabilities. A report by the US Senate Special Committee on Aging and US Senate Committee on Rules and Administration found that older Americans are a sizable voting bloc - 30 percent of the voters in 2016 were 50-64 years old, 15 percent 65 and over.²⁸ Yet, 11 percent of adults (over 21 million citizens) do not have a valid, government-issued photo ID and nearly one in five Americans over 65 (approximately 8 million people) lacked a current, government-issued photo ID.²⁹

The Brennan Center for Justice also found that 10 million voters (who are otherwise eligible) live over 10 miles from the closest office that can issue an ID that qualifies for voting purposes and is open more than two days per week.³⁰ While this would present a burden for any voter, people with disabilities and older adults are less likely to drive or have accessible public transportation options. The argument that people

²¹ <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

²² https://www.ada.gov/chicago_boe_sa.html

²³ <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

²⁴ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>

²⁵ <https://elections.countyofdane.com/documents/pdf/VoterId/UW-Voter-ID-Study-Supporting-Info.pdf>

²⁶ <https://elections.countyofdane.com/documents/pdf/VoterId/UW-Voter-ID-Study-Supporting-Info.pdf>

²⁷ <https://smmr.rutgers.edu/sites/default/files/images/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf>

²⁸ <https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>

²⁹ <https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>

³⁰ <https://www.brennancenter.org/our-work/research-reports/challenge-obtaining-voter-identification>

with disabilities who are disenfranchised by voter ID laws can simply obtain an ID has clearly not panned out in reality.

Remote Voting

Traditional vote by mail systems are not, and have never been, accessible to voters with disabilities. People with print disabilities, which includes those who are blind or low vision, have limited literacy, or limited manual dexterity, cannot privately and independently mark, verify, and cast a hand marked paper ballot. Dropping traditional paper ballots into the mail simply will not work for all voters. Increasingly people with disabilities have been given access to electronic ballot delivery systems typically reserved for military and overseas voters protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). While the ability to receive a ballot electronically can increase the accessibility of remote voting, these systems typically require the voter to print and return a paper ballot at the end of the process.³¹ Essentially receiving and marking of the ballot have been made significantly more accessible, while the ability to verify and return the ballot remain inaccessible once paper has been re-introduced to the voting process.

People with disabilities are also more likely to be disenfranchised by signature matching practices commonly employed to verify vote by mail ballots.³² For many people with disabilities, particularly those with limited manual dexterity, the appearance of a signature can vary drastically from one signing to the next. For anyone who has aged or acquired a disability between signatures, the same could easily be said. In many cases, matching signatures is a decidedly unscientific and unreliable tool to verify the voter's identity. Additionally, states vary in their readiness to accept signatures provided by a voter's assistant or signature stamp, commonly employed by people with disabilities who are unable to provide a wet signature. Further, requirements for witness signatures and notaries, represent barriers to voters with disabilities who may not have ready access if they live where accessible transit is lacking, are homebound, or have a significant need to isolate. In a few states, voters may even be required to provide a doctor's note attesting to the disability to apply to vote absentee. The same barriers that can prevent a voter from accessing a notary are compounded when access to a medical professional to provide proof of disability can require health insurance and access to ongoing medical care. A particularly glaring barrier when other excuses to vote absentee do not attach a burden of proof to the voter.

Voter assistance and Voting in Long Term Care Facilities

In addition to the ADA, voters with disabilities are protected by the Voting Rights Act of 1965, under which a voter with a disability has the right to an assistant of their choice, with the limited exceptions of the voter's employer or union representative.³³ Given that the promise of the ADA has yet to be fully realized in providing equal access to the ballot, this right to assistance has been a critical one for many voters with disabilities. Yet, voter protection hotlines operated by Election Protection and disability rights organizations across the country receive calls from voters every election who have been denied the assistant of their choice by poll workers unfamiliar with the law.

³¹ <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>

³² <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>

³³ <https://www.justice.gov/crt/statutes-enforced-voting-section#:~:text=Section%20208%20of%20the%20VRA,agent%20of%20the%20voter's%20union>

The right to assistance is an important stop-gap measure for dealing with inaccessible polling places, accessible voting equipment that has not been maintained or prepared for use on Election Day, and vote by mail systems that continue to fall behind technological advancement. The right to assistance has also become a primary method of ensuring access to the ballot for people with disabilities who are hospitalized or live in long term care facilities. Voters experiencing unexpected hospitalization rely on elections personnel bringing the ballot to hospitals on Election Day or may even rely on a trusted friend or family member to deliver that ballot when hospitalized outside the proper voting jurisdiction, particularly in states where electronic ballot delivery is not an option. For voters who live in long term care facilities, the facility staff and visiting elections personnel may be the only contact they receive all year from any party interested in facilitating their right to register and vote.

Voting During the COVID-19 Pandemic

Voting in Person

The timing of the pandemic during peak primary season for the 2020 Presidential Election, highlighted the importance of in-person voting, as well as its long-term struggles with accessibility. Polling places in many parts of the country were reduced as schools, long term care facilities, and other previously reliable locations were unable to serve in order to protect the health of students, residents, and employees. Wisconsin demonstrated this problem as the first state to hold an in-person primary during the pandemic rather than relying on vote by mail.³⁴ The need to quarantine, particularly for older adults, also created an unexpected shortage of poll workers, when numerous jurisdictions already operate with too few poll personnel in any given year. Shortages combined with a surge in voter turnout and inability to meet the demand for mailed ballots created long lines.

New polling sites had to be assessed and adapted for ADA compliance, but inexperienced polling place volunteers were ill-prepared to provide reasonable accommodations for voters with disabilities. This meant in-person voting was at risk of failing dismally to meet the standards of the ADA, while also carrying the potential to spread the virus. Smart jurisdictions made rapid changes to their election policies to meet these demands.

In light of COVID-19, states focused on providing lengthy early voting periods and securing a sufficient number of early voting sites, to help minimize wait times and the number of voters that would interact with poll personnel in enclosed spaces on any given day. A total of 42 states offered a significant period of early voting, including early voting expansions in Texas and Kentucky.³⁵ Some states also opted to implement curbside voting or extend existing curbside voting to any voter that chooses this option related to COVID-19 concerns. For example, various jurisdictions in Virginia, including Chesapeake,³⁶ expanded curbside voting for all voters with or without disabilities in response to concerns of COVID-19 exposure at polling places. Expansion of curbside or even Harris County, TX's drive thru voting³⁷ meant that voters who are immunocompromised or at increased risk of severe COVID-19 were able to limit their exposure. Voters who tested positive for COVID-19 after the deadline to request an absentee ballot

³⁴ <https://www.jsonline.com/story/news/politics/elections/2020/04/09/wisconsin-election-milwaukee-had-5-voting-sites-while-madison-had-66/2970587001/>

³⁵ <https://www.wsj.com/articles/early-and-mail-in-voting-for-2020-election-expands-dramatically-despite-legal-fights-11604052000>

³⁶ <https://www.13newsnow.com/article/news/politics/elections/curbside-voting-during-the-covid-19-pandemic/291-46443c26-31d3-4476-9957-032f82e06b99>

³⁷ <https://harrisvotes.com/drivethruvoting>

had passed were also able to remain in their vehicles and interact with a limited number of personnel wearing personal protective equipment, similar to a drive thru COVID testing site.

Alternatively holdout states, like Alabama, expressly prohibited voting curbside to the point of forcing litigation that reached the United States Supreme Court³⁸ rather than provide this lifesaving measure at the polls. Curbside voting and early voting are important pro-voter policies for people with disabilities, giving them additional options for navigating inaccessible polling places and lining up accessible transportation or a voting assistant, both of which may be difficult to schedule on Election Day alone.

Remote Voting

Social distancing was among our best lines of defense against the COVID-19 pandemic, and as a result, several states moved to open up their absentee and vote by mail processes to all voters, allowing them to continue to quarantine if necessary and reduce congestion at the polls.³⁹ Yet, many states were ill prepared to process a drastic increase in requests for remote ballots and simply could not meet the demand to print and mail these ballots by legal deadlines.⁴⁰ As a result, states allowed many domestic voters to access their electronic ballot delivery systems for the first time. States like Colorado, Massachusetts, Nevada, and North Carolina joined states that already allowed voters with disabilities to access electronic ballot delivery, like West Virginia.⁴¹ These technologies are widely available and have been in use reliably for years in primarily vote by mail states. In fact, every state is currently required to have some form of remote ballot marking in place for military and overseas voters, according to the MOVE Act.⁴² These are tested systems, already in use, that can be offered to domestic voters with print disabilities to enhance the accessibility of vote by mail systems. The ADA is clear that any option made available to voters must be accessible for people with disabilities,⁴³ including vote by mail. States that have not already done so must immediately implement some form of electronic ballot delivery or remote accessible ballot marking system that provides an electronic ballot to voters who choose to vote from home.

In their efforts to enable remote voting for record numbers of voters during the pandemic, many jurisdictions also eased their long-standing requirements for witness signatures and notaries in order to complete and return a mailed ballot, remediating long standing barriers for voters.⁴⁴ Additionally, all but 10 states offered ballot drop boxes to return vote by mail ballots, the most in any American election.⁴⁵ Some drop boxes were observed by voters with disabilities and the P&A network to be inaccessibly designed or placed along inaccessible paths of travel, and increased ADA compliance of ballot drop boxes would better serve voters with disabilities. Yet overall, ballot drop boxes represent a useful tool for helping voters with disabilities to avoid common barriers to casting a ballot, including long lines, and

³⁸ <https://docs.justia.com/cases/federal/district-courts/alabama/alndce/2:2020cv00619/173742/1>

³⁹ <https://www.brennancenter.org/our-work/research-reports/mail-voting-what-has-changed-2020>

⁴⁰ <https://fivethirtyeight.com/features/few-states-are-prepared-to-switch-to-voting-by-mail-that-could-make-for-a-messy-election/>

⁴¹ <https://fivethirtyeight.com/features/new-laws-let-americans-with-disabilities-vote-online-theyve-also-resurrected-the-debate-about-voting-access-vs-election-security/>

⁴² <https://www.fvap.gov/uploads/FVAP/Policies/moveact.pdf>

⁴³ https://www.ada.gov/ada_voting/ada_voting_ta.htm

⁴⁴ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-mail-voting-policies-in-effect-for-the-2020-election.aspx>

⁴⁵ <https://www.lawfareblog.com/ballot-drop-options-all-50-states>

drop boxes can be used in locations where polling places or postal service is too sparse to meet voters' needs.

Voter assistance and Voting in Long Term Care Facilities

Voting in long term care facilities proved to be one of the larger challenges of ensuring access to the ballot during a pandemic. Nursing homes and other facilities were understandably forced to close their doors to visitors to help prevent the spread of COVID-19. As a result, jurisdictions that typically send teams of elections personnel into long term care facilities, nursing homes, and hospitals to assist voters were unable to do so. Similarly, friends and family of facility residents were unable to gain entrance and assist potential voters.⁴⁶ The burden of ensuring access to the vote, fell squarely on facility staff. Guidance from the Centers for Medicare and Medicaid Services (CMS) reinforced the obligation of facility staff to facilitate voter participation among residents.⁴⁷ However, relying on overworked staff, on the front lines of a global pandemic and understaffed as a result, revealed how genuinely tenuous voter access is for people with disabilities and older adults in long term care facilities.

Threats to Voter Access Following the 2020 Election

The challenge of successfully administering a Presidential Election during a global pandemic necessitated America's elections officials thinking on their feet and enhancing options for voters as quickly as possible. Despite this, these new practices helped to make the voting process more accessible for people with disabilities. In the aftermath, states across the US have seen legislation introduced that threatens the progress made during the 2020 election cycle. By October 2021, nineteen states have enacted thirty-three laws that will negatively impact the accessibility of the vote for people with disabilities.⁴⁸

Voting in Person

Already inaccessible polling places will be further burdened by legislation that will reduce the locations or hours for polling places in Iowa, Montana, and Texas, as well as an increase to the number of voters per precinct in Nevada.⁴⁹ Additionally, the state of Alabama passed legislation in 2021 that explicitly bans the use of curbside voting anywhere in the state, in response to a handful of Alabama counties pushing the Secretary of State to allow use of curbside voting as a pandemic response measure in 2020.⁵⁰ Similarly, Harris County's innovative drive thru voting program, which used the design of a COVID-19 testing site to process large numbers of voters quickly from their vehicles, became a target of Texas legislation, that outlawed the practice.⁵¹

Georgia, Iowa, and Texas have begun limiting days/hours for early voting, which will inevitably increase wait times for voters on Election Day.⁵² Notably, Floridians and Georgians can now be charged with a crime for handing out water or food to voters waiting in line to vote, making long lines now a dangerous place for voters with disabilities, such as a voter with diabetes for whom access to food could prevent a serious medical emergency.⁵³

⁴⁶ <https://www.washingtonpost.com/outlook/2020/10/14/nursing-homes-voting-covid-discrimination/>

⁴⁷ <https://www.cms.gov/files/document/gso-21-02-nh.pdf>

⁴⁸ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁴⁹ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁰ <https://www.sos.alabama.gov/newsroom/alabama-legislature-codifies-ban-curbside-voting>

⁵¹ <https://capitol.texas.gov/tlodocs/871/billtext/pdf/SB000011.pdf>

⁵² <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵³ <https://www.flsenate.gov/Session/Bill/2021/90/BillText/er/PDF>

Voter ID Requirements

Arkansas, Florida, Georgia, Montana, New Hampshire, Texas, and Wyoming passed restrictive voter ID measures.⁵⁴ Given the known problems in acquiring the necessary types of ID or supporting documents to obtain an ID for voters with disabilities, including few locations capable of issuing an ID and non-ADA compliance at some of these facilities, voter ID requirements that are strict in nature can prevent people with disabilities from accessing the ballot box. Voter ID measures must take into consideration the readiness of a state's infrastructure to provide no-cost identification to all eligible voters in a manner that fully complies with the ADA and is accessible to all.

Remote Voting

Vote by mail became a lifeline for Americans to exercise their right to vote without jeopardizing their health during the pandemic, and consequently, it became a primary talking point in the 2020 elections news cycle. Following record numbers of mailed ballots in 2020, Alabama, Arkansas, Georgia, Iowa, Kentucky, New York, and Oklahoma will shorten the window to apply for a vote by mail ballot, while Arkansas and Iowa will also shorten timelines for ballot delivery. Arizona, Idaho, Kansas, and Texas created stricter signature matching requirements for vote by mail ballots. Florida, Georgia, Iowa, and Indiana imposed limits on the number, location, or availability of ballot drop boxes.⁵⁵

While shortened timelines and new restrictions on ballot return will harm access for both voters with disabilities and their nondisabled peers, some new measures in states will explicitly create barriers for voters with disabilities. Arizona and Florida have made it more difficult for voters with disabilities to remain on absentee voter lists from election to election.⁵⁶ Voting absentee is a useful way to ensure voters with disabilities' participation when their precinct polling places have not yet been made ADA compliant.

Voter assistance and Voting in Long Term Care Facilities

In Iowa and Kansas, people could face criminal charges for returning ballots on behalf of voters who may need assistance, such as voters with disabilities. The states of Arkansas, Florida, Iowa, Kansas, Kentucky, Montana, and Texas all passed legislation designed to limit who can assist a voter to return a vote by mail ballot.⁵⁷ Yet, the right to assistance in casting a ballot for voters with disabilities is protected by existing federal law, and limitations on who can return a ballot pose a significant barrier for people with disabilities who may not be able to return their ballots personally or have an assistant that qualifies under new state laws to return the ballot. As discussed earlier, the COVID-19 pandemic highlighted the challenge of ensuring access to the vote for people who live in long term care facilities, and vote by mail is a critical avenue for ensuring facility residents are able to participate in the electoral process. Limiting who may assist these voters threatens to disenfranchise them entirely.

Role of Congress and the Federal Government

The ADA has been and continues to be the gold standard in protecting the right to vote for people with disabilities. The United States government has an obligation to ensure that states, territories, and local jurisdictions are administering elections as accessibly as possible, and Congress has an urgent role to play

⁵⁴ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁵ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁶ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

⁵⁷ <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

in this process. Congressional funding is sorely needed to assist elections administrators to procure, maintain, and improve polling locations and equipment and for NDRN's national network of P&As to provide invaluable consultation on compliance with HAVA and the ADA. In this vein, Congress must act now to re-introduce and pass the PAVA Inclusion Act and provide the territorial government and P&A of the Northern Mariana Islands, as well as the Native American Disability Law Center, with desperately needed HAVA funding to ensure access to the vote for Pacific Islanders and Native Americans with disabilities. Extending funding to the only two P&As excluded from PAVA is a simple, no cost legislative fix.

Congress must also act now to prevent threats to voter access that have arisen nationwide in response to the historic voter turnout witnessed in 2020. Congress must amend the Freedom to Vote Act to allow voters with disabilities an exemption from blanket paper ballot mandates that will disenfranchise them. Creating a legislative carve out for people with disabilities, in addition to a periodic reauthorization or sense of Congress to reconsider the need for a paper ballot mandate, will allow voters with disabilities who need it most to access the same technologies we allow for military and overseas voters protected by UOCAVA. We are willing to take a limited, calculated risk to ensure that our deployed military will have their voices heard on Election Day. We must be willing to do the same for people with disabilities.

Finally, Congress and the DOJ play a critical role in ensuring that elections are fair, accurate, and accessible by implementing and enforcing a delicate patchwork of federal laws that protect the rights of voters with disabilities, including the ADA, HAVA, the Voting Accessibility for the Elderly and Handicapped Act, the National Voter Registration Act, and the Voting Rights Act. Each of these laws must be protected, restored, and enforced to their full capacity. While the DOJ is charged with enforcing the ADA and the Voting Rights Act so that voters with disabilities will not be disenfranchised, Congress must act now to pass the John Lewis Voting Rights Advancement Act to restore federal preclearance to its full strength and prevent known discriminatory practices, including undue closure of polling places, limitations on the right to voter assistance, bans on curbside voting, and restrictive voter ID requirements.

These problems are solvable, and after thirty years of the ADA, there is no excuse for not having addressed them. I have said it to this subcommittee before, but it bears repeating. We call them Americans with disabilities because they are, first and foremost, Americans. And America's democracy is only as good as its ability to hear the voices of all Americans.

Mr. COHEN. Thank you very much. Apparently, the interpreters are following Mr. Johnson's earlier imploration, and people are talking too fast, so we need to talk slower. Thank you. I would normally go first for questions, but with this new requirement that we talk slower, I will yield to Mr. Nadler for the first question.

Chair NADLER. Thank you.

Ms. Lee, why is living independently important to you? Ms. Lee? Oh.

Ms. LEE. Living independently gives me a sense of accomplishment. That is the best way I can say it.

Chair NADLER. Okay.

Ms. Bishop, one of the ADA's purposes is, "to invoke the sweep of Congressional authority in order to address the major areas of discrimination faced day to day by people with disabilities." Why is ensuring the right to vote for every American with a disability essential to fulfilling its purpose? How should Congress be invoking its authority to accomplish this goal in terms of the right to vote?

Ms. BISHOP. I think that Congressman John Lewis said it best when he said that the right to vote in America is one that is almost sacred. It is the foundation of all our other rights, and people with disabilities have to be able to participate in the democratic process to ensure that their rights are going to be protected.

I think Congress has a role to play in ensuring that the ADA, which works, is being enforced and in providing funding and support to our nation's election officials to help them to meet the demands, as well as look [inaudible] past works of other Federal legislation that also supports the right to vote for people with disabilities, including passing an amended version of the Freedom to Vote Act, as well as the John Lewis Voting Rights Advancement Act.

Chair NADLER. Thank you.

Ms. Kline, in September, this past September, the civilian labor force participation rate was 22.3 percent for people with disabilities compared to 67 percent for people without disabilities. Why do you think there is such a large discrepancy in these labor force participation rates?

Ms. BISHOP. Yes. Thank you for that question, Congressman Nadler. In truth, there has been a nearly 40-point percentage gap for decades as between people with disabilities and people without. This is an ingrained, systemic injustice that has to do with where we invest. When we invest the majority of our service dollars in separate, segregated settings where people spend the majority of their days for the majority of their adult working years, the results that we get are low labor force participation.

In addition, we have very little to show in terms of the public investment in the types of skills that are most catered to new and emerging industries in this utterly disrupted, knowledge-based economy. We are vastly overinvested in manual skills training in separate settings, and as a result, we have seen very little breakthrough in terms of that labor force participation rate over time.

Chair NADLER. What should we be doing instead?

Ms. BISHOP. What we should be doing instead is providing guidance and support to those State and local systems that want to rebalance and shift their service systems to resource those that are advancing the solutions to supporting workers to come into typical

jobs. What that means is, supporting job coaches, job developers, benefits counselors.

We are talking about shifting the lion's share of public service dollars from supervision and support in separate settings to supporting workers to find, obtain, and sustain employment in jobs that match their skills and talents.

This is not something that happens lightly. This is something that takes the intentionality of the public system working together with private employers. Here is the good news: Private employers are in search of talent today and have been for quite a long time in search of diverse talent, including people with disabilities. Our talent pipelines are caught up, held captive in this system that is actually channeling workers with disabilities out of secondary school around the United States and directly into segregated programs instead of typical employment. So, it is a challenge to support those service providers within State systems to support workers to move into competitive, integrated employment.

Chair NADLER. Thank you. Finally, can you describe what segregated employment settings look like, and how they are at odds with the ADA?

Ms. BISHOP. Well, segregated employment settings take on many of the institutional attributes that are recognized in residential settings. That means that there are people with disabilities congregated with each other without people without disabilities in the employment setting, except typically paid staff, paid support staff.

One of the indicia of this segregation, and one of the factors that shows how out of step with economic self-sufficiency these settings are, is that they so often pay subminimum wages. How could this be in 2021 in step with the meaning and purpose of the ADA and title II that we have Americans earning less than minimum wage in these settings?

Chair NADLER. Well, thank you. I just want to say that I certainly think we ought to outlaw subminimum wages. I thank you, and my time has expired. I yield back.

Mr. COHEN. Thank you, Mr. Nadler.

I would now like to recognize Mr. Johnson for five minutes.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair, and again, all of you for participating. I had a couple questions for Ms. Harned.

Is it your experience that most small businesses really do want to comply with the ADA?

Ms. HARNED. Oh, absolutely. If you go into any business—or I shouldn't say any business, but the businesses I have gone into, the Members I have talked to that is actually one of the questions I ask them, because I know this area of the law is complicated. They are, like, oh, I am up to code. Yes, I am compliant. That is why it is so frustrating to me and frustrating to them because they are thinking in many instances that they actually are doing the right thing because, of course, before you go into your place of business, you are going to have a business—I mean, you are going to have it inspected, right. So, that is where I think we are still not there yet on all of us being on the same page as to what it takes to be compliant with ADA.

Mr. JOHNSON of Louisiana. Really, that is the primary point. There are a lot of incentives to comply, not just to comply with the

golden rule and do the right thing, be a good corporate citizen, but there is an economic incentive as well because you want to provide for as many customers and clients, et cetera, to access your business as possible. It just follows commonsense. Earlier this year, the National Federation of Independent Business released a White paper on the lack of guidance businesses have received from the government on how to make their websites ADA-compliant. That is just a case in point. The paper said businesses were left with a mandate that essentially says, “comply, but we won’t tell you how to comply, and what compliance means.”

So, can you explain a little bit about this uncertainty in this area or just one example regarding websites and how that affects small business?

Ms. HARNED. Correct. Well, this is nothing short of, I mean to use a term my kids would use, a hot mess. There is no legal standard for what it means to comply, to have your website accessible. So, the courts have stepped in, and the answers are all over the place. The circuits are split on what is required. The Department of Justice really has not been very helpful in providing any answers, and, so, you are really seeing, particularly in this space, a lot of predatory litigation.

I mention in my testimony the story of a business owner I just recently heard from that is part of a class action lawsuit, and he is—the way he speaks is definitely the way our Members speak. He said, I try to do everything the right way. I try to be on top of all the laws, but I have no law I can comply with here, and he is just extremely frustrated. So, yeah, that is a big area of—it is becoming a bigger problem each and every day, quite frankly.

Mr. JOHNSON of Louisiana. It is. You have noted, and we all recognize, common sense tells us, experience tells us most small businesses, obviously, do not have compliance professionals and lawyers on the payroll to help them navigate all this, these various laws and rules. As you mentioned, even when they make a good-faith effort to comply even when a small business does hire a consultant, other professionals, somebody that specializes in ADA compliance, that is not even a panacea, because they can still be found in violation, so they are in a tough spot.

You proposed today some practical solutions. One of them, I note, was you were talking about providing an expanded period to allow for compliance by a willing business before these punitive damages are assessed. Could you explain that just a bit more and how it would help?

Ms. HARNED. Right. I understand from members of the disabled community they might react, oh, it is 31 years. Your business should be—this should not be an issue anymore. Honestly, I know of business owners that have done what they thought was required under the law using an attorney, only to find that they were sued because a guardrail was a quarter of an inch off which I recognize, again, may be a lot for a member of the disabled community. I am not saying that is not real. What I am saying is that a small business owner is not going to know that level of technicality, and they could receive bad advice. The bad actors are not going to—they don’t care if I am being completely candid, but most small business

owners do care. If you tell them what they are doing wrong, they will fix it.

Mr. JOHNSON of Louisiana. That has been my experience as well. I think the goal of all of this, every one of us, this is not a partisan issue. We want disabled Americans and everyone to have full access and the ability to patronize businesses and do everything that everything else can, and we want the businesses to thrive as well. We want all boats to rise together. To do that, we have to apply common sense. We have to modify some of these rules and regs and make it possible so that we can achieve all those goals simultaneously. These are not mutually exclusive pursuits, and I think we would do well to recognize that. I think Congress has a role here to help, and I hope that we will.

I am out of time, unfortunately. I yield back, Mr. Chair.

Mr. COHEN. Thank you, Mr. Johnson. I am going to take my five minutes and ask a few questions.

Ms. Kline, I think it was your testimony concerning the employment locations where folks are just congregated without—to do work and paid a subminimum wage. Was it you or was it Ms. Bishop who testified about that?

Ms. KLINE. That was me, Mr. Chair. Thank you.

Mr. COHEN. I mean, what are some of the groups that have that type of employment situation? There are groups in the community, well-known, but I don't recall them, not that well-known, but pretty well that have shelters and provide this work for people with disabilities which, as I recall, when I visited, this has been many years ago, they seemed to be doing a good public service. Who are those groups?

Ms. BISHOP. Well, Mr. Chair, that is an interesting question and one that is often asked. These service settings are prolific, and there is no particular group that I would isolate other than to say to you this is an 83-year-old practice, the origins of which are embedded in the New Deal. There is no doubt in my mind that you have seen these groups over the years and that many people who have explored, people with disabilities who are working have seen them working in separate settings.

It is an historical anachronism to say that we set it and forget it. The moment has come, and there is no particular group to isolate. This is a question of priorities of spending and supports. People about disabilities have an archaic, and pretty much fossilized service system for employment at the precise time when there is a labor shortage, at the precise time when other workers in the global economy are reassessing their skill development, are reassessing their interests and preferences for employment, and we have got to get moving on this goal. It is the time to evaluate—

Mr. COHEN. Ms. Kline, I understand what you are saying in theory, and I accept it, but I am just trying to recall. Some of these groups seem to be very well-intentioned, and very well-respected in the community, and a lot of the people that were working there look to me to be very seriously disabled to where they probably could not work in a different setting. There is a standard by which some of those people could continue to work in those settings, because otherwise, they wouldn't probably be able to work at all. Is that not correct?

Ms. BISHOP. Well, Federal courts have recognized, and the ADA itself has explicitly recognized that we should not give regard to whether someone can work or not without providing them an individualized assessment of their skills and their functions on the job in employment. Actually, what we have done is we referred many people to these settings without a unique understanding of their skills. We don't know—what we do know with particularity is that many people can and want to work in other settings, but because of the significant excessive overreliance on these settings by State and local governments, people have been channeled to these settings.

Mr. COHEN. Ms. Harned, let me ask you this. Are you familiar with any of these particular groups that provide these disability shelters? They are shelters, I think they are called. Are you familiar with those groups? Are they part of NFIB at all? Ms. Harned, are you there? You are muted.

Ms. HARNED. I apologize.

Mr. COHEN. There you are.

Ms. HARNED. I am not personally familiar with these groups, no. I am sorry.

Mr. COHEN. Okay. Sorry to hit you with that, but whatever. I want to see this work, but I also know there are situations to where some of those groups are doing good things. They maybe should pay minimum wage. Minimum wage is absurdly low right now, and to pay less than that is almost infinitesimal to determine something less. I think that the people that—a lot of the folks who work there, I don't know if they have cerebral palsy. I think there is one particularly, and then other disabilities where they might not otherwise have any meaningful activity, and it seems you don't want to throw the baby out with the bath water because some of it is probably good. On voting—

Ms. KLINE. Mr. Chair, apologies. If I could just respond, just one more response to that comment which I think is useful, is that the goal of many of the current legislative proposals toward spending new public resources to support people in their transition is this concept of providing career development planning and really getting to the bottom of what people can and can't do. We haven't done that yet with the level and the capacity that we need to support people toward their employment goals. It is not painting with a broad-brush stroke about the validity of a particular provider. It is empowering that provider to support people in their interests and their preferences towards employment.

Mr. COHEN. Thank you. I am going to recognize Mr. Owens in a minute, but I just have one question and ask for a brief answer, if I can.

Ms. Bishop, you talked about voting. Have any of the places—I can see a problem when you have got, like, 200 voting precincts, and they all ought to be compliant and make it easy to vote and not have barriers. Have any districts tried to get around this by having a central location and allow people with disabilities to come to some particular location that might be totally set up for people with disabilities and have all the barriers removed?

Ms. BISHOP. I think the closest thing that we have seen to that, thus far, is States that moved to a vote center model—

Mr. COHEN. Yeah.

Ms. BISHOP. —which is not exclusive to voters with disabilities, but open to all voters. I think that they come with their pros and cons. It does give you the opportunity to pick out your most accessible locations and rely on those, but we do have to be very conscious of how many vote centers we have, how far they may be from voters with disabilities, how accessible they are according to public transit, accessible public transit to make sure that they are going to be effective.

Mr. COHEN. Right.

Ms. BISHOP. One thing I think we would discourage is having a separate vote center specifically for people with disabilities when we are really trying to have the most integrated experience possible for voters with disabilities rather than separating how they vote from other voters.

Mr. COHEN. Thank you. I am over my five minutes by far. I apologize.

Mr. Owens, you are recognized for five and a half minutes.

Mr. OWENS. Thank you. Thank you, Mr. Chair.

First, I want to just echo what the Ranking Member said. This is very simple. It is very nonpartisan. We all can agree on the benefits of ADA was done to help the vulnerable. My message will be making sure that we have a balance, make sure that our small businesses can continue to grow, because that is truly what creates this culture, this great culture we have called the American way.

I want to offer to Patricia, thank you for your story. You are a remarkable example of the American way again, second chances, and what can happen when you can truly get support and you believe in self-sufficiency, which you are in the process of doing. My dreams and hopes—and I don't know if you ever thought about it—but one day to be in the position to start your own business one day. I mean, that is what we are all about.

I want to say this real quickly about my upbringing, because the small business owners are truly what makes our country what it is, and I grew up in the sixties where 40 percent of Black Americans were business owners in our segregated community. We had them all over the place. Forty percent equated 50–60 percent of Black Americans across our country being middle class. It is that middle class that powers this great culture that we look at that is full of service and commitment and innovation, and all the great things that we feel about our country comes from that powerful middle class. We have to make sure that we do not do anything that will diminish that.

Right now, my community, that great community I just talked about, is now down to 3.8 percent business ownership, and so you don't have the same innovation. You don't have the same success story, the same mentorship that I grew up with around.

So, that being said, I think what it comes down to, ADA, is we have got to make sure—and anything we have in which we are looking for the benefit of protecting the vulnerable, that we also protect those vulnerable business owners that really give us this opportunity to have people like Patricia or anyone else out there that they can actually build a business.

I have some real concerns about what I see as predatory lawsuits. Ms. Harned, if you wouldn't mind answering this question for me, to your knowledge, are Black business owners a popular target for predatory ADA lawsuits and demands? Have you seen that happen, by chance?

Ms. HARNED. Well, I don't know specifically about Black business owners. I will say, what we have seen, particularly in California where this has been a tremendous problem for decades, there are a lot of not—business owners that English is not their first language, where they do tend to be hit more than others, I would say, and I find that very disturbing, quite frankly.

I really encourage anybody to look at the standards that the document—it is 200 pages long, and it really is highly technical. Again, I think that is one of the reasons why it is just so easy for small business owners to be victims of these lawsuits.

Mr. OWENS. Yes. I probably should transition from Black to minority, for those who are maybe first-time business owners, those who get the dream, but they just want to move up, they are not—don't have the legal background but just have the dream, the dream they want to move forward, and those are the ones that are most vulnerable because they don't know. They do their very best.

Let me see here. Are you able to—okay. When a business is targeted by any of these lawsuits, they cannot afford to pay attorney's fees associated with the lengthy expensive litigation, what recourse do they have, in your experience, what you have seen with any minority or new businesses getting started with these types of onerous litigations?

Ms. HARNED. Well, a lot of the attorneys that practice in this area, quite frankly, again, these would be those that are really more interested in their own financial gain than maybe the end goal, and they know that these small business owners cannot afford to litigate these suits going in. So, they will send demand letters and say we went by your business and this is off or whatever, and give a few things, and then say, if you don't pay us X amount of money by X date, we are going to bring you to court.

So, there is not even a follow-up later to see if the business owner even fix it. It is all about trying to extract the funds. Because, honestly, our research has shown that small business owners just don't go to court. They are going to settle these suits. A lot of these drive-by—these lawyers that do these, what are called drive-by lawsuits that are well documented, that is their mode of operandi.

Mr. OWENS. Okay. I think it is important to realize these are predators. These are people who look at vulnerable businesses, those who cannot afford, and they know that exactly. They are not looking for the benefit of those who need the support. They are looking for their own monetary gain.

So, I think we should really keep that in mind. Again, it is a very nonpartisan price, my friends. Let's make sure those who need the support, those who are vulnerable citizens of our country get what they need. At the same time, small business owners, they are the ones that give the best service you possibly could find. They want their customers to continue to come back. Let's make sure they continue to thrive, and our country moves forward as they do.

So, thank you so much, and I yield back the remainder of my time.

Mr. COHEN. Thank you, Mr. Owens.

Ms. ROSS, the gentlelady from North Carolina, is recognized for five minutes.

Ms. ROSS. Well, thank you so much, Mr. Chair. I wish I was in the room with you. We are juggling multiple meetings, but this is such an important one and particularly in North Carolina.

I wanted to thank Ms. Lee for being with us. It means a lot to hear a story from North Carolina, and I will ask you a question in just a minute, so get ready.

The Americans with Disabilities Act was designed to ensure that disability is no barrier to opportunity and that people with disabilities are fully integrated members of society. Since the law was enacted, our nation and our economy have benefited from the contributions of tens of millions of Americans with disabilities in our workforce and in our communities. Yet, countless incidents, including in my home State of North Carolina, continue demonstrating that the ADA was a milestone but not the end of our fight for equality for people with disabilities.

Recently, a blind man in Winston-Salem, North Carolina, named Wilmer was denied entry into a store with his guard dog, Forte, not only once but twice in the span of a single month. The second time, the local police were called and threatened Wilmer with arrest, simply for shopping with his guide dog.

Disability Rights North Carolina has filed a Federal complaint for Wilmer arguing that the officers violated the ADA. This incident demonstrates how pervasive discrimination against people with disabilities is ongoing.

Thirty-one years after the enactment of the ADA, far too many people are unaware of the accommodations legally required for people with disabilities. To keep our promise to people with disabilities, we need stronger enforcement of the ADA to ensure that everyone can fully participate in public life.

I would like to ask Ms. Lee how important it is to have those community services so that you can live independently. I know in North Carolina we had a history of institutionalizing people and then putting them in assisted living facilities rather than investing in community supports. I would love to hear your story about how important it is to have those community supports.

Ms. LEE. Without those supports, I don't see where I would be—reach the barriers that I have been able to reach.

Ms. ROSS. Well, thank you so much.

My second question is for Ms. Kline. Just this week, I visited a service industry for people with disabilities where they pay more than minimum wage, get full benefits, are located near a transit stop. It is called LCI Industries, and they contract with the military to provide beds for the Navy. They make all sorts of supplies under Federal contracts.

Could you tell me how you see these kinds of facilities functioning and how they differ from the ones that you see as problematic?

Ms. KLINE. Thank you, Congresswoman Ross. Each instance requires more of an acute awareness of the factual circumstances of

that provider, and so I feel discomfort in weighing in on the nature of their service provision.

The one thing I will say to you, though, that is quite relevant to your question is we are making significant progress, including in Federal procurement. Just this month, in honor of October being National Disability Employment Month, the AbilityOne Commission, which manages over \$3 billion in Federal procurements, has issued a proposed rule moving away from subminimum wage and in support of moving more towards integration. How that looks over time and what happens to the rule yet remains to be seen, but it is a considerable statement of progress towards the acknowledgment that what is typical is the goal, that systems should be realigned towards the goal of what is typical, including the indicia of integration.

So, I think that we are seeing the needle move. Every instance requires more knowledge about what the particular services that are being provided are. The point is that we are starting to come to grips with the fact that we have got to get the end game in mind first, and it is integration and realign services from there.

Ms. ROSS. Thank you. I yield back.

Mr. COHEN. Thank you, Ms. Ross.

We now recognize, for five minutes and thirteen seconds, Mr. Hank Calvin Johnson.

Mr. JOHNSON of Georgia. Oh, thank you, Mr. Chair. I wasn't quite ready to be called on, but I want to thank you, Mr. Chair, for holding this hearing. I want to thank the Witnesses for their testimony today.

My colleagues on the other side of the aisle throughout the pandemic have been strong proponents for schools being open for in-person learning. After Democrats passed the American Rescue Plan and we finally started getting shots into arms, Republicans started fostering vaccine hesitancy. As we started getting kids safely back in schools, my friends across the aisle should have been happy. Yet, despite the CDC recommendations that for in-person learning, universal indoor masking should be required for all teachers, staffs, students, and visitors to K-12 schools, regardless of vaccination status, as of September 29, Republican politicians in nine States have banned school districts from setting universal mask mandates.

Ms. Kline, do local and State bans on mask mandates make it more difficult for students with disabilities to return to in-person learning? Based on your experience, how can the Department of Justice help ensure that civil rights of persons with disabilities, especially students, continue to be protected and that States and localities are mindful of their obligations under title II of the Americans with Disabilities Act?

Ms. KLINE. Yes. Thank you, Congressman. As you know, my background is in, with particularity, to employment, but I am happy to weigh in to honor your question to the extent that I can.

Mr. JOHNSON of Georgia. Please. Thank you. I appreciate it.

Ms. KLINE. Yes. One thing that is clear from the pandemic is that people with disabilities have been disproportionately impacted. A lesson learned is that congregation is dangerous. It imposes safety risks. The advocates have long understood that about congrega-

tion in segregated settings. It became clear there was a prism or a magnifying glass on that issue as it relates to segregated settings during the pandemic, obviously, because of an airborne virus.

As it relates to schools, the same is true that there are many students with disabilities across the country that deserve equal access to education in the least restrictive environment and students who are particularly vulnerable to the idea that there would be health risks imposed upon them by these policies.

So, the goal of title II is to ensure integration. The goal of the ADA is to ensure equal access. The goal of the IDEA is to ensure equal access to education.

So, that is a generalized response to your statement, I understand, but this is complementary to the goal of the ADA is to provide students with disabilities access to education at this time.

Mr. JOHNSON of Georgia. Thank you. Imposing bans on mask mandates hurts the ability of disabled students to return to school safely. Is that true or is that false?

Ms. KLINE. Yes. If I sounded at all equivocal, the answer is yes.

Mr. JOHNSON of Georgia. Thank you.

With regard to voting rights, it seems that after Trump lost the 2020 election in a landslide and after the big lie and the insurrection, the right to vote has once again come under relentless assault in States led by Republican politicians looking to remain in power, despite the demographic shifts occurring throughout the nation. I don't think every American truly understands the extraordinary efforts many disabled voters must take to exercise their fundamental right to vote.

Ms. Bishop, what discriminatory barriers have persons with disabilities historically faced when attempting to vote? How do unnecessary and punitive restrictions on voting by mail impact accessibility when it comes to voting as a disabled person?

Ms. BISHOP. I think when we talk about the barriers that voters with disabilities face, the answer is just about everything. Every method of voting—in person, election day, early voting, voting by mail, even getting registered to vote—still has some existing barriers for at least some people with disabilities, because we have really yet to fully realize the promise of the ADA, as well as the Help America Vote Act, to make the process fully accessible and fully integrate voters with disabilities.

You talked about vote by mail, and I think some of the things that we did in 2020 in response to the pandemic were really important for making vote by mail work for more voters. We relaxed some of those deadlines by which you had to apply or return your ballot. We relaxed some of the requirements around having witness signatures, notaries, getting a doctor's note to attest that you have a disability to vote by mail, things that are just extra hoops for voters with disabilities to have to jump through. It can be a barrier for any voter, but for a person with a disability for whom those things may not be readily available, for whom transportation could be a problem, it just is that much more difficult.

The last thing I want to stress is that we have seen an increase in allowing voters with disabilities to use electronic ballot delivery that we usually use for our military and overseas voters, which allows them to receive and mark their ballots electronically because

mailing them a piece of paper is never going to be accessible to everyone. I think that is something that we really have to look at expanding nationwide. It is something we are willing to do for our military and overseas voters. We should be willing to do it for people with disabilities who are stateside as well to ensure that they have access to the vote.

Mr. JOHNSON of Georgia. Thank you. I yield back.

Mr. COHEN. Thank you, Mr. Johnson. Good to hear from you. Good that the Dodgers had Cody Bellinger yesterday.

Mr. JOHNSON of Georgia. We still [inaudible] though.

Mr. COHEN. I now recognize Ms. Garcia, who is happier with what the Astros did last night.

Ms. GARCIA. Much better, Mr. Chair. Thank you so much for this opportunity to examine the continued and longstanding barriers to voting accessibility for people with disabilities.

As a young legal aid lawyer many years ago, I actually represented the Coalition for Barrier Free Living here in Houston, which started working on some of these issues. Let me tell you, it is completely disheartening, disheartening, Mr. Chair, that we are still talking about the same things that we talked about back when I was in legal services in the late eighties, and that has been some time ago.

So, with that in mind, whether it is the ADA or local or State government requirements people with disabilities should have full participation in all aspects of life. Certainly, when it comes to voting, they should also have equal access without facing any barriers of any sort.

I would like to call your attention to an urgent problem that this Subcommittee has held numerous hearings on, and that is, of course, the voting rights, particularly for us here in Texas, for minorities' and seniors' ability to vote. One in every three States in the country have passed voting restriction laws this year, as was quoted by one of our Witnesses. This is alarming. New voting restrictions could threaten seniors and people with disabilities, like my constituent, Earlene Sullivan, who turned 102 years old recently. I visited her at her home, and she shared with me that even within her own house, one of her sisters is a Republican, who has actually already insinuated that she is ballot harvesting because she has her sister—her daughter helps her with her mail-in ballot.

Imagine the friction that causes in one's household when one sister is already accusing another sister of doing something that has always been acceptable but now, under the Texas voter restriction laws, may be illegal.

Then look at another one in our area, Nancy Crowther, a 64-year-old retiree, who is disabled because of a neuromuscular disease, turned to mail-in voting in hopes of safeguarding her health during the pandemic. Because of the Texas GOP's renewed force to further tighten the State's voting procedures, Nancy had no other choice but to traverse a quarter of a mile in her wheelchair, navigating an uneven intersection and construction tunnel, totaled approximately three miles, just to cast her ballot in person so that she could avoid any accusations of voter issues.

So, it is clear that the law is not helping. In fact, the laws are hurting.

So, my first question is for Ms. Bishop. First, Ms. Bishop, thank you so much for continuing the work that is so important in this area. Ideally, what do we need to do? I know you have mentioned passing two bills. What else can Congress be doing to ensure that the States and the local communities do not do anything that hamper a person's access to the ballot, particularly for those with disabilities?

Ms. BISHOP. I love the stories, first, that you talked about your constituents. I think they are so important, because so many people who had an easy experience voting do not truly understand that is not the experience of all voters and that some of us jump through hoops of fire to be able to cast our ballots. I also really loved the story about the voter whose own family in her home are not necessarily supportive of her votes. That is really important to point out, because I think we often hear a lot of things proposed that will make it difficult to impossible for people with disabilities to vote privately and independently, which is their Federal right. The excuse we always hear is that, well, people with disabilities will just have someone assist them. That is not what their rights are under Federal law, first and foremost, but also not everyone has that, which your story illustrates. Not everyone has someone who they can trust to mark and return their ballot for them. We have to make the process as private and independent as possible.

I did talk about a couple pieces of Federal legislation in particular. I do think Federal legislation can be very powerful for ensuring that we have good pro-voter policies in place that will ensure people with disabilities and all voters are going to have access to the vote and can counteract some of those policies.

I did talk about the John Lewis Voting Rights Advancement Act, in particular, because it would restore Federal preclearance, which helps us stop some of those practices before they even begin, so that we are not waiting for a lengthy process of litigation to ensure that voters aren't going to be disenfranchised while elections are passing.

Ms. GARCIA. Well, thank you.

Mr. Chair, I would like to ask unanimous consent to enter into the record an article, "Texans with disabilities fear voting will get harder for them as special session on GOP restrictions nears."

Mr. COHEN. Without objection, so entered.

[The information follows:]

MS. GARCIA FOR THE RECORD

10/19/21, 4:34 PM

Texans with disabilities fear voting obstacles under proposed GOP restrictions | The Texas Tribune

★ THE TEXAS TRIBUNE

MENU

Special Legislative Session Ends Redistricting Vaccine Mandates Ban Abortion Restrictions Texas Election Coronavi

Texans with disabilities fear voting will get harder for them as special session on GOP restrictions nears

The extent to which Republicans' proposed voting restrictions might affect voters of color has received much attention, but Texans with disabilities also face the prospect of new barriers to the ballot box.

BY ALEXA URA JULY 5, 2021 5 AM CENTRAL



COPY LINK



Louise Calvillo and Charolette Connelly, members of the Texas Alliance for Retired Americans, protest against Republicans' proposed voting restrictions in Richardson. 📷 Ben Torres for The Texas Tribune

10/19/21, 4:34 PM

Texans with disabilities fear voting obstacles under proposed GOP restrictions | The Texas Tribune

Sign up for The Brief, our daily newsletter that keeps readers up to speed on the most essential Texas news.

It took Nancy Crowther three hours, four public bus rides and an impressive amount of gumption to make sure her vote counted in the 2020 election. She's hoping Texas lawmakers don't make it even harder the next time.

With Texas Republicans determined to enact additional voting restrictions in the upcoming special legislative session, much of the uproar has focused on changes that could make it harder for people of color to cast ballots. Less attention has fallen on another group of voters bracing for what could happen to them under the GOP's renewed push to further tighten the state's voting procedures — people with disabilities, for whom the voting process is already lined with potential obstacles.

Among them are people like Crowther, a 64-year-old retiree, who could have been shut out from voting last November had it not been for her own tenacious determination. Immunocompromised because of a neuromuscular disease, Crowther chose to forgo her usual trip to a nearby polling place and instead turned to mail-in voting in hopes of safeguarding her health during the pandemic. But as Election Day neared — and after experiencing interruptions in her mail service — she began to worry her ballot wouldn't make it back to the county in time.

The Texas Tribune thanks its sponsors. [Become one.](#)



A former transit employee who worked on improving accessibility on public transportation, she pulled up the city bus schedule and started mapping the distance between her home in South Austin and the Travis County elections office 9 miles away. Under Texas law, she couldn't ask someone else to return her ballot, so Crowther, who uses a wheelchair, had to make the trip herself.

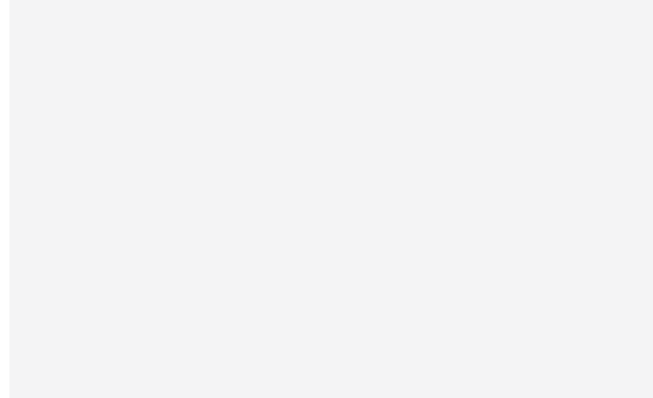
"That's the only thing I could think of," Crowther said. "So I hit the road."

10/19/21, 4:34 PM

Texans with disabilities fear voting obstacles under proposed GOP restrictions | The Texas Tribune

Double-masked and loaded up with hand sanitizer, she boarded the first bus to a community college on the east side of town, then transferred to a second bus that would get her closest to the county building. From her drop-off spot, she still had to traverse a quarter of a mile in her wheelchair, navigating an uneven intersection and a construction tunnel, at one point ducking under a guide wire to press forward.

Nancy C. had to travel on a bus to a polling location in North Austin to cast her ballot in 2020.



Nancy Crowther took on a three-hour journey on public transportation to get her mail-in ballot turned in during the 2020 presidential election. 📷 Courtesy of Julie McConnell

When she finally got to where she thought she was supposed to be going, Crowther queued up in a line of cars for 20 minutes before a county worker asked if she was there to register a vehicle. She realized she was in the wrong line. Spotting the ballot envelope carefully tucked into the belt of her wheelchair, the worker pointed to some tents across the parking lot where ballot collection was taking place.

“I dropped it in and everybody cheered because they knew how much of a hassle it was, and I thought, ‘OK, where’s the bus I catch to go home?’” she said.

In a state with some of the strictest voting rules in the country, Crowther’s ordeal illustrates how easily access to the ballot box can contract for marginalized voters when new challenges emerge — and the risk lawmakers run in setting up new restrictions, including changes some disabled voters might not be able to overcome.

10/19/21, 4:34 PM

Texans with disabilities fear voting obstacles under proposed GOP restrictions | The Texas Tribune

“They’re taking a lot of the dignity away from people with disabilities,” Crowther said. And while some of the technology is available to make voting an easier, more independent process for them, the rules have not kept up, she said. “They’re actually going backwards because of these discriminatory acts, and frankly, it just pisses me off.”

Texas Republicans have pursued broad efforts this year to ratchet up voting restrictions in the aftermath of a high-turnout election that saw high-profile fights over the state’s voting rules, including the tight eligibility requirements for absentee voting. The 2020 election marked a shift from what was traditionally a tool utilized by the GOP to one that was instead taken up by more Democratic voters. But as the GOP has worked to clamp down on what remains a limited voting option, voters with disabilities — who are among the few groups of Texans eligible to vote by mail — have been caught in the middle of the fight.

The Texas Tribune thanks its sponsors. [Become one.](#)

Republicans have cast their proposals as “election integrity” measures to protect the voting process from fraud, even though there is no evidence it occurs on a widespread basis. But throughout the spring legislative session, nearly every version of the GOP’s priority voting legislation raised alarms for disability rights advocates who warned lawmakers they would likely run afoul of federal protections for disabled voters.

Texas offers two avenues to voting most helpful for people with disabilities. If they’re unable to vote in person without needing assistance or injuring their health, they can request a mail-in ballot. If they want to vote in person but need assistance, they can ask someone to accompany them to a polling place to help them through the voting process.

Under Republican proposals that are expected to be reconsidered this month, both of those paths might be further constricted.

10/19/21, 4:34 PM

Texans with disabilities fear voting obstacles under proposed GOP restrictions | The Texas Tribune

In the Senate, Republicans wanted to require proof of a condition or illness, including written documentation from the Social Security Administration or a doctor's note, before disabled voters can receive mail-in ballots for every election in a calendar year. Under current law, voters need only attest that they have a disability that qualifies them for a mail-in ballot.

The Texas Tribune thanks its sponsors. [Become one.](#)

That proposed change was eventually pulled down, but Republican senators moved forward with a bill that would have increased the likelihood that people with disabilities would be cast as suspect voters if they used other legal accommodations, like having assistance at the polling place.

The GOP bill would have allowed partisan poll watchers to video record voters receiving assistance in filling out their ballots if the poll watchers believed the help was unlawful — a change that disability rights advocates argued would wrongly target people with disabilities. For voters with intellectual or developmental disabilities, for example, voting help may require prompting or questioning that could be misconstrued as coercion by a person unfamiliar with that sort of assistance.

Although voters can select anyone to help them as long as they're not an employer or union leader, House Republicans attempted to set up new rules for those helping voters, including a requirement to disclose and document the reason the voter needed assistance, even if for medical reasons.

At multiple points during the session, Republicans said they tweaked some of those proposals in response to concerns from disability rights advocates. But when the final version of the legislation emerged from backroom negotiations just before the end of the regular session, it included unwelcome changes to redefine what constitutes a disability under state election law, as well as new identification requirements for voting by mail that advocates said lacked clarity.

10/19/21, 4:34 PM

Texans with disabilities fear voting obstacles under proposed GOP restrictions | The Texas Tribune

The Texas Tribune thanks its sponsors. [Become one.](#)

“Our voices weren’t being heard at the very end when it was the most important,” said Chase Bearden, the deputy executive director for the Coalition of Texans with Disabilities.

State Sen. [Bryan Hughes](#) and state Rep. [Briscoe Cain](#), the chief Republicans behind the measures, did not respond to requests for comment. Although Texas Democrats blocked that legislation from getting a final vote at the end of May, Republicans are expected to revive some of those proposals when lawmakers return to the Capitol this week.

The possible changes to the voting process for people with disabilities come at a time when advocates have been working to engage with and organize the millions of voters with disabilities into a voting bloc hefty enough to claim lawmakers’ attention.

But while their advocates lobbied against rules that could complicate the voting process, voters with disabilities struggled to make themselves heard during a legislative session that began before vaccinations for COVID-19 were widely available. Virtual testimony at public hearings was largely limited, and advocates said the coronavirus heightened dangers for medically vulnerable people who could not risk a trip to the Capitol.

The Texas Tribune thanks its sponsors. [Become one.](#)

Ahead of the special session, disability rights advocates have been working to marshal their influence. Two dozen organizations serving voters with disabilities recently signed on to a joint statement asking lawmakers to consider the “unintended and negative effects” of proposed legislation and demanding to be consulted throughout the legislative process. The organizations are in turn encouraging their members to deliver the statement to their local representatives and are working to return to the Capitol in larger numbers. Some advocates recently met with House Speaker [Dade Phelan](#)’s staff.

“I think we are now also sending a message that there’s such a thing as the disability vote — that we are an interest group,” said Bob Kafka of Rev Up Texas, a grassroots organization focused on increasing participation among disabled voters. “You hear about people of color, older voters, evangelicals, Catholics. They never actually think of the disability vote as a policymaker.”

If the Legislature’s goal is to ensure trust in the voting process, their influence will be integral, disability rights advocates argue.

As voting legislation moved through the chambers, Republicans argued that part of their efforts, including new requirements and potential penalties for those who assist voters, were meant to protect voters with disabilities from being exploited by people purporting to offer them help through the voting process. But disability rights advocates told lawmakers they were unaware of widespread documented instances of what they were trying to prevent.

“To be honest, I think if it would’ve passed as it was in that last version, I think we would’ve seen ... more votes lost than their assumed or unproven [concerns] of these goings-on,” Bearden said. “We know for a fact that there are more votes that are thrown out that are legal votes that don’t get counted than there is demonstrated fraud over the last 20 years.”

The Texas Tribune thanks its sponsors. [Become one.](#)

At the same time, GOP legislators failed to preserve Democratic measures that could improve the process for voters with disabilities.

In a negotiated version of the legislation that left the House, Democrats managed to tack on an amendment that would have created a correction process for mail-in ballots that are ordinarily rejected because of a missing signature or an endorsement a local review board determines does not belong to the voter who returned the ballot. That issue has long been top of mind for advocates for voters with disabilities, whose signatures can change over time or are often not recorded similarly because of their conditions. Because the state does not currently offer them the opportunity to fix the issue, legitimate votes are lost.

Republicans ultimately removed that amendment in backroom negotiations with little explanation.

“We have the time. We’re calling a special. We’re bringing everyone back,” Bearden said. “We should take advantage of that by bringing a bill that represents all of Texas, not one side versus another but something that actually creates the belief that we’re going to improve our voting system and improve the way we can vote and ensure our votes count.”

Quality journalism doesn't come free

Perhaps it goes without saying — but producing quality journalism isn't cheap. At a time when newsroom resources and revenue across the country are declining, The Texas Tribune remains committed to sustaining our mission: creating a more engaged and informed Texas with every story we cover, every event we convene and every newsletter we send. As a nonprofit newsroom, we rely on members to help keep our stories free and our events open to the public. Do you value our journalism? Show us with your support.

YES, I'LL DONATE TODAY

The Texas Tribune thanks its sponsors.
Become one.

Ms. GARCIA. Thank you. I yield back.

I will submit a question for Ms. Kline that I did have on some employment numbers.

Thank you.

Mr. COHEN. You are welcome, Ms. Garcia.

Our next Congressperson to be recognized for five minutes is Ms. Bush who just got on. I am sorry. Ms. Bush trumps Ms. Lee.

Ms. Bush, you are recognized for five minutes.

Ms. BUSH. Thank you.

Good morning to everyone. As a St. Louisan, I thank you, Chairs Cohen and Nadler, for convening this urgent hearing on the importance of the Americans with Disabilities Act.

For decades, disability rights activists have been sounding the alarm about how a lack of accommodations negatively impacts every aspect of their lives. Disabled people have been denied equal access to higher education, disproportionately struggle with mental health crises, suffer from police brutality at high rates, and get denied opportunities for civic engagement in voting.

As a nurse, I have seen firsthand how anyone at any time can become permanently disabled, whether you become disabled from elder age, an accident, a health crisis, or you are born disabled. This society should be built to accommodate your needs.

Schools, businesses, transportation systems, and buildings have had over 30 years to get this right, 30 years. It is time to fight to develop universal designs for every single building and home that are designed to be accessible for everyone.

Disabled workers are subjected to an abysmal subminimum wage that makes the self-sufficiency described in the ADA nearly impossible to obtain. Low wages more or less guarantee disabled workers must live in poverty. Disabled people have to juggle subminimum wages while navigating higher medical costs, needing extra time off for appointments and treatments, and contending with a physically hostile environment. This is a shameful failure at every level of policymaking and enforcement. The buck, it stops here.

Ms. Kline, in your testimony, you mentioned the issue of disabled workers' rights. Can you talk about some of the workplace accommodations and practices that support people with disabilities, particularly in the wake of COVID-19?

Ms. KLINE. Thank you. Thank you, Congresswoman Bush, for your really sensitive remarks about the reality. You are very sensitive to the issue as a nurse background when you are saying the reality is that we all could become a member of the population of people with disabilities at any time. It is the reality, this is us. This is a universal human condition.

To your point, COVID-19 has been a major disrupter to the way everyone works. I would like to say we are living in the golden era of more flexible, more autonomous, more distributed work, and yet we are talking about the very population of people that may have been the inventors of flexibility in work since 1990 and before, that have the least amount of investment in the infrastructure to have an even recovery from this pandemic.

It seems that we are seeing a widening, a deepening inequality, an uneven recovery. People with disabilities were the first fired, they are the last rehired in this type of economic shock. We have

the majority of our equities, in terms of public spends, still channeled towards segregated, separate settings when, in fact, there are many workers around the United States with disabilities who are reassessing their interests and their preferences for competitive employment and actually need more flexible technology, the infrastructure around broadband but also the infrastructure around remote and distributed business tools, the types of technology that will allow virtual reality training.

This is what other workers are doing right now. They are upskilling. They are reskilling. They are getting acclimated to a knowledge-based economy. There are so many workers trapped in historical anachronism. They are being trained in industries that are no longer pertinent to this knowledge-based economy.

So, we need to shift the focus of public spending to catch up, because the economy won't wait as the expansion and knowledge-based jobs upskilling and reskilling is of utter necessity now and we need public investments to follow.

Ms. BUSH. Thank you. Thank you so much for all that information.

Ms. Bishop, research from Rutgers University shows that 21.3 million eligible voters have mobility disabilities and seven million have visual disabilities. What practices can local and State governments adopt to ensure their elections are widely accessible?

Ms. BISHOP. I think the number one most important thing we can do in terms of practices to make sure our elections are accessible is to include people with disabilities and disability rights organizations in the process from start to finish. We very often devise an electoral process and then show it to people with disabilities after the fact and say, look what we made for you. It is not actually accessible, and we have to go back and try and retrofit something we have already built to make it work for everyone.

We should be bringing everyone to the table and making sure that their voices are heard from start to finish so that we are designing processes from the start that are actually accessible to everyone.

I would also be remiss if I didn't say I was a St. Louisan before I came to DC, and go Cardinals.

Ms. BUSH. Thank you. I yield back.

Mr. COHEN. You have every right to throw in the Cardinals. Mr. Carter took them out, I think.

Ms. Jackson Lee, you are recognized for five minutes.

Ms. JACKSON LEE. Mr. Chair, thank you for this outstanding hearing, long overdue, and clearly a needed refresher course for so many about the crisis of living in America with a disability.

This is a serious issue, so I will step aside because I cannot be restrained to say go Astros. Let me move to the seriousness of this issue and the importance of seeing what legislative response we need to give.

Let me quickly read into the record from the Centers for Disease Control: Three in ten American Indians have a disability. One in four African Americans have a disability, one in five Whites, one in six native Hawaiian Pacific Islander, one in six Hispanic, and one in ten Asian.

The disabled community is with us, and they deserve an ultimate quality of life that we as part of the democratic republic must ensure they get. I will ultimately introduce into the record the inequities that are faced, particularly by those racial and ethnic disparities in special education, an article from Child Trends, that indicates the need to address those inequities as relates to dealing with children with disabilities and discipline, if you will, the challenges that come about through placement and discipline of children with disabilities.

Also, will discuss and enter into the record the article entitled, "Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing," dated April 21, 2021; and then an article that has already been submitted I will speak from is a July 5, 2021, that says it is harder for us to vote in Texas with people with disabilities.

Ask unanimous consent, Mr. Chair, as I go forward.

Mr. COHEN. Without objection.

[The information follows:]

MS. JACKSON LEE FOR THE RECORD



Black students and students with disabilities remain more likely to receive out-of-school suspensions, despite overall declines

Authors: Kristen Harper, Renee Ryberg, Deborah Temkin

Publication Date: April 29, 2019

Topic: Education

This brief reflects data and analysis of school discipline disparities that were current as of school year 2015-2016. For the most recent analysis, with school year 2017-2018 data, see our [updated brief published in August 2021](#).

Over the last decade, education officials across the country have worked to reduce the use of suspension, expulsion, and other disciplinary approaches that remove students from schools. New legislation and codes of student conduct have spread in the wake of high-profile studies linking such practices to harmful student outcomes, including school dropout and contact with the juvenile justice system.[1] Meanwhile, federal data has raised public awareness of wide disparities by race and disability in the administration of discipline.[2]

Some states have enacted legislation that would increase public transparency regarding the use of discipline (e.g., Arkansas), limit suspensions and expulsions for young children (e.g., Maryland, New Jersey), and limit suspensions and expulsions for nonviolent behavior (e.g., Tennessee).[3] Other states have enacted legislation that directs education officials to review discipline data for subgroup disparities and address inequity (e.g., Rhode Island).[4] Further, the nation's most prominent K-12 statute, the Every Student Succeeds Act, requires states and school districts to develop strategies to reduce the use of harmful discipline practices. [5] These efforts emerged amid widening consensus between policymakers, educators, and researchers that suspension and expulsion should be replaced whenever possible with evidence-based practices shown to address the underlying causes of student misbehavior.[6]

Child Trends reviewed trends in school-level discipline data from the Civil Rights Data Collection (CRDC) to better understand how discipline practice has shifted amid rising awareness of the detrimental effects of suspensions. The release of the school year (SY) 2015-16 CRDC in 2018 marked the first occasion that school-level reports of out-of-school suspension were available from every public school in the nation, for three points in time: SY 2011-12, SY 2013-14, and SY 2015-16. Using this data, Child Trends researchers answered three questions:

- Are schools reducing their use of out-of-school suspension?
- Are schools reducing disparities by race and disability in the use of out-of-school suspension?

- Are schools achieving reductions in out-of-school suspension by increasing their reliance on other punitive discipline practices?

While there are many school responses to student behavior that may pose harm to children—such as seclusion, restraint, school-based arrest, and expulsion—we chose to focus on out-of-school suspension due to its widespread use and clear interruption of academic instruction. In SY 2015–16, 2.7 million public school children experienced an out-of-school suspension.^[7] More than one third of children experience suspension during their K–12 public school careers.^[8]

K–12 schools have achieved clear, but unsteady, progress in decreasing out-of-school suspension.

Because discipline practice is strongly shaped by school-level decisions, our analysis tracked the average percentage of children suspended at each individual public school over time. In SY 2011–12, schools suspended an average of 5.6 percent of their enrolled students. Four years later, schools suspended 4.7 percent of students—a 17 percent decrease in out-of-school suspension. The decrease was even larger among secondary schools, where there was a 21 percent drop in out-of-school suspension.

In most, but not all, states, schools reported reductions in the percentage of students suspended: Eight states saw increases over the four-year stretch. States in the southeast have higher-than-average rates of out-of-school suspension, while states in the northwest and northeast tend to have rates below the national average. These patterns are consistent over time, despite reductions in average suspension rates.

Schools are reporting success in reducing reliance on out-of-school suspension for multiple student subgroups.

We repeated our school-level analysis to determine whether reductions in suspension were achieved across subgroups. We examined the prevalence of suspension for five groups of students: white students, black students, Hispanic students, students with disabilities, and students without disabilities.^[9]

All five subgroups experienced fewer suspensions in SY 2015–16 than in SY 2011–12, both in public K–12 schools generally and in public secondary schools. Hispanic students, in particular, saw drops in their rates of suspension: Among K–12 schools, Hispanic students were suspended at rates moderately higher than white students in SY 2011–12 (5.0 percent compared to 4.7 percent). Four years later, after schools reduced suspensions for Hispanic students by nearly one third, white students (3.8 percent) had a slightly higher rate of suspension than Hispanic students (3.5 percent).

Even as black students and children served by the Individuals with Disabilities Education Act (IDEA) experience fewer suspensions than in the past, the average school continues to suspend both groups at rates far higher than their peers. As of SY 2015–16, schools suspended black students (8 percent) at rates more than twice as high as white (3.8 percent) and Hispanic students (3.5 percent). Further, schools suspended children with disabilities (8.6 percent) at rates more than twice as high as children without disabilities (4.1 percent). Also in the same year, the average public secondary school administered out-of-school suspension to 12.8 percent of black students and 12.8 percent of students with disabilities.

While a small percentage of schools have succeeded in closing disparities by race and ethnicity, disparities by disability status remain unchanged.

While the previous analysis shows clear race and disability disparities in suspension across schools, we also looked for changes in the number of schools with such disparities *within* their school.[10] For this analysis, we made three comparisons: suspensions for black and white students; suspensions for Hispanic and white students; and suspensions for students with disabilities and students without disabilities.[11] We found wide state-level variations in the percentage of schools with statistically significant subgroup disparities, which are illustrated in the map below.

In SY 2011–12, one quarter of K–12 schools serving at least one black and one white student had disproportionately higher rates of suspension for black students. The proportion of such schools decreased by 8 percent four years later. During that same period, the percentage of schools suspending Hispanic students more frequently than white students decreased from 8.8 percent to 6.2 percent—a nearly 30 percent drop. A larger proportion of secondary schools have disparities, but these follow the same trends as K–12 schools overall.

While the proportion of schools with racial and ethnic disparities is decreasing—faster for Hispanic students, slower for black students—it is unclear that this trend applies to schools with disparities based on disability. This is particularly troubling: As of SY 2011–12, more than 37 percent of K–12 schools that serve students with disabilities—and more than 48 percent of secondary schools that serve students with disabilities—suspended children with disabilities at higher rates than their peers. By SY 2015–16, the percentage of secondary schools with disability disparities decreased by only 2 percent, while the percent of K–12 schools with disability disparities *increased* by 2 percent.

This analytical approach is useful in examining both practices and shifts in practices *within* schools serving multiple race and ethnic subgroups. However, this analysis does not capture disparities that may result from differences in discipline practice *between* schools. Studies suggests that black students, for example, experience higher rates of discipline in schools serving larger proportions of black students.[12] Further, studies have shown that variations in discipline practice between schools can be substantial, even when schools are within the same school district.[13]

There is room for optimism that suspension has not been replaced by other punitive practices, but education officials should be wary of the use of school-based arrests as suspensions decrease.

As research has called into question the effectiveness of suspension in reducing student misbehavior or improving student safety, initiatives to reduce suspension generally encourage greater use of evidence-based practices that address student social, emotional, and behavioral needs.[14] This goal is not met if schools simply trade one punitive practice for others. We analyzed the CRDC to examine whether schools reporting reductions in suspension may be increasing their reliance on other routine, but punitive, discipline practices to manage student behavior.

Our analyses compared rates of eight discipline practices between public K–12 schools that decreased suspension (from SY 2011–12 to SY 2015–16) and schools that increased suspension during the same time period. Specifically, we examined both groups of schools for increases in in-school suspension, expulsion, corporal punishment, arrests, referrals to law enforcement, mechanical restraint, physical restraint, and seclusion. For both groups of schools, there will typically be a subset that increased their use of one or more of these punitive practices, based on random variation. Unless suspensions were traded for other punitive measures, schools with decreasing suspensions should generally have an equal or smaller portion of schools with increases in other punitive discipline practices, relative to schools with rising suspension rates.

Using this method, we found little evidence at the national level that schools reducing suspensions were trading between discipline types. We identified only one type of discipline—school-based arrest—for which the likelihood of an increase was marginally higher in schools that decreased suspension than in schools that increased it. This pattern was repeated when we examined trends in the use of discipline by subgroup. Schools that decreased suspension rates for black students, Hispanic students, and students with disabilities were slightly more likely to increase school-based arrests than schools that had increased suspension rates during the same timeframe.

Conclusion

This analysis provides a critical update on the status of school discipline practice that should inform policymakers and educators as they work to create safe, productive, and fair learning environments. Several initiatives in recent years have addressed school discipline: This brief helps illustrate whether discipline practice is moving in the right direction without identifying the specific causes of recent shifts in out-of-school suspension.

School reliance on suspension as a mechanism for managing student behavior is decreasing but continues to be widespread. Schools reported lower rates of out-of-school suspension in SY 2015–16 than four years before, and disparities in discipline by race and ethnicity seem to be slowly narrowing. There is both reason for optimism and a need for continued vigilance. While gaps are large—schools still suspend black students and children with disabilities at rates twice as high as their peers—a smaller overall proportion of black students and children with disabilities are receiving an out-of-school suspension.

While this is good news, state and district education officials should be wary. This analysis uncovered little evidence of discipline tradeoffs at the national level, but did not include a comprehensive exploration of such trends at the local level. Initial analyses of the 10 largest school districts nationwide found that efforts to exchange suspensions for other forms of discipline may vary so widely from district to district that these patterns wash out in national analyses. Schools could also be engaging in informal discipline practices such as calling parents to pick students up, instructing parents to keep children home, and, for children with disabilities, shortening school days. The CRDC does not ask about such practices and schools generally do not record them as disciplinary actions. The possibility that school districts may be reducing suspensions by increasing punitive practices or introducing new exclusionary approaches warrants further study.

Educators and policymakers should celebrate their progress in reducing reliance on suspension while recognizing that there is still room for improvement. As schools continue their work to replace exclusionary practices with supportive approaches, education officials should examine trends in all authorized discipline practices and clarify the discipline practices allowable under state policy and local codes of conduct. Regular audits of school discipline records would also help to ensure the validity of discipline data. Moving forward, schools and educators that successfully transition to practices that address student needs—and that keep kids in schools—should be recognized for their efforts. Identifying such schools requires careful maintenance of and close attention to school discipline data.

Acknowledgements: The authors would like to thank Gabriel Pina, Samantha Anderson, and Emily Fulks for their contributions to the data analysis.

For details regarding the authors' methodology, please [click here](#).

- [1] Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P., & Booth, E. A. (2011). *Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement*. New York, NY: Council of State Governments Justice Center and The Public Policy Research Institute, Texas A & M University. Retrieved from https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf
- [2] U.S. Department of Education Office for Civil Rights. (2014). *Civil Rights Data Collection: Data snapshot: School Discipline*. Washington, DC: U.S. Department of Education Office for Civil Rights. Retrieved from <http://blogs.edweek.org/edweek/rulesforengagement/CRDC%20School%20Discipline%20Snapshot.pdf>
- [3] Rafa, A. (2018). *Policy snapshot: Suspension and expulsion*. Denver, CO: Education Commission of the States. Retrieved from: https://www.ecs.org/wp-content/uploads/Suspension_and_Expulsion.pdf
- [4] Rafa, A. (2018). *Policy snapshot: Suspension and expulsion*. Denver, CO: Education Commission of the States. Retrieved from: https://www.ecs.org/wp-content/uploads/Suspension_and_Expulsion.pdf
- [5] 20 U.S.C §§ 6311(g)(1)(C)(ii) and 6312(b)(11)
- [6] Morgan, E., Salomon, N., Plotkin, M., & Cohen, R. (2014). *The school discipline consensus report: Strategies from the field to keep students engaged in school and out of the juvenile justice system*. New York: The Council of State Governments Justice Center. Retrieved from http://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf
- [7] U.S. Department of Education Office for Civil Rights. (2018). *2015-2016 Civil Rights Data Collection: School climate and safety*. Washington, DC: U.S. Department of Education Office for Civil Rights. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>
- [8] Shollenberger, T. L. (2015). Racial disparities in school suspension and subsequent outcomes: Evidence from the National Longitudinal Study of Youth, In D. J. Losen (Ed.), *Closing the school discipline gap: Equitable remedies for excessive exclusion* (pp. 31-43), New York, NY: Teachers College Press.
- [9] For the purpose of this brief, "students with disabilities" refers to students served under the Individuals with Disabilities Education Act and does not include students served under Section 504 of the Rehabilitation Act of 1973.
- [10] As the CRDC is based on actual student records from every public school in the nation—that is, the CRDC contains population data rather than sample data—it is generally unnecessary to use statistical significance tests to identify a difference between student subgroups when looking at overall trends. However, when looking at differences at the school level, it is important to consider that each school is a sample from the broader population, creating more potential for variation in the underlying propensity for discipline use in a given school. Thus, for this analysis, we used statistical testing to differentiate schools with clear subgroup disparities from schools which had disparities based on random variation. To make this distinction, we subtracted discipline rates between groups within schools (e.g., the rate of out-of-school suspension for black students minus the rate of out-of-school suspension for white students). Z-tests of proportions were then used to determine whether these differences had less than a five percent likelihood of being due to chance (i.e., we can be 95 percent confident that observed disparities were real disparities). This does mean, in some cases, real disparities were not identified if populations were especially small (i.e., type II error).

[11] For each comparison, we restricted our analyses to those schools serving at least one child in each of the two subgroups examined. The sample of schools varied for each analysis such that schools that serve only white and black—but not Hispanic—students were included in the first analysis but not in the second.

[12] Ramey, D. (2015). The social structure of criminalized and medicalized school discipline. *Sociology of Education*, 88(3), 181-201. Retrieved from <http://journals.sagepub.com/doi/abs/10.1177/0038040715587114>

[13] Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P., & Booth, E. A. (2011). Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement. New York, NY: Council of State Governments Justice Center and The Public Policy Research Institute, Texas A & M University. Retrieved from https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

[14] Sartain, L., Allensworth, E., & Porter, S. (2015). Suspending Chicago's students: Differences in discipline practices across schools. Chicago, IL: The University of Chicago Consortium on Chicago School Research. Retrieved from <https://consortium.uchicago.edu/sites/default/files/publications/Suspending%20Chicagos%20Students.pdf>

Latest Research



By Using Vague Language to Define Misconduct, Many States Put Children at Risk for Unfair Disciplinary Action

Publications | Education | Mar 10, 2022



Comprehensive School Employee Wellness Initiatives Can Lower Financial Costs to Schools

Blog | Education | Feb 28, 2022



Meet Our Researchers: Chrishana M. Lloyd

Blog | Education | Feb 22, 2022

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing



Like Republicans across the country, Texas lawmakers are pushing to enact sweeping changes to state voting laws, including new restrictions on how and when voters can cast ballots.

At the forefront of that campaign is [Senate Bill 7](#), a legislative priority for Lt. Gov. [Dan Patrick](#) that has already passed the Senate and awaits action in the House. The wide-ranging legislation touches almost the entire voting process, taking particular aim at narrowing the latitude local officials have to control voting. It clamps down on early voting rules and hours, restricts how voters can receive applications to vote by mail and regulates the distribution of polling places in diverse, urban counties.

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

The original bill has already changed in significant ways — revised to eliminate a provision that would have required some voters to provide proof of a disability to vote by mail. But the 38-page bill would still institute an expansive set of changes and new regulations governing Texas elections.

Below is our analysis of the most significant portions of the legislation, with some added context to help Texans understand some of its key provisions.

Limiting how local officials can expand voting options

April 19, 2021 at 1:33 p.m.

In drafting SB 7, Senate Republicans made clear some of its proposed restrictions are meant as a response to voting initiatives implemented by Harris County for the 2020 election, but the proposed new restrictions would apply across the state.

Regulating voting hours

Currently, counties with a population of 100,000 or more must provide at least 12 hours of early voting each weekday of the last week of early voting. In Texas, the early voting period usually runs for the two weeks ahead of Election Day. Hours for that last week of early voting are usually set for 7 a.m. to 7 p.m.

SB 7 would lower that population threshold to 30,000 so more counties would be required to offer more early voting hours between the newly established window of 6 a.m. to 9 p.m. But the legislation also sets a 12-hour cap on how long early voting can run during that week, so polling places that stay open until 9 p.m. would have to open up later in the morning.

This would directly preempt the expanded early voting hours offered in large, diverse counties last year. Harris County pioneered 24 hours

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

of uninterrupted voting at a few polling places for one day. (Local election officials have indicated they hoped to keep the initiative for future elections.) Harris and other large counties like Bexar County, home to San Antonio, also kept their polling places open until 10 p.m. — three hours past the usual 7 p.m. closing time — for at least a few days last year.

Banning drive-thru voting

SB 7 also attempts to outlaw the sort of drive-thru voting offered by Harris County last year by requiring early voting to occur inside a building, as opposed to a “stationary structure,” as specified in current law. It also prohibits polling places from being located in a “tent or other temporary movable structure or a parking garage, parking lot, or similar facility designed primarily for motor vehicles.”

Harris County first tested drive-thru voting in a summer 2020 primary runoff election with little controversy, but its use of 10 drive-thru polling places for the November general election came under Republican scrutiny.

The county's drive-thru polling places were mostly set up under large tents. Voters remained in their cars and showed a photo ID and verified their registration before casting ballots on portable voting machines. At the Toyota Center — home of the Houston Rockets — drive-thru voting was located in a garage.

Republicans have argued the arrangements amounted to an illegal expansion of what is known as curbside voting, an option long available in Texas to accommodate people who are unable to enter a polling place without risking their health or without some form of personal assistance. Under this method of voting, posted signs at polling sites typically notify voters to ring a bell, call a number or honk to request curbside assistance.

The county argued its drive-thru locations were separate polling places, distinct from attached curbside spots, and therefore were

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

available to all voters. Keith Ingram, the chief of elections for the state, had said in an unrelated court hearing that drive-thru voting is "a creative approach that is probably OK legally."

Drive-thru voting proved popular in Harris County, with 1 in 10 in-person early voters casting their ballots at drive-thru locations. A conservative activist and three Republican candidates sued over the process, but were unsuccessful in convincing a federal judge to throw out those nearly 127,000 votes. The litigation at the time did lead to the voluntary shutdown of nine of the 10 drive-thru locations for Election Day, for which voting is already required to occur inside a building.

Regulating the distribution of polling places in urban areas

April 19, 2021 at 1:41 p.m.

SB 7 would target the distribution of polling places in the state's biggest counties — most of which are under Democratic control and home to a large share of voters of color.

In recent years, county election officials have worked to ditch precinct-based voting on Election Day and instead open up every polling place to all voters regardless of where they live in a county. That model, known as countywide voting, has existed in Texas for many years but [has been taken up most recently by both blue urban metros and Republican-leaning suburbs](#). The 2020 election marked the first major election during which the state's five largest counties — Harris, Dallas, Tarrant, Bexar and Travis — all operated under the countywide model.

Under SB 7, counties with a population of one million or more that use countywide voting would be subjected to a specific formula for distributing polling places based on the number of registered voters in each state House district within the county. That formula would capture those five, mostly Democratic counties, while the more than

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

60 other Texas counties that use countywide voting — many of them rural and under Republican control — would remain under the state's more relaxed rules for polling place distribution.

A formula based on voter registration would likely reduce the number of polling places in House districts represented by Democrats — the vast majority of them people of color serving districts that typically have a larger share of voters of color compared to Republican-held districts — where registration numbers are generally much lower than in districts represented by Republicans. In selecting their polling places, counties generally consider a variety of factors beyond voter registration, including proximity to public transportation, accessibility for voters with disabilities, past voter turnout and sufficient space to set up voting machines. In urban areas, election officials also look to sites along thoroughfares that see high traffic to make polling places more convenient.

The formula would also apply to the distribution of voting equipment and poll workers, which local officials and advocates have said likely takes away the ability to set up extra-large polling places in stadiums and arenas like those used in November. But the more standard formula could also complicate individual set ups at typically used polling places, including popular polling places located in large venues, where counties generally tailor the setup, including voting machines and check-in stations, based on both space at each location and historical demand.

Requiring paper trails for voting

April 19, 2021 at 1:53 p.m.

SB 7 would move all Texas counties toward voting machines that offer a paper trail by producing an auditable paper record of ballots cast. That sort of equipment is already in use in many counties, including some of the state's biggest, that have modernized outdated, paperless voting machines in recent years.

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

The bill sets a 2026 deadline for all counties to make the switch. The move to require machines with a paper trail has found rare bipartisan support at the Legislature though lawmakers have previously not agreed on how to pay for it. SB 7 sets up a formula for some counties to be reimbursed if they must retrofit recently purchased equipment without a paper trail to comply with the requirement.

Setting new rules for voting by mail

April 19, 2021 at 1:54 p.m.

SB 7 would create new restrictions on the distribution of applications to request a mail-in ballot and alter some of the rules used to verify returned ballots. Texas generally has strict rules outlining who can receive a paper ballot that can be filled out at home and returned in the mail or dropped off in person on Election Day. The option is limited to voters who are 65 and older, will be out of the county during the election, are confined in jail but otherwise still eligible or cite a disability or illness that keeps them from voting in person without needing help or without the risk of injuring their health. The proposals follow a pandemic-era election that saw a significant increase in voting by mail, particularly among Democrats.

Restricting the distribution of vote-by-mail applications

SB 7 would prohibit local election officials from distributing applications for mail-in ballots to voters who did not request them. It also prohibits the use of public funds "to facilitate" the unsolicited distribution of applications by third-parties, which would keep counties from also providing applications to local groups helping to get out the vote. Political parties would still be able to send out unsolicited applications on their own dime.

The proposal is a direct response to Harris County's attempt to proactively send applications to all 2.4 million registered voters last year with specific instructions on how to determine if they were eligible. The Texas Supreme Court ultimately blocked that effort, but

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

other Texas counties sent applications to voters 65 and older without much scrutiny. Though those voters automatically qualify to vote by mail, mailing applications to them in the future would also be blocked.

Local election officials have also raised concerns about a separate provision in the bill that prohibits them from attempting to "solicit a person to complete an application," which they fear would keep them from offering applications to voters even if they qualify, or even posting about the availability of the vote-by-mail option on social media.

Verifying signatures on mail-in ballots

The legislation also changes part of the process for reviewing mail-in ballots by expanding the set of signatures that can be used to decide whether to throw out returned ballots.

Before they are counted, a committee of local election workers examines returned ballots to determine that a voter's signature on the flap of a ballot envelope matches the endorsement that voter included when applying for the ballot. The committee can also compare it to signatures on file with the county clerk or voter registrar that were made within the last six years. If a mismatch is determined, the ballot is tossed.

Under SB 7, the committee could compare a voter's signature to "any known signature on file." This has raised concerns among voting rights advocates and advocates for people with disabilities who worry that it gives untrained workers more room to reject ballots because a person's signature can change over time.

The state election code does not establish any standards for review for signatures, and Texas offers voters no recourse if their ballot is rejected based on a perceived mismatch.

Creating an online tracker

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

The bill would also set up an online tracker so voters can keep tabs on the status of an application to vote by mail and the processing of their ballot when it is cast. The state is already required to provide ballot tracking for military and overseas voters, and representatives for the Texas secretary of state's office previously told lawmakers they already planned to establish one for local voters.

Texas is not among the many states that provide voters statewide with the ability to track their ballots, though a few counties have set up their own tracking systems.

Regulating donations to counties

April 19, 2021 at 1:57 p.m.

In 2020, the pandemic forced election administrators to reimagine the voting process from socially distanced waiting lines to the sanitization of polling places to new additions, like face shields, to their election checklists. The election also required an increased workforce to keep polls running throughout an extended early voting period.

To help cover the costs of those measures, counties across the state received private funds from organizations distributing donations by Mark Zuckerberg and his wife, Priscilla Chan, and actor and former California governor Arnold Schwarzenegger.

SB 7 would ban direct donations to counties of more than \$1,000 unless they are unanimously approved by the governor, the lieutenant governor and the speaker of the House.

Setting new rules for removing people from the voter rolls

April 20, 2021 at 12:22 p.m.

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

The legislation would set up a new mechanism for the Texas Secretary of State's Office to remove people from voter rolls based on questions about their citizenship status.

Currently, local voter registrars periodically receive lists of people who are excused or disqualified from jury duty because they are not U.S. citizens. Registrars are charged with sending notices to those individuals requesting proof of citizenship to keep their registrations. SB 7 would broaden that requirement so notices also go to voters "otherwise determined to be ineligible to vote."

That language has raised concerns among voting rights advocates because of its vagueness about how that ineligibility would be determined and the state's previous missteps when it comes to scouring the voter rolls. In 2019, the secretary of state's office [jeopardized the voting rights of tens of thousands of naturalized citizens](#) when it flagged them for review as possible noncitizens based on a flawed database and delivered their names to the Texas Attorney General's Office for investigation. Despite walking back some of its claims after errors in the data were revealed, [Texas only dropped its botched effort months later after being sued](#) by more than a dozen naturalized citizens and voting rights groups.

If a local registrar is found to be out of compliance in sending out those notices, SB 7 also gives the secretary of state the authority to eventually "correct the violation." It also makes registrars liable for a civil penalty of \$100 for each corrected violation.

In 2019, many counties held off on questioning the citizenship of voters flagged by the state. Those that sent out notices [were caught up in the litigation and even blamed by the state](#) for acting too quickly to question voters on their lists, even though local officials followed the state's instructions for reviewing the eligibility of those voters.

Enhancing poll watcher freedom

April 19, 2021 at 1:57 p.m.

chrome-distiller://bc7fe33f-d999-48d4-a1c2-1ad63931dcfb_0edb82d566c25b8f7a381f0dbfd6fc6923ee5f456605ae9025773cc0b77f050/?title=Here's... 9/11

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

The legislation would widely broaden access for partisan poll watchers inside polling places. One of the biggest expansions in the bill would give them power to video record voters receiving assistance in filling out their ballots if the poll watcher "reasonably believes" the help is unlawful. Recording inside a polling place, including by voters, is otherwise not allowed.

That provision has drawn particular concerns about possible intimidation of voters who speak languages other than English, as well as voters with intellectual or developmental disabilities who may require assistance through prompting or questioning that could be misconstrued as coercion. Under law, voters can select anyone to help them through the voting process as long as they're not an employer or a union leader.

The bill also adds language to the Texas Election Code to allow poll watchers "free movement" within a polling place, except for being present at a voting station when a voter is filling out their ballot. It also makes it a criminal offense for an election worker to "distance or obstruct the view of a watcher in a way that makes observation reasonably ineffective."

Currently, poll watchers are entitled to sit or stand "conveniently near" election workers, and it is a criminal offense to prevent them from observing. SB 7 would entitle them to be "near enough to see and hear" the election activity.

Though Republicans have tried to characterize poll watchers as the "eyes and ears of the public," they are not public watchdogs but instead inherently partisan figures who are appointed by candidates and political parties to serve at polling places.

Requiring the recording of vote counting

April 19, 2021 at 1:58 p.m.

8/11/22, 11:41 AM

Here's how Texas elections would change, and become more restrictive, under the bill Texas Republicans are pushing - Reader ...

Though vote tallying is a crucial step in the democratic process, it's, frankly, a boring part of it. But under SB 7, live streams of the counting could be coming to a screen near you.

The bill would require video surveillance of what are known as counties' central counting stations where votes, including mailed ballots, and voting equipment containing vote tallies are delivered and eventually totaled up. The live video would be required for counties with a population of 100,000 or more — aligning the state with requirements already in place in Arizona and initiatives taken up during the last election in places like Philadelphia, Denver and Los Angeles to help build trust in the counting process.

Disclosure: The Texas Secretary of State has been a financial supporter of The Texas Tribune, a nonprofit, nonpartisan news organization that is funded in part by donations from members, foundations and corporate sponsors. Financial supporters play no role in the Tribune's journalism. Find a complete [list of them here](#).

[Sign up for The Brief](#), our daily newsletter that keeps readers up to speed on the most essential Texas news.

2021 Texas Tribune

Ms. JACKSON LEE. Let me thank the Witnesses: Patricia Lee, Regina Kline, Michelle Bishop, and Ms. Harned as well.

Patricia Lee, let me thank you for your story. Let me tell you that SB 7 in Texas, words that I really don't want to say, it is not an election bill. It is a prohibition of an election bill. It would videotape people who were giving assistance to disabled people, allow them to be in the voting area with a camera.

Can you, again, talk about how difficult it is in life at an assisted-living facility where you used to live and how your life changed, and how these living conditions may deny you your constitutional right to vote?

Ms. Lee?

Ms. LEE. Yes, ma'am. I don't know how to answer that really, but I am just going to say I didn't feel very independent whenever I was in the assisted-living facility. It was very depressing. I didn't feel any independence or accomplishment there. Through the help from Disability Advocates in Eastpointe, TCLI, have brought me so much more—have helped me to obtain goals that I didn't think I could obtain, and I see myself in a better place in the future.

Ms. JACKSON LEE. Thank you.

Ms. LEE. Because I—yes, ma'am.

Ms. JACKSON LEE. Thank you so very much.

Was it harder for you to vote too?

Ms. LEE. I don't vote.

Ms. JACKSON LEE. Well, it was harder for you to feel like a human being?

Ms. LEE. Yes, ma'am.

Ms. JACKSON LEE. All right. Thank you so very much.

May I ask Regina Kline and Michelle Bishop, again, a question of how we can further enhance the Americans with Disabilities Act on issues like voting, on issues about introduction—interaction in the retail and manual skills? What do we need to do to refresh or improve the Americans with Disabilities Act?

If the Chair would be kind enough to allow both of you to answer the question. Regina Kline and Michelle Bishop. Thank you.

Ms. Kline?

Ms. KLINE. Yes. Thank you, Congresswoman Lee. I would defer the voting issue to my colleague, Ms. Bishop, who is certainly an expert on that issue.

To your other question, Congresswoman, we need not do anything to the ADA other than enforcement and vigorous enforcement. I am very troubled today by some of the comments made about ADA notification. Ignorance of the law is no excuse. At bottom, courts are very clear about the standards that apply to the ADA.

On this issue regarding employment, it is very clear what the mandate of title II of the ADA and *Olmstead* is, and it is really a matter of supporting State and local governments to comply, supporting the Department of Justice to vigorously enforce the mandate of title II, and providing clear, unequivocal guidance as to how to do it.

So, my answer is pretty plain. There is nothing that needs to be done, other than vigorous enforcement, as it relates to the very

clear and powerful mandate embedded in the ADA and the integration mandate.

Ms. JACKSON LEE. I appreciate that, and we will listen very carefully and engage.

Ms. Bishop, would you follow up, please?

Ms. BISHOP. So, Ms. Kline and I have very different areas of expertise, but we completely agree. There is nothing that we need to do to the ADA. The ADA works. What we need to see is vigorous enforcement by the DOJ, I agree completely. Additional guidance is always helpful. We see new issues arise in the world of voting rights all the time. Ballot drop boxes became one of the rock stars of the 2020 election, but they weren't always designed and placed accessibly, and that is something that guidance could be issued on to help election officials to do that.

In terms of the role of Congress, I would say absolutely funding, funding for elections officials to meet the requirements of the ADA, fundings for our organizations, like our national network, to provide them consultation to do that, that is our role under the Help America Vote Act, but also restoring Federal preclearance that would stop in its tracks some of the legislation that you mentioned that really does threaten access to the vote for people with disabilities.

Ms. JACKSON LEE. Voting, would you answer that?

Ms. BISHOP. Yes. I do think it is important to amend and pass the Freedom to Vote Act that would establish protections for voters with disabilities, as well as other voters, and implement pro-voter reforms nationwide. I think it is important to pass the John Lewis Voting Rights Advancement Act to fully restore Federal preclearance so that we can stop some discriminatory practices we are seeing arise in the States.

Mr. COHEN. Thank you very much.

Ms. JACKSON LEE. Thank you.

Mr. COHEN. Thank you, Ms. Lee. Good luck with the Astros.

That concludes our hearing. Everybody has had their chance to ask their questions. We appreciate the Witnesses.

Without objection, all Members will have five legislative days to submit additional written requests—questions for the Witnesses or additional materials to the record.

With that, the hearing is adjourned.

[Whereupon, at 11:37 a.m., the Subcommittee was adjourned.]

APPENDIX



Oct. 27, 2021

Hon. Steve Cohen
Chair
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties
House Judiciary Committee
2104 Rayburn HOB
Washington DC 20515

Hon. Mike Johnson
Ranking Member
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties
House Judiciary Committee
568 Cannon HOB
Washington DC 20515

Re: Comments for the Record of October 20, 2021 Hearing on Oversight of the
Americans with Disabilities Act of 1990: The Current State of Integration of People
With Disabilities

Dear Chair Cohen and Ranking Member Johnson:

We write as co-chairs of the Consortium for Citizens with Disabilities (CCD) Rights and Employment Task Forces to submit these comments for the record of the above-captioned hearing on the Americans with Disabilities Act. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We applaud you for conducting a hearing concerning implementation of the Americans with Disabilities Act (ADA) and its integration mandate. As you and others observed at the hearing, the full promise of the ADA remains unrealized for far too many people with disabilities. Implementation and enforcement of the integration mandate and the Supreme Court's *Olmstead* decision are critically important to the lives of disabled people, and yet it has been quite a few years since Congress focused a hearing on this issue. The testimony of Ms. Lee about her experiences in an adult care home and how dramatically her life improved when she was able to transition to her own home in the community was a powerful testament to the need for greater enforcement of the integration mandate. Ms. Lee, like thousands of others, got the opportunity

to transition to her own home as the result of an *Olmstead* settlement agreement between North Carolina and the Justice Department.

We urge Congress to ensure that the Department has sufficient resources to resume the *Olmstead* enforcement initiative that made such a significant difference during the Obama Administration. This is even more urgent in light of the pandemic's devastating death toll on people with disabilities in congregate settings. It is urgent that this enforcement address segregated living settings as well as segregated day and employment settings, segregated education settings, and criminal justice settings—and that the Department reinstate and strengthen its enforcement guidance on *Olmstead*'s application to employment services, rescinded during the prior Administration.

In addition, we highlight that Congress should swiftly enact the Build Back Better Act, which would provide a much-needed investment in home and community-based services that would strengthen state efforts to comply with *Olmstead* and help to build back community service systems that were weakened by the pandemic.

The testimony presented by Regina Kline and Michelle Bishop also highlighted urgent issues. Ms. Kline testified about the “disability unemployment crisis:” people with disabilities, who comprise nearly 1 in 5 Americans, are roughly half of those living in long-term poverty and nearly two-thirds of working-age people with disabilities are not employed. Yet at a time when labor is in dramatically short supply, this unemployment crisis “has been deepened by public spending—namely, the significant overreliance of state and local governments on service systems that structure employment service delivery for people with disabilities in separate, segregated settings—apart from competitive mainstream and typical employment—in violation of the mandates of federal civil rights law.”

Similarly, Ms. Bishop presented stark concerns about the widespread barriers to voting by people with disabilities, even as the number of voters with disabilities continues to grow. She also described the ways in which state laws placing new restrictions on voting make it more difficult for people with disabilities to exercise their right to vote, highlighting the need to pass the John Lewis Voting Rights Advancement Act. We support Ms. Bishop's recommendation to ensure that the current version of the Freedom to Vote Act be modified before final passage to allow voters with disabilities an exemption from blanket paper ballot mandates that would otherwise disenfranchise many.

In response to Mr. Cohen's question concerning whether people with significant disabilities in sheltered workshops would otherwise be unable to work, we note that there is overwhelming evidence that they can work. Decades of evidence-based approaches to supported employment services have revealed that people with even the most significant disabilities can work in a wide

range of jobs with the right services and supports, and that the success of an individual's long-term employment depends on an appropriate match between an individual's identified talents, preferences, and skills, and the right job, along with the availability of supports (like career development planning, job coaching, benefits counseling). Studies have consistently documented that the majority of people in sheltered workshops would prefer to work in other employment settings if given the opportunity to do so. We refer you to the myriad of sources identified in the testimony of Ms. Kline and many others at the U.S. Civil Rights Commission's Nov. 15, 2019 [hearing](#), *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities*, including the following from Ms. Kline's testimony to the Commission:

Decades of research in the field of supported employment establish that competitive integrated employment is realistic and achievable for individuals with even the most significant disabilities with the right services and supports in place. The past three decades of research in the field of disability employment tells us that with the right services and supports even individuals with the most significant disabilities can work in a range of competitive integrated employment. In fact, supported employment services (like job development, job coaching, and individualized training) are easier and far more effective at placing a person in a job than providing training in a segregated 14(c) setting in the hopes that the person will have learned transferable skills for competitive employment.¹ Individuals learn skills in sheltered workshops that largely cannot be used in the competitive mainstream economy, and crucially, given the lack of performance expectation, individualized instruction, and training, people with disabilities often acquire habits in sheltered workshops that are not useful in competitive integrated employment.

Whereas supported employment services allow individuals with disabilities not only to work successfully but to advance in typical employment settings, as supports allow individuals to find, obtain, stabilize, and succeed in competitive integrated employment. Supported employment services provided in competitive integrated employment are proven to be more cost-effective in the long run than sheltered workshop services.² These cost efficiencies are created as workers' individual supports begin to fade over time as they become accustomed to their jobs, begin to expand social networks, and strengthen skills.

With respect to the testimony of Ms. Harned concerning Title III of the ADA, we would simply note that Ms. Harned's statements that her members would comply with web accessibility

¹ National Council on Disability Report, *National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future*, at 34.

² Robert Evert Cimeria, "The cost-trends of supported employment versus sheltered employment," *Journal of Vocational Rehabilitation*, (2008): 15–20, pages 18, 19.

requirements if only they had more clarity about what standards apply (Ms. Harned did not mention that the courts have overwhelmingly been clear about the standards that apply) rings hollow in light of her responses where the Justice Department has set forth a set of clear standards for accessibility of the built environment: Ms. Harned complained that those standards are too voluminous and too complex. Speaking on a [panel](#) in 2017, Ms. Harned acknowledged that accessibility was simply not on her members' "to do lists." Perhaps that is the real problem.

Thank you for the opportunity to provide comments.

Sincerely,

Jennifer Mathis
Bazelon Center for Mental Health Law

Allison Nichol
Epilepsy Foundation

Stephen Lieberman
United Spinal Association

Samantha Crane
Autistic Self Advocacy Network

Co-chairs, CCD Rights Task Force

Julie Christensen
Association of Persons Supporting
Employment First (APSE)

Susan Prokop
Paralyzed Veterans of America

Philip Pauli
RespectAbility

Co-chairs, CCD Employment Task Force

