



ADA Live!

Episode 77: Making Our Elections Accessible: Equal Access for Voters with Disabilities

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Jennifer Levin: Hi, I am Jennifer Levin and you're listening to ADA Live!.

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Meera Adya: Good afternoon. On behalf of the Southeast ADA center, the Burton Blatt Institute at Syracuse University and the ADA National Network. Welcome to episode 77 of ADA Live!. Hello everybody. I am Meera Adya, senior director of research and evaluation at the Burton Blatt Institute. You may submit your questions about the ADA at anytime at adalive.org. In the November 2018, midterm election, 14.3 million people with disabilities reported that they voted. People with disabilities, however, are still underrepresented at the polls, with voter participation for people without disabilities at 108 million.

Meera Adya: Interestingly, of those 108 million voters, 10.2 million lived in a household where someone with a disability lived. And this is research that's been done by colleagues, [Shore] and [Cruise] at Rutgers University. The good news is, according to Time magazine, voter turnout for people with disabilities improved by 8.5% in the 2018 midterms, from the 2016 presidential election. We are so pleased to have as our guest

today, Jennifer Levin senior attorney with Disability Law Colorado. In today's episode, we will be discussing how we can make elections accessible and the rights of people with disabilities in regard to voting access. Jennifer, welcome to ADA Live!. 2020 is upon us with various local and state elections, state primaries, and presidential election only 10 months away. To begin, can you tell us about the protection and advocacy system and what role it plays in ensuring equal access to voting?

Jennifer Levin: Yes, absolutely Meera, and thank you for having me here today. I would like to first of all start out explaining what a protection and advocacy system is. I know a lot of people may not be aware of our organization. There's one in every state, as well as the territories across the United States. So important to know about all these services because we are the largest provider of legally based advocacy services to people with disabilities. So we do things like, take on individual representation of people who have been discriminated against because of their disability. An example that that would be an employment situation or housing, public accommodations. Even private businesses, if you are trying to access someone's services, but they're not willing to serve you because of your disability, that could be considered discrimination. And also we delve into, of course, elections because that would be considered a state government federal service that people should have access to.

Jennifer Levin: So the protection and advocacy organizations throughout the country are all a part of P&A program that provides voting accessibility. And we call it the Protection and Advocacy Voter Accessibility program. Because of that program, we are able to spend time and resources on ensuring that our election process remains accessible. And that can mean anywhere from registering to vote, to reading your ballot, and physically accessing voting service and polling center.

Meera Adya: Excellent. Very helpful. Thank you, Jennifer. I know that there are several different federal laws that protect voters with disabilities such as Voting Accessibility for the Elderly and Handicapped Act of 1984, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002. Would you be able to tell us more about these laws and the protections that they provide?

Jennifer Levin: Yeah, absolutely. So all of these laws have different elements that specifically address people who have disabilities. So they're really important to be aware of. When I talk about it to people, I kind of like to give a little bit of a historical basis to why this law exists because that kind of helps seal it in your mind like why it's here. It gives it a little bit more formative basis for people who are trying to maybe stand up for their right, to have the ability to go and vote in case they do encounter any discrimination. So the first law that was passed that actually addresses people with disability would've been the Voting Rights Act of 1965. Which came out of the movements that went on down in Selma, Alabama. So you've probably heard of the marches across the bridge to Selma and some protests that went on down in that area. Which led to this act being signed that would ... mainly addressing the disenfranchisement of people of color.

Jennifer Levin: So African American people were being told that they had to pay a poll tax or they had to pass certain literacy tests in order to be able to vote. So this piece of legislation addresses that. But it also addresses people with disabilities who might need assistance in voting. If you do need help with your ballot, you have the right to ask anybody that you trust to help you fill out that ballot, or to help you go to a polling center and cast a ballot. The only people that are not allowed to help someone would be someone that is your employer or your union representative. And that's probably because of any potential undue influence those people might have over a voter. So I think that's why that language is included in that legislation. The Americans with Disabilities Act is probably one of the most important pieces of legislation for people with disabilities. And I think provides the best means for trying to get that equal access in an election process.

Jennifer Levin: So under the Americans with Disabilities Act Title Two, it says that people who are using state or government services, or federal government services must be given equal access to that service. Which means people who do not have disabilities, if they're enjoying a certain service from the government, that means that people who have disabilities should be able to participate in that fully as much as that person who is a non-disabled person can do. And that is important, particularly in states where they have mail ballot elections. For example, everybody gets a mail ballot. If you have a disability, that means you can't use that mail ballot and vote a ballot in the comfort of your own

home. You still have to go down to voting service and polling center and use an accessible machine or get assistance from an election worker in that polling center to vote your ballot.

Jennifer Levin: Because that doesn't sound very equal in the minds of a lot of advocates, there's been some legislation around making sure people with disabilities are able to access this kind of vote at home or you know, vote your ballot at home opportunity. Let's make sure people who had disabilities can do that as well by using their online assistive technology support. If you're at home and you can get a ballot online, they deliver it to you through your email, and then you can vote it using a reader or something that helps you access your computer, then you are able to vote that ballot in the comfort of your own home, just as any other person can do who doesn't have a disability. So in Colorado, we were able to pass some legislation that allowed that to happen. And I'll talk about ... a little bit more about that later.

Jennifer Levin: That's just an example of how the ADA, I think can be something to support that type of claim. Like if you don't provide that kind of access, then you could potentially be violating this piece of legislation. Section 504 of the Rehabilitation Act of 1973 is very similar to the ADA. The ADA basically mirrors that piece of legislation. It is limited to any government entity that ... or any entities that receives federal funding. So essentially the ADA is a much broader piece of legislation and covers more types of accommodations or types of businesses and services that are out there.

Jennifer Levin: The National Voter Registration Act of 1993, which is commonly known as the Motor Voter Law passed. So it could address like low registration rates of people who are maybe underserved or underrepresented, by capturing them when they're going through apartment and motor vehicle process. Trying to get a driver's license or say you're going somewhere to get some sort of public assistance or you're trying to access a state funded program such as some assistance through Medicaid. So these agencies ... because of this legislation are required to assist and provide registration opportunities to anyone accessing these agencies. So as soon as you step in the door to one of these places, the agent that's helping you is required to provide you with a registration form and

assist you in registering and then even following through on making sure that registration is delivered to the secretary of state's office or your clerk and recorder's office. So that the whole process is completed once you enter into that agency.

Jennifer Levin: And it's supposed to ... like I said, ensure that people who may not have access to registering online or registering in person, they are at least going to be able to do that through one of these agencies where they might be seeking some kind of assistance. The Voting Accessibility for the Elderly and Handicapped Act of 1984, was also a piece of legislation passed that protects people with disabilities. If they are not able to access whatever the voting process is in that state, if there's no way for them to maybe go in person or use that process, then they must be given the opportunity to either vote by mail ... because not all states allow that, but if you're in a state that doesn't allow the voting by mail, or what they call absentee ballot, you must still provide that process to a person who has a disability, if they can't access the election, the typical way that everybody else in the state would access it.

Meera Adya: Thank you. Thank you. And that was a very helpful rundown of all the different laws and how they all fit into context in terms of history and in relation with each other. Thank you very much.

Jennifer Levin: Oh, sure.

Meera Adya: Speaking of Colorado, according to the data from the ADA participation action research consortium, a project often abbreviated as P-A-R-C or PARC. We understand voter participation in Colorado, where you live, was an outstanding 71.7% in the 2018 election. What has Colorado done over the past several years to increase access to elections for voters with disabilities?

Jennifer Levin: So we've had quite a few years to work on this because as a result of the presidential election in 2000, and depending on your age, you may or may not remember that, but it was when Al Gore and George Bush were running for president. And there was some contention over the count in Florida because the machines down there were outdated. They were using these ... the system that hole punched the count to determine

the person's decision. And it ended up becoming actually a federal case. As a result of all of that, Congress passed what's called The Help America Vote Act in 2002. We call it HAVA. It actually has language that established the protection and advocacy for voting accessibility and the PAVA program. That's where that came from. This legislation created the funding that would enable people who want to advocate for people with disabilities to make sure that they're able to access the election process and have their vote counted.

Jennifer Levin: HAVA made sure that that funding was available and created our PAVA system. So because of that, and that was back about 2002, we've been working with the secretary of state quite a bit to go around the state, check on our physical accessible issues throughout our clerk and recorders offices, which are where our election divisions are usually located. And a lot of times where a lot of polling centers are located. So we went around to all 64 counties in the state, spoke with the clerk and recorders in each county and assessed what their needs were. And there was money granted under HAVA that could be dispersed to all these different counties to help them work on those accessibility issues. So I think that kind of was like the kickstart to making sure everything was accessible, at least you know as far as from a physical accessibility perspective.

Meera Adya: ADA Live! listening audience, if you have questions about this month's topic or any of our other ADA Live! topics, you can submit your questions at 1(404) 541-9001 or through our website, www.adalive.org. Let's pause for a word from our featured organization, Disability Law Colorado.

Speaker 3: Disability Law Colorado is part of Colorado's protection and advocacy system. Since 1976, Disability Law Colorado has protected and promoted the rights of people with disabilities and older people in Colorado through direct legal representation, advocacy, education, and legislative analysis. We are committed to increasing opportunities for adults and children with disabilities to live, work, and attend school in the community. Enjoying independent and productive lives. We also protect the rights of people in institutions to be treated with dignity and respect. You can find out more about Disability Law Colorado by visiting www.disabilitylawco.org.

Meera Adya: Welcome back. We are speaking with Jennifer Levin, senior attorney with Disability Law, Colorado. Hi, Jennifer. Have Colorado voters with disabilities been denied equal access to polling places or the voting process, and if so, what are some of the barriers often faced by voters with disabilities?

Jennifer Levin: So it's not often, I wouldn't say that that happens, but it does happen. I would say the general problem with access across our state would be lack of knowledge on the part of an election worker. One would be, how to use the accessible equipment. When someone walks in and needs to use a machine or one of the BMDs, the ballot marking devices that we have. But needs say, some assistant technology to go along with it and workers may not ... because they may not use it very often, they just don't really understand how to use the equipment and that can cause some delay in getting a machine ready for somebody. So that can impact someone's just maybe their overall voting experience.

Jennifer Levin: Just anecdotally, what I've seen as part of a call center that we conduct every general election, along with other collaborators like the Colorado Lawyers Committee, Colorado Common Cause, League of Women Voters, Mi Familia Vota, we all band together for all the every general election cycle and we will do a call center where we put out our just vote number for the state of Colorado, which is actually a national ... I believe a national line. But we will receive the calls for Colorado. I'll get some calls that are just kind of anecdotal issues where, maybe the people that are running the polling center just don't really know how to not make assumptions about a person's disability. So if someone wants to use an accessible machine, the people will see the person and if they don't maybe a see what the disability is, or understand why they would need it.

Jennifer Levin: They begin to ask questions that are inappropriate or make assumptions and say, "Well you look like you could fill out a paper ballot. Why don't you just do that?" And "We're not going to let you use the machine because you don't look like you really need to." We'd had complaints like that before. We've had complaints that people have left those traffic cones, you know those orange triangular things like in the middle of a sidewalk ramp, a cut out ramp, that is there for somebody who need to use it for say a

mobility issue, or a wheelchair, or something like that. But the cone is blocking the entryway for that. Somebody who wasn't trained on what to look for, they might not think twice about doing that. When we've had people using the accessible parking spaces that didn't need them. In particular, we had one polling center where the election judges thought that they should have those parking spaces, I guess because they were judges.

Jennifer Levin: So we'll get little calls like that on a regular basis during the election. But fortunately because of our connections throughout the state with these clerks, they are on it really fast. And they will get someone out to those centers that makes sure that everything is worked out, usually within minutes of us giving them a phone call about it. Because the main thing on election day especially, you don't want that person's vote not to be counted or not to even get cast. Right? So we're trying to make sure everything gets taken care of as quickly as possible. But I would say maybe the biggest thing that I would want to focus on would be just the training for disability etiquette and assumptions that you shouldn't be making about a person when they come in and ask for accommodations, or things like that.

Meera Adya: So you mentioned that poll workers can often, right on the spot when you get that call, go down and try to intervene. Outside of those possibilities. How have poll workers or state and local government officials helped or worked towards removing these barriers that are often faced by voters with disabilities?

Jennifer Levin: We work really well, I would say, with most of our clerks and recorders around the state and also the secretary of state. If I do get a client for example, who didn't receive an accommodation for an election, I will immediately call ... and this is maybe after a complaint that comes in, say after the election day, but a call to the clerk and recorder where that voter was supposed to vote has so far as long as I've been here, cleared up any problems and future problems. I would say that most clerks here just ... they want people to vote. No one wants to keep their constituents from making it to the polls or being able to participate in an election. So when they hear about it they do seem to want to fix the problem.

Jennifer Levin: And currently we're getting out a huge message to our residents and facilities, whether it's longterm care such as nursing homes, or assisted living, or our mental health facilities and residential facilities. We are working with several committees around the state and the secretary of state's office, to ensure that there are no assumptions made about the people in these residences. Because the complaints we get out of these are based on issues with mental capacity. People making assumptions that because someone has maybe dementia, or they have to have a guardian, they assume they can't vote well. In Colorado, that's not true. We just don't have any laws that would limit your right to vote because of any reason like that. But it is definitely a huge assumption here. And I think that might be because there are a lot of states that do have laws regulating those situations. Maybe because we're one in a few states that don't, people here will tell a person that lives in say, a longterm care facility that, "No, you don't need your ballot because you're here, you can't vote or you have a guardian and you can't vote this."

Jennifer Levin: So if we get a complaint like that, which we have. Have gotten several complaints like that, we want to work with the secretary of state and our department of human services, to make sure that we get PSAs out, public service announcements, and information out to the department of human services and health and environment so that they know that the directors of these facilities and these homes are educated on this and they teach their staff what they should be doing with people who want to vote. It's been a really good collaborative effort. I would say definitely with the secretary of state helping me get that information out and they've been working with me on signature matching issues as well. Because we are a ballot, we are a mail ballot state. Our biggest verification of you are who you say you are here, is our signature.

Jennifer Levin: That's a problem in a lot of longterm care facilities because signatures, as we age deteriorate, so the ballots get kicked back to the resident. Something is happening along the way where that resident is not getting the card, the cure card they're supposed to receive so they can cure their signature. So I'm working with the secretary of state's office as well as the directors at these facilities, to try to figure out a way to maybe change our rules in this state around signature matching, so that people don't get

disenfranchised because they didn't have the opportunity to cure. And maybe have a better way of judging those signatures. I don't know exactly how we're going to do that. I know that they can go back in history to look at older signatures, but I'm not sure that's the answer to how to make sure they're matching.

Jennifer Levin: Officially, if you're looking at a signature that's deteriorated or for some reason has ... it just doesn't match anymore because of possibly disability or some other issue. And we're always invited, the protection and advocacy here is always a member of a committee with the secretary of state's office. So I think they do take our information and our advice very seriously. We've definitely made some good collaborative efforts towards making sure the people here have access that maybe normally they wouldn't if we weren't working well together.

Meera Adya: Absolutely. Excellent. Well as we talk about some of these strategies that Colorado is using or investigating and considering to increase voter access, we look nationwide as well. And we see that one nationwide initiative is the Accessible Voting Technology Initiative. Could you tell us a little bit about this project and who is eligible for funding?

Jennifer Levin: So this was a project that started in, I want to say around 2009 and 10, the Election Assistance Commission, which is also an entity that was created under the Help America Vote Act ... that was created to oversee elections going on throughout the country and has different tasks delegated to them. And one of the things they did was, they handed out some grants to Clemson University and the National Institute of Standards and Technology to do some research on how to make sure that elections were accessible. And they did issue a couple of reports which you can find on their websites. So if you go to Clemson University or the Information Technology and Innovation Foundation websites, you can find these reports to see what they came up with. But that I think, was over by September of 2014. I would say there's more recent information out right now on accessibility issues that I would be happy to share some reports with you all from the online access.

Meera Adya: Appreciate it. So what other voting rights issues has the protection and advocacy system dealt with?

Jennifer Levin: We're working on a multilingual ballot. So to have access for people who speak anything other than English. We like to work with our collaborators on issues that may not seem like they're specifically geared towards people with disabilities that obviously there are people with disabilities that speak other languages. And so we're working on some legislation that will make sure a ballot will be accessible for people who do not speak English. We've also worked on some legislation that will allow people who are on parole to vote. So in Colorado, we already do allow people who have a felony record to vote. And I know in some states that is not allowed, but in Colorado, if you've committed a felony and you've served your time, you can still vote. It used to be you had to also be through your parole period, so if you were still on parole, you weren't able to vote yet.

Jennifer Levin: Now we've passed legislation in 2019, that will now allow people who are on parole to vote. So we were very happy to support that bill because a lot of our clients and people that we advocate for, do have criminal records. And not only do they have disabilities, but they also have been in trouble with the law. And when we do our voting outreach to our state mental hospital, people there have felony records and they did not know that they have the right to vote. And so it's just another one of those common misunderstandings among people that have committed crimes or been in trouble with the law that they no longer have the right to vote. So we like to make sure we get that message out to people. And I think by working on legislation that promotes the access to the election system for people on parole, or who have felonies and who do not speak English, it kind of opens up access for even more people with disabilities.

Meera Adya: So before we go then, one more question. When it comes to voting, what one piece of advice would you give to someone with a disability?

Jennifer Levin: Well I don't know if I just have one.

Meera Adya: We'll take as many as you have.

Jennifer Levin: I guess the main one ... well I guess because states are all so different. We have different rules in place for Coloradans, I would definitely say take advantage of that early process. So you go vote early. If you run into any problems, you still have time to fix it. Your vote will get cast in time. But if you are in another state and if you do have issues, call your local protection and advocacy organization. They have the funding and they have the expertise and probably the connections to get whatever issue you're facing taken care of pretty rapidly so that you don't want to lose that vote. And you don't want to have a provisional vote because it may or may not get counted, it just kind of depends. Right?

Jennifer Levin: So I just would suggest call that protection and advocacy system in your state. We all have similar names, but there ... some are very different names so you can't really kind of go by, it's going to all be disability law something. We were called Disability Law Colorado, but in another state it's going to be something else. So I would just go on the internet and Google protection and advocacy and put your state's name in and it'll pop up.

Meera Adya: Well that is very helpful and good advice. Thank you so much and thank you so much for joining us for ADA Live!. Listeners, our guest for this episode of ADA Live! has been Jennifer Levin, senior attorney with Disability Law Colorado based in Denver, Colorado. Thank you for your time today. Jennifer. You can submit questions, comments regarding the podcast to adalive.org and they will be forwarded to Jennifer Levin for her responses.

Meera Adya: This episode and all previous ADA Live! episodes are available on our website at adalive.org. As well as on our sound cloud channel at soundcloud.com/adalive. Every episode is archived in a variety of formats including streamed audio and accessible transcripts. You can also download ADA Live! on your mobile device podcast icon by searching for ADA Live!. Listening audience, the 30th anniversary of the ADA will be here before you know it. You can check out the ADA anniversary toolkit from the Southeast ADA center and the ADA national network for celebration of the ADA anniversary on July 26 and year round. The toolkit features a media kit, publications and other resources to

keep the celebration going at www.adaanniversary.org. A reminder, if you have any questions about the Americans with Disabilities Act, you can submit your questions anytime online at adalive.org, or contact your regional ADA center at 1(800) 949-4232. Remember, all calls are free and confidential. ADA Live! is a program of the Southeast ADA center. Our producer is Celestia Ohrazda with Beth Harrison, Mary Morder, Emily Rueber, Marsha Schwanke, and Barry Whaley. Our music is from Four Wheel City, the Movement for Improvement. See you next episode.

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