

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LEAGUE OF WOMEN VOTERS OF OHIO, *et al.*,

Plaintiffs,

v.

FRANK LAROSE, *et al.*,

Defendants.

CASE NO. 2:20-CV-1638

JUDGE MICHAEL H. WATSON

**BRIEF OF AMICUS CURIAE DISABILITY RIGHTS OHIO IN SUPPORT OF
PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

I. STATEMENT OF INTEREST OF AMICUS CURIAE

Disability Rights Ohio ("DRO") is a not-for-profit organization designated by the Ohio Governor as the protection and advocacy system under federal law for people with disabilities in Ohio. *See* 42 U.S.C. § 15001, *et seq.*; Ohio Rev. Code. § 5123.60. The mission of DRO is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. As the protection and advocacy system for Ohio, DRO investigates abuse, neglect, and rights violations affecting people with disabilities; pursues administrative, legal, and policy remedies to address identified violations; and advocates for individuals in many areas of disability rights, including voting, housing, employment, government benefits and services, and special education.

Voting rights for people with disabilities is an important aspect of DRO's work, and is reflected in the organization's priorities. This work includes education and outreach to voters with disabilities and professionals in the disability field, direct and systemic voter advocacy, and operating a voter hotline every Election Day. DRO also engages in voting-related litigation.

II. INTRODUCTION

People with disabilities face unique and frightening challenges during the COVID-19 pandemic. COVID-19 could be a death sentence for many Ohioans with disabilities, as they face not only a higher risk of contracting the virus, but also a higher risk for serious, or even fatal, complications resulting from the virus. The public health crisis has caused upheaval in the lives of many people with disabilities who were already vulnerable, and sadly is likely to worsen in the weeks ahead.

Due to the COVID-19 pandemic, many people with disabilities have not yet voted in the 2020 primary election but still want to cast ballots. Ohio House Bill 197 (“H.B. 197”), as passed by the General Assembly and signed into law by Governor DeWine, will result in substantial obstacles for these voters and will likely disenfranchise large numbers of them. It forces many of them to choose between exercising their constitutional right to vote and their health and even their lives. The state of Ohio has legal obligations under the Americans with Disabilities Act to ensure equal access to the electoral process for people with disabilities. The emergency relief sought by the Plaintiffs in this case will provide necessary and expanded opportunities for people with disabilities to exercise their fundamental right to vote and to cast a ballot in the 2020 primary election.

III. STATEMENT OF FACTS

Ohio’s 2020 primary election was to be held on March 17, 2020. Because of the COVID-19 pandemic, the Director of the Ohio Department of Health ordered polling locations closed late in the evening on March 16, 2020. On March 27, 2020, Ohio created, through the enactment of H.B. 197, abbreviated timelines to comply with burdensome, time-consuming, confusing requirements to apply for, receive, and return absentee ballots, and also allowed limited options for in-person voting on April 28, 2020. This contradicted the recommendations

of the Ohio Secretary of State's office, which had advocated for in-person voting to occur on June 2, 2020 (instead of "unattainable timelines" which would be logistically impossible) and mailing every registered voter a postage prepaid absentee ballot application. Doc. 4 at 7-8. The Plaintiffs filed their Complaint and an Emergency Motion for a Temporary Restraining Order in this Court on March 31, 2020.

IV. ARGUMENT

A. The Americans with Disabilities Act Requires States to Conduct Elections in a Manner That Allows Equal Access to People with Disabilities.

The Americans with Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities in all areas of public life. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). Title II of the ADA, 42 U.S.C. § 12141 *et seq.*, not only prohibits discrimination based on an individual's disability by states and local governments; it also seeks to ensure full participation of people with disabilities in society by removing barriers to access. 28 C.F.R. § 35.130(b)(7).

Participation in the political process is crucial to full participation in society and a central value of the disability rights movement. To ensure that individuals with disabilities can be full participants in the political process, Title II of the ADA requires that people with disabilities have a full and equal opportunity to vote. These protections extend to every aspect of voting, from registration to casting a ballot, and during all stages of voting, including absentee ballots, early-voting opportunities, and in-person voting on Election Day.¹ *See also* Help America Vote Act of 2002 Pub.L. 107–252. Title III, § 302, 116 Stat. 1706 (codified at 42 U.S.C. § 15301 *et*

¹ U.S. Department of Justice, *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities* (Oct. 10, 2014) https://www.ada.gov/ada_voting/ada_voting_ta.htm (last accessed Apr. 2, 2020).

seq.) (requiring jurisdictions responsible for conducting federal elections to provide at least one accessible voting system for persons with disabilities at each polling place in federal elections).²

If a state's laws, rules, policies, and practices deny voters with disabilities opportunities to cast ballots that are available to non-disabled voters, this has the discriminatory effect of excluding them from participation in elections on the basis of their disability. *See Mooneyhan v. Husted*, No. 3:12-CV-379, 2012 WL 5834232, at *5 (S.D. Ohio Nov. 16, 2012) (holding that the Ohio Secretary of State and a county board of elections had to modify its policies, practices, and procedures under the ADA to enable a hospitalized voter with psychiatric disabilities to cast her ballot on Election Day).

B. H.B. 197 Will Result in Substantial Obstacles for People with Disabilities Who Have Not Yet Voted in the 2020 Primary Election and Will Likely Disenfranchise Large Numbers of Them.

H.B. 197 establishes a burdensome, time-consuming, confusing framework for voters who have not yet cast a ballot in the 2020 primary election. Aside from limited opportunities to vote in person on April 28, 2020 (which poses its own risks to many people with disabilities, as discussed below), Ohio law currently provides less than a month for voters to apply for an absentee ballot by mail, receive the ballot in the mail, and return the completed and signed ballot.³

² Voting locations must be physically accessible for voters with disabilities. When a public entity cannot modify barriers--either permanently or temporarily--and are unable to identify an alternative accessible voting location, the public entity must offer an alternative method of voting at the polling place. Voting Accessibility for the Elderly and Handicapped Act of 1984, 52 U.S.C. § 20102 (formerly 42 U.S.C. § 1973ee-1).

³ The time-constraints under H.B. 197 are a serious concern. Even if people are able to submit an application for an absentee ballot, despite all of the challenges, it must be completed properly. And if a voter does obtain an absentee ballot, it too must be completed properly. There is limited time to cure any deficiencies, and any delay under the processes set forth under H.B. 197 could be problematic, particularly since mail service is anticipated to be slower during this pandemic, and county boards of elections staff are overburdened. Many voters are accustomed to the tradition of voting in person and may be unfamiliar with the absentee ballot process, so mistakes are likely, especially during the stress and anxiety of the COVID-19 pandemic.

Because of the challenges many people with disabilities face during this public health crisis, these voters may be unable to apply for an absentee ballot and may be effectively disenfranchised. Submitting an application for an absentee ballot in writing and at the voter's expense, as Ohio law requires, will be an insurmountable obstacle for many people. For example, many have limited or no access to a computer, internet, printer, envelopes, or stamps, and therefore cannot download, print, and mail the application for an absentee ballot to their county board of elections.

Nor can many people with disabilities easily and safely travel to libraries, post offices, and other business establishments or public places to print and obtain postage to mail the application during this public health crisis.⁴ To the extent these places are even open (many are not), many people with disabilities would face higher risks leaving their homes. According to the Centers for Disease Control and Prevention ("CDC"), persons with disabilities are at a higher risk for serious illness resulting from COVID-19.⁵ This includes individuals with impaired lung function, immunocompromising disorders, including individuals taking immunocompromising drugs, high blood pressure, diabetes, and heart disease.⁶ Although not an exhaustive list, the CDC identifies the following chronic conditions as more common in people with disabilities: arthritis, asthma, cancer, chronic fatigue syndrome, diabetes, heart disease, limb loss, MRSA, and musculoskeletal disorders.⁷ Anyone who has an underlying acute health condition is at

⁴ The apparent opportunity to contact the county board of elections to ask for an absentee ballot application by mail is not widely known.

⁵ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Groups at Higher Risk for Severe Illness* (Apr. 2, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last accessed Apr. 3, 2020).

⁶ Seth McBride, *New Mobility, Disability-Specific Recommendations for COVID-19* (Mar. 12, 2020) <https://www.newmobility.com/2020/03/disability-specific-recommendations-for-covid-19/> (last accessed Apr. 2, 2020).

⁷ Centers for Disease Control and Prevention, *Disability and Health Promotion: Disability and Health Related Conditions* (Sep. 9, 2019) <https://www.cdc.gov/ncbddd/disabilityandhealth/relatedconditions.html> (last accessed Apr. 2, 2020).

increased risk of severe symptoms for both illnesses because “there would be two separate issues for their immune system to fight.”⁸

Many people with disabilities are not only at higher risk for serious complications from the virus, but also at higher risk for contracting the virus because they are often unable to follow all the suggested precautions to keep themselves healthy. Guidance from the CDC includes “taking everyday precautions,” limiting contact with others, washing hands often, avoiding crowds, and “staying home as much as possible” when there is a COVID outbreak in the community.⁹ Some other precautions include avoiding touching one’s face, coughing into a tissue, and regularly disinfecting surfaces. But many people with disabilities rely on others (family, personal care aides, home health aides, nurses) for their care and for assistance with activities of daily living, and cannot practice safe and recommended social distancing to the same extent as others. They may not have access to needed supplies and equipment, like face masks, disposable gloves, and disinfectant products.

Assuming they even want to take the risk of traveling out in public during this public health crisis (either to print and submit an application for an absentee ballot, or to vote in person on April 28, 2020), people with disabilities may not have access to their own private transportation, or may have to rely on public transportation or on others to transport them, putting themselves at higher risk of infection.¹⁰ And presently there is pervasive, widespread

⁸ Seth McBride, New Mobility, Disability-Specific Recommendations for COVID-19 (Mar. 12, 2020) <https://www.newmobility.com/2020/03/disability-specific-recommendations-for-covid-19/> (last accessed Apr. 2, 2020).

⁹ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Groups at Higher Risk for Severe Illness* (Apr. 2, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last accessed Apr. 3, 2020).

¹⁰ In March 2016, DRO conducted a survey that identified transportation as the second most prevalent issue for people with disabilities in accessing in-person voting. See Disability Rights Ohio, *VOTING IN OHIO: A Disability Rights Perspective*, 5 (Mar. 2018) https://www.disabilityrightsohio.org/assets/documents/dro_voting_in_ohio_report_march_2018.pdf (last accessed Apr. 2, 2020). While some voters with disabilities can utilize their own vehicle, the 2017 Self Advocates Becoming

fear among many people with disabilities of a worsening home care worker shortage, as these workers may contract the COVID-19 virus or may not be working at all to avoid the risk of infection. Those who rely on others to do tasks for them would have significant difficulty going out into public to print, obtain postage, and mail an absentee ballot or vote in person on April 28, 2020.

Furthermore, persons with disabilities residing in facilities, institutions, or hospitals may be prohibited from leaving these facilities and returning to their home because of the potential to infect many other at-risk individuals. On March 12, 2020, the Ohio Department of Developmental Disabilities listed “restricting individual community engagement” as a possible precaution for Intermediate Care Facilities.¹¹ Other long-term care facilities are guided to take similar precautions. It is also possible that if an individual did leave the facility where they reside, they would be forced into prolonged quarantine upon their return to the facility.

Therefore, many people with disabilities, unable to obtain and properly submit an application for an absentee ballot or vote in person on April 28, 2020 without serious risks to their health and their lives, may choose to forgo their right to vote. They should not be forced to make this choice. The relief requested by the Plaintiffs is necessary to avoid large-scale disenfranchisement and discrimination against people with disabilities in the 2020 primary election in Ohio and to uphold the integrity of the democratic process. Other accommodations

Empowered (“SABE”) report found that many voters with disabilities rely on family, friends, or service providers to provide transportation. *Id.* at 4 n.12, 5. Some use public transportation, but service availability to polling places can limit this option. Given the current local and national guidelines to avoid contact with others, many of the transportation options voters with disabilities rely on may no longer be available, or may pose another risk of exposure.

¹¹ Ohio Department of Developmental Disabilities, *ICFs: DODD Prepares for COVID-19* (Mar. 12, 2020) <https://dodd.ohio.gov/wps/portal/gov/dodd/about-us/communication/news/news-icf-coronavirus> (last accessed Apr. 2, 2020).

for people with disabilities may be needed,¹² but H.B. 197 is untenable for many people with disabilities across Ohio and will effectively exclude them from the electoral process.

V. CONCLUSION

For the foregoing reasons, Amicus Curiae Disability Rights Ohio respectfully requests that this Court grant the Plaintiffs' Emergency Motion for Temporary Restraining Order and the relief requested by the Plaintiffs.

Respectfully submitted,

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¹² For example, the Ohio Secretary of State's office should widely publicize opportunities to request personal delivery of absentee ballots under Ohio Rev. Code § 3509.08 for people with disabilities who are home-bound or in institutions or facilities or hospitals. These voters must still submit an application for absentee ballots, raising the same challenges described in this brief. For personal delivery of absentee ballots by county board of elections staff, the state should ensure adequate health and safety precautions are taken to prevent further spread of the COVID-19 virus. The state should also widely publicize the reasonable accommodations process for voters with disabilities unexpectedly hospitalized outside their county of residence.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed electronically on April 3, 2020. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/Kevin J. Truitt

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