

Coalition of Disability Groups Demand Access to Virginia's Inaccessible Absentee Voting

Individuals and Disability Organizations File Lawsuit Today in Federal Court

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Today, the 35th anniversary of the Virginians with Disabilities Act and one day after the 30th anniversary of the Americans with Disabilities Act (ADA), a coalition of disability organizations and individual voters sued the Commonwealth of Virginia for excluding Virginians with disabilities from absentee voting in November. The Commonwealth's current absentee voting discriminates against voters who cannot mark a paper ballot due to print disabilities, including blindness. Instead of voting absentee like other Virginia citizens, these voters must reveal their choices to another person and hope that person correctly records their absentee vote or risk COVID-19 infection by travelling to the polls to vote in person. Because some are immunocompromised and at greater risk from the COVID-19 virus, this is an untenable choice.

Virginia officials themselves have recognized the need to expand absentee voting because of the pandemic. As Governor Ralph Northam urged, "Virginians should never have to choose between casting a ballot and risking their health." [i] Yet, despite advocacy from the coalition, Virginia officials have not taken sufficient steps on their own to address the rights of blind or print-disabled voters in time for the November 2020 general election.

Virginia already has an accessible vote-by-mail system in place, but refuses to roll it out to counties statewide. The suit seeks statewide implementation of the accessible vote-by-mail (RAVBM) system in time for the November 2020 election.

Sam Joehl, President of the American Council of the Blind of Virginia stated: "We are disappointed that the Virginia Department of Elections has not been forward in articulating a plan that would provide for a private, safe and independent ballot for voters with disabilities. We call upon the Virginia government to uphold their legal and moral obligations by implementing a solution that allows voters with disabilities to cast their ballots safely and independently. The ADA was signed into law 30 years ago to prevent situations like the one we have in Virginia."

"30 years ago, Justin Dart, the father of the ADA, exhorted people with disabilities to 'Vote as if your life depends on it – because it does,'" said **Eve Hill of Brown Goldstein & Levy**. "Yet today, voters with disabilities must risk their lives to vote in Virginia."

Colleen Miller, the Executive Director of the disAbility Law Center of Virginia, stated "In these extraordinary times, it is critical that we protect the rights of all, and that includes the right to vote. With an epidemic impacting people with disabilities more than any other demographic, the Commonwealth must do everything in its power to ensure those voices are heard."

“The National Federation of the Blind has fought successfully for blind and deafblind voters across the nation for decades, and this advocacy is all the more urgent during the COVID-19 pandemic,” said Tracy Soforenko, president of the National Federation of the Blind of Virginia. “The nation’s blind will not tolerate being treated as second-class citizens in Virginia or anywhere else.”

“It is appropriate on the 30th Anniversary of the enactment of the Americans with Disabilities Act to remember that the right of equal access to the ballot is foundational to democracy,” said Steven Hollman, Sheppard, Mullin, Richter & Hampton, LLP.

Individuals with disabilities have a right to all aspects of the voting process, including remote absentee voting,” said Maggie Hart, Counsel at the Washington Lawyers’ Committee “The U.S Court of Appeals for the Fourth Circuit, of which Virginia is part, has already held that voters with disabilities must have equal access to a state’s absentee voting program. We call on Virginia to do the right thing for its voters.”

The lawsuit was filed by the American Council of the Blind of Virginia and the National Federation of the Blind of Virginia, and individual plaintiffs including Carshena Gary, Lori Scharff, Regina Root, Ph.D., Naim Muawia Abu-El Hawa, and John Halverson, Ph.D. It alleges violations of Title II of the ADA, Section 504 of the Rehabilitation Act, and Virginia law.

You can access the filed complaint here.

Counsel for this case include Eve L. Hill of Brown Goldstein & Levy, the disAbility Law Center of Virginia, Sheppard, Mullin, Richter & Hampton, LLP, and the Washington Lawyers’ Committee for Civil Rights & Urban Affairs.

[i] Whitney Evans, *Lawsuit Tries to Stop Virginians From Using Coronavirus as Excuse to Vote Absentee*, Va.’s Home for Pub. Media (VPM) (May 21, 2020), <https://vpm.org/news/articles/13610/lawsuit-tries-to-stop-virginians-from-using-coronavirus-as-excuse-to-vote>; PBS NewsHour, *Virginia Governor Ralph Northam Gives Coronavirus Update*, YouTube (Apr. 24, 2020), <https://www.youtube.com/watch?v=BQ-BX1fl-N0&t=320s>.

Attorneys

Steven P. Hollman

Practice Areas

Litigation