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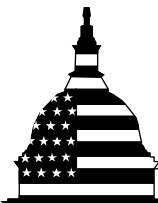
Statement
Before the National Council on
Disability

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VOTERS WITH
DISABILITIES

Challenges to Voting
Accessibility

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Education, Workforce, and Income Security



G A O

Accountability * Integrity * Reliability

Highlights of [GAO-13-538SP](#), statement before the National Council on Disability

Why GAO Did This Study

Voting is fundamental to our democracy and federal law generally requires polling places to be accessible to all eligible voters, including those with disabilities and the elderly. However during the 2000 federal election, GAO found that only 16 percent of polling places had no potential impediments to voting access for people with disabilities. To address these and other issues, Congress enacted the Help America Vote Act of 2002 (HAVA), which required each polling place to have an accessible voting system by 2006. Congress asked GAO to reassess voting access on Election Day 2008, and also to study voter accessibility at long-term care facilities.

This statement focuses on (1) progress made from 2000 to 2008 to improve voter accessibility in polling places, including relevancy to long-term care facilities and (2) steps the Department of Justice (Justice) has taken to enforce HAVA voting access provisions.

To prepare this statement, GAO relied primarily on its prior products on polling place accessibility ([GAO-09-941](#)) and voting in long-term care facilities ([GAO-10-6](#)).

What GAO Recommends

GAO previously recommended that Justice expand its monitoring and oversight of polling place accessibility. Justice generally agreed with our recommendation and has reported taking some steps towards addressing it, such as expanding Election Day observations to include an assessment of physical accessibility.

View [GAO-13-538SP](#). For more information, contact Barbara Bovbjerg at (202) 512-7215 or bovbjerg@gao.gov.

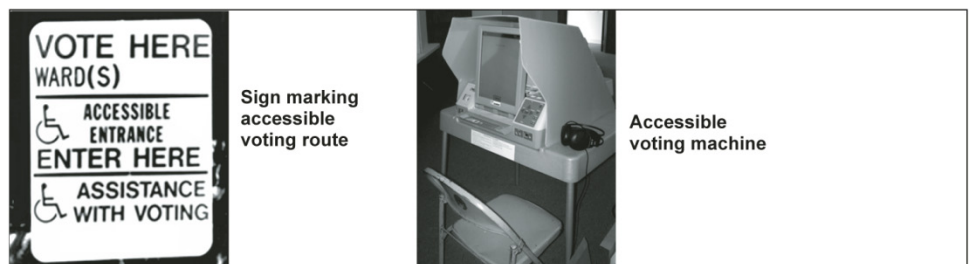
VOTERS WITH DISABILITIES

Challenges to Voting Accessibility

What GAO Found

Compared to 2000, the proportion of polling places in 2008 without potential impediments increased and almost all polling places had an accessible voting system as states and localities made various efforts to help facilitate accessible voting. In 2008, based upon GAO's survey of polling places, GAO estimated that 27 percent of polling places had no potential impediments in the path from the parking to the voting area—up from 16 percent in 2000; 45 percent had potential impediments but offered curbside voting; and the remaining 27 percent had potential impediments and did not offer curbside voting. All but one polling place GAO visited had an accessible voting system—typically, an electronic machine in a voting station—to facilitate private and independent voting for people with disabilities. However, 46 percent of polling places had an accessible voting system that could pose a challenge to certain voters with disabilities, such as voting stations that were not arranged to accommodate voters using wheelchairs. In GAO's 2008 state survey, 43 states reported that they set accessibility standards for polling places, up from 23 states in 2000. Further, 31 states reported that ensuring polling place accessibility was challenging. Localities GAO surveyed in 2008 reported providing voting services directly to long-term care facility residents who may face challenges voting in a polling place. For example, close to one-third of localities GAO surveyed reported designating long-term care facilities as Election Day polling places.

From shortly after the passage of HAVA until 2006, Justice provided guidance on polling place accessibility and conducted an initial assessment of states' compliance with HAVA's January 2006 deadline for accessible voting systems. After implementation of HAVA, Justice's oversight of HAVA's access requirements was part of two other enforcement efforts, but gaps remained. While Justice provided guidance on polling place accessibility, this guidance did not address accessibility of the voting area itself. In 2009, Justice conducted polling place observations for federal elections that identified whether accessible voting systems were in place, but it did not systematically assess the physical accessibility of polling places or the level of privacy and independence provided to voters with disabilities. Justice also conducted a small number of annual community assessments of Americans with Disabilities Act compliance of public buildings, which included buildings designated as polling places. However, these assessments did not provide a national perspective on polling place accessibility or assess any special features of the voting area and the accessible voting system that are set up only on Election Day.



Source: GAO.

Mr. Chairman and Members of the Council,

I am pleased to be here today to discuss voting access for people with disabilities. As you know, voting is fundamental to our democratic system, and federal law generally requires federal election polling places to be accessible to all eligible voters, including voters with disabilities and the elderly. Under the law, state political subdivisions responsible for conducting elections must assure that polling places used in federal elections are accessible, as determined by the state.¹ These requirements present a challenge to state and local election officials because achieving accessibility—which is affected by the type of impairment and various barriers posed by polling place facilities and voting methods—is part of a larger set of challenges they face in administering elections on a periodic basis. In the 2008 federal election, an estimated 15 million voters with disabilities cast ballots. However, during the 2000 federal election, we found that only 16 percent of polling places had no potential impediments to voting access for people with disabilities. Congress passed the Help America Vote Act of 2002² (HAVA) to address these and other challenges encountered during the 2000 federal election. Subsequently, Congress asked GAO to assess voting access for people with disabilities again and examine actions taken to facilitate voting for residents of long-term care facilities during the 2008 federal election.³

Much has happened since the 2008 federal election, and states have made various changes to their election laws that may affect voters with disabilities. Specifically, leading into the 2012 presidential election, numerous states made substantive changes to: their election codes or

¹See the Voting Accessibility for the Elderly and Handicapped Act, Pub. L. No. 98-435, 98 Stat. 1678 (1984), codified at 42 U.S.C. § 1973ee et seq. Exceptions are allowed if the state determines that all potential polling places have been surveyed and no accessible place is available, and the political subdivision cannot make one temporarily accessible. In these cases, voters with disabilities who are assigned to inaccessible polling places must be, upon advance request, either reassigned to an accessible polling place or provided another means for voting on Election Day.

²Pub. L. No. 107-252, 116 Stat. 1666, codified as amended at 42 U.S.C. § 15301 et seq.

³GAO, *Voters with Disabilities: Additional Monitoring of Polling Places Could Further Improve Accessibility*, [GAO-09-941](#) (Washington, D.C.: Sept. 30, 2009) and GAO, *Elderly Voters: Information on Promising Practices Could Strengthen the Integrity of the Voting Process in Long-term Care Facilities*, [GAO-10-6](#) (Washington, D.C.: Nov. 30, 2009).

procedures in areas of voter identification; alternative methods of voting, such as in-person voting prior to Election Day; and requirements for voter registration drives conducted by nongovernment organizations.⁴

My statement today is based primarily on our findings from two 2009 GAO reports on polling place accessibility and voting in long-term care facilities, respectively. Specifically, my comments will focus on (1) progress made from 2000 to 2008 to improve voter accessibility in polling places, including relevancy to long-term care facilities and (2) steps the Department of Justice (Justice) has taken to enforce HAVA voting access provisions. In addition, we currently have work under way examining state voter identification laws and their impact on voting access.⁵

In conducting our prior work on polling place accessibility and voting in long-term care facilities, we visited 730 randomly selected polling places in the contiguous United States on Election Day, November 4, 2008, to make observations of their accessibility features.⁶ We also administered a web-based survey of election officials in all 50 states, the District of Columbia (District), and 4 U.S. territories (American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands)⁷ between December 2008 and February 2009 and received a 100 percent response rate. In addition, we conducted an e-mail survey of 104 local election jurisdictions between September 2008 and February 2009 and received an 88 percent

⁴See GAO, *Elections: State Laws Addressing Voter Registration and Voting on or before Election Day*, [GAO-13-90R](#), (Washington, D.C.: Oct. 4, 2012).

⁵This study—being conducted for the Senate Judiciary Committee and Senate Committee on Rules and Administration—seeks to examine the cost to voters to obtain documents to satisfy state voter identification requirements, the impact of voter identification requirements on voter turnout and the use of provisional ballots, and the availability of data on voter impersonation and fraud. We expect to report on this work early next year.

⁶The 730 polling places we visited on Election Day 2008 were located in 79 of the 84 counties we selected for our sample because 5 counties did not grant GAO access to polling places on Election Day. In addition, in several counties, state or county officials granted us access but placed restrictions on our visits, such as not permitting access to the voting area itself. We excluded Alaska and Hawaii for cost and efficiency reasons and Oregon because voters exclusively use mail-in ballots.

⁷We selected the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands for this review because they are required to comply with HAVA provisions. See 42 U.S.C. § 15541.

response rate.⁸ Furthermore, we interviewed federal officials and national organizations that represented election officials and disability advocacy groups. We also reviewed relevant state and federal laws, guidance, and other documentation, including citizen complaints from Election Day 2008 that Justice provided to us.

The work upon which this testimony is based was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusion based on our audit objectives. Additional information on our full scope and methodology is available in the published reports.

Background

Limited Federal Role in Administering Elections

The administration of federal elections is a massive enterprise, conducted primarily at the state and local level, under applicable state and federal voting laws. Responsibility for holding elections and ensuring that each voter has the ability to fully participate in the electoral process—including registering to vote, accessing polling places or alternative voting methods, and casting a vote—primarily rests with state and local governments. While federal elections are generally conducted under state laws and policies, several federal laws apply to voting and some provisions specifically address accessibility issues for voters with disabilities, including the Americans with Disabilities Act of 1990⁹ (ADA) and HAVA.¹⁰

⁸ The sample of local election jurisdictions was taken from the two-stage sampling method used to create a nationally representative random selection of polling places in the contiguous United States, with the exception of those in Oregon. Specifically, the local election jurisdictions used for the survey were those which had one or more of their polling places randomly selected in the sample of polling places. The survey estimates calculated did not have a low enough margin of error to allow us to generalize results to localities nationally and for this reason we simply report counts of local jurisdictions. In addition, the scope of this work did not include contacting election officials from each local jurisdiction to verify all survey responses or other information provided by local officials.

⁹ Pub. L. No. 101-336, 104 Stat. 327, codified as amended at 42 U.S.C. § 12101 et seq.

Americans with Disabilities Act of 1990

Title II and III of the ADA contain provisions that help increase the accessibility of voting for individuals with disabilities. Specifically, Title II and its implementing regulations require that people with disabilities have access to basic public services, including the right to vote. The ADA requires that public entities make reasonable modifications in policies, practices, or procedures to avoid discrimination against people with disabilities. Moreover, no person with a disability may, by reason of disability, be excluded from participating in or be denied the benefits of any public program, service, or activity. State and local governments may generally comply with ADA accessibility requirements in a variety of ways, such as reassigning services to accessible buildings or alternative accessible sites.¹¹ Title III of the ADA generally covers commercial facilities and places of public accommodation that may also be used as polling places. Public accommodations must make reasonable modifications in policies, practices, or procedures to facilitate access for people with disabilities. These facilities are also required to remove physical barriers in existing buildings when it is “readily achievable” to do so; that is, when the removal can be done without much difficulty or expense, given the entity’s resources.

Help America Vote Act of 2002

HAVA, which contains a number of provisions to help increase voting accessibility for people with disabilities, establishes the Election Assistance Commission (EAC) and grants the Attorney General enforcement authority. In particular, section 301(a) of HAVA outlines minimum standards for voting systems used in federal elections.¹² This section specifically states that the voting system must be accessible for people with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation as is provided for other voters. To satisfy this requirement, each polling place must have at least one direct recording electronic or other voting system equipped for people with disabilities.

¹⁰Other relevant laws include the 1984 Voting Accessibility for the Elderly and Handicapped Act and the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437, codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1.

¹¹28 C.F.R. § 35.150(b)(1). All newly constructed public buildings where construction commenced after January 26, 1992, must be readily accessible to individuals with disabilities. 28 C.F.R. § 35.151(a). Alterations to existing facilities commenced after January 26, 1992, must also to the maximum extent feasible be done in such a way that the altered portion of the facility is readily accessible. 28 C.F.R. § 35.151(b).

¹²Codified at 42 U.S.C. § 15481(a).

HAVA also established the EAC as an agency with wide-ranging duties to help improve state and local administration of federal elections, including providing voluntary state guidance on implementing HAVA provisions. The EAC also has authority to make grants for the research and development of new voting equipment and technologies and the improvement of voting systems. Additionally, HAVA vests enforcement authority with the Attorney General to bring a civil action against any state or jurisdiction as may be necessary to carry out specified uniform and nondiscriminatory election technology and administration requirements under HAVA.¹³

Characteristics of Long-term Care Facility Residents

As the proportion of older Americans in the country increases, the number of voters residing in long-term care facilities who may face challenges voting at polling places on Election Day due to their physical and mental condition could also increase. By 2030, those aged 65 and over are projected to grow to more than 72 million individuals and represent a quarter of the voting age population. Older voters, who consistently vote in higher proportions than other voters, may face challenges exercising their right to vote because disability increases with age. Moreover, it is estimated that 70 percent of people over age 65 will require some long-term care services at some point in their lives, such as residing in a nursing home or assisted living facility. The physical and cognitive impairments of many long-term care facility residents may make it more difficult for them to independently drive, walk, or use public transportation to get to their designated polling place. Once at the polling place, they may face challenges finding accessible parking, reaching the ballot area, and casting a ballot privately and independently.

Recent GAO Election Reports

We recently issued two reports on elections in which the findings may have implications for voters with disabilities. Specifically, in 2012, we issued a report examining state laws addressing voter registration and voting on or before Election Day.¹⁴ In the report, we found that states had

¹³Specifically, the Voting Section, with Justice's Civil Rights Division, is responsible for enforcement of civil provisions of federal voting laws, such as HAVA. Whereas, the Disability Rights Section, also within the Civil Rights Division, is primarily responsible for protecting the rights of persons with disabilities under the ADA.

¹⁴[GAO-13-90R](#).

been active in the past 10 years in amending their election codes, regulations, and procedures, not only to incorporate requirements mandated by HAVA, but also in making substantive changes to their laws in the areas of voter identification, early voting, and requirements for third-party voter registration organizations. We found that states had a variety of identification requirements for voters when they register to vote, vote at the polls on Election Day, and seek to cast an absentee ballot by mail that were in effect for the November 2012 election. Specifically, while voter identification requirements varied in flexibility, the number and type of documents allowed, and alternatives available for verifying identity, 31 states had requirements for all eligible voters to show identification at the polls on Election Day. We also found that most states had also established alternatives for voters to cast a ballot other than at the polls on Election Day. Thirty-five states and the District of Columbia provided an opportunity for voters to cast a ballot prior to the election without an excuse, either by no-excuse absentee voting by mail or in-person early voting, or both. States also regulated the process by which voters registered to vote and had a variety of requirements that address third-party voter registration organizations that conduct voter registration drives.

In addition, in 2012, we issued a report looking at the potential implementation of weekend voting and similar alternative voting methods.¹⁵ In the report, we found that in the 2010 general election, 35 states and the District provided voters at least one alternative to casting their ballot on Election Day through in-person early voting, no-excuse absentee voting, or voting by mail. However, state and local election officials we interviewed identified challenges they would anticipate facing in planning and conducting Election Day activities on weekends—specifically, finding poll workers and polling places, and securing ballots and voting equipment—and expected cost increases. Specifically, officials in 14 of the 17 jurisdictions and the District expected that at least some of the polling places they used in past elections—such as churches—would not be available for a weekend election, and anticipated difficulty finding replacements. Additionally, officials in 5 of the 7 states and the District that conducted early voting and provided security over multiple days explained that the level of planning needed for overnight security for a

¹⁵GAO, *Elections: Views on Implementing Federal Elections on a Weekend*, [GAO-12-69](#), (Washington, D.C.: Jan.12, 2012).

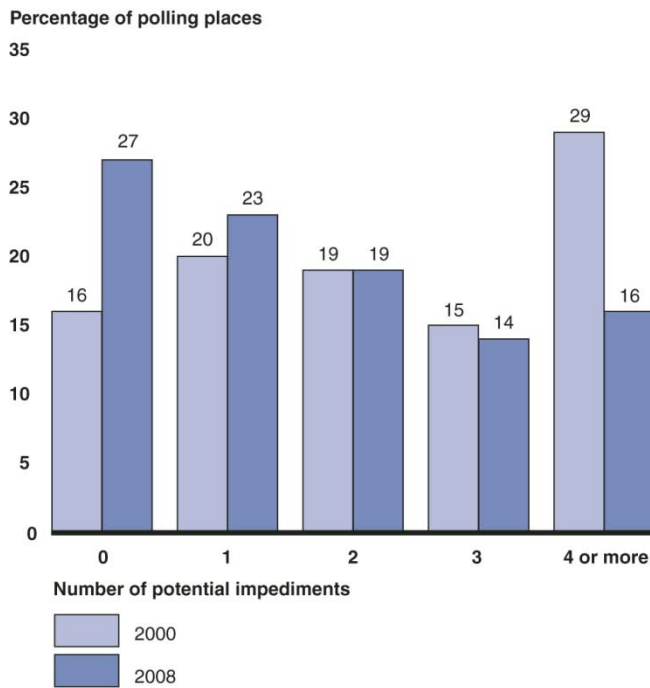
weekend election would far surpass that of early voting due to the greater number and variety of Election Day polling places. For example, officials in one state said that for the 2010 general election, the state had fewer than 300 early voting sites—which were selected to ensure security—compared to more than 2,750 polling places on Election Day, which are generally selected based on availability and proximity to voters.

The Proportion of Polling Places Without Potential Impediments Increased Between the 2000 and 2008 Elections

In comparison to our findings in 2000, the proportion of polling places with no potential impediments increased in 2008. In 2008, we estimated that 27 percent of polling places had no potential impediments in the path from the parking area to the voting area—up from 16 percent in 2000.¹⁶ Specifically, polling places with four or more potential impediments decreased significantly—from 29 percent in 2000 to 16 percent in 2008 (see fig. 1). Potential impediments included a lack of accessible parking and obstacles en route from the parking area to the voting area.

¹⁶ The 95 percent confidence interval for 2000 data is 11.3 to 21.6 and for 2008 data is 21.9 to 32.7. The difference between the 2000 and 2008 estimates are statistically significant.

Figure 1: Comparison of Potential Impediments in 2000 and 2008

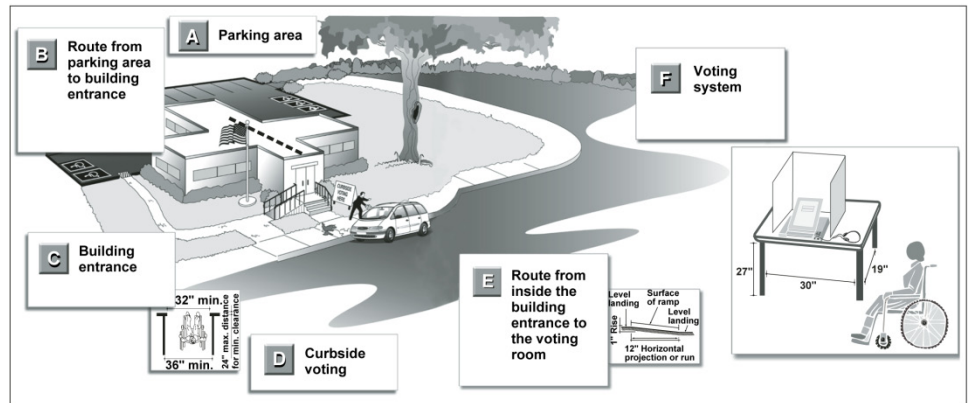


Source: GAO analysis of polling place data collected on November 7, 2000, and November 4, 2008.

Figure 2 shows some key polling place features that we examined in our 2008 review of polling places. These features primarily affect individuals with mobility impairments, in particular voters using wheelchairs.¹⁷

¹⁷ For the purposes of this study, we treated all of the potential impediments with equal significance, although we recognize that, in practice, the effect of any one impediment will depend on an individual's type or severity of disability. For example, the width of a door would not necessarily affect a blind individual without mobility impairments, but it could prevent a person using a wheelchair from entering a polling place.

Figure 2: Key Polling Place Features that We Examined



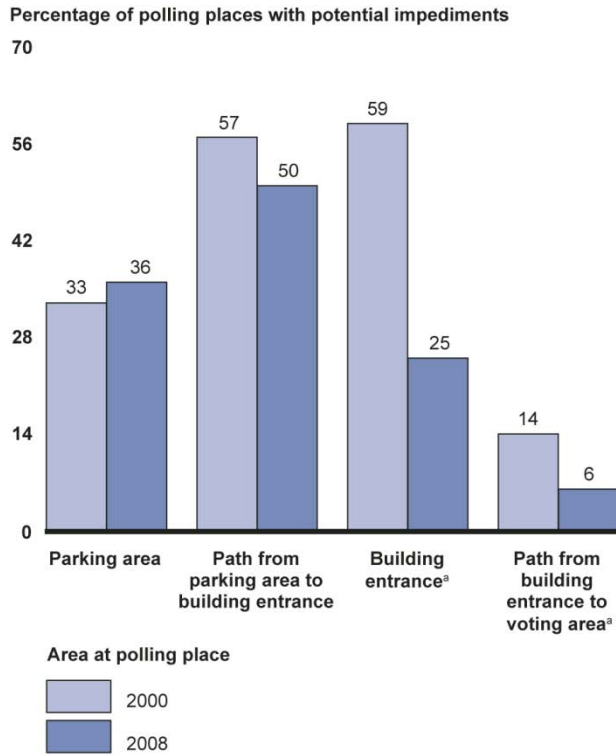
Sources: Americans with Disabilities Act Accessibility Guidelines (ADAAG); GAO and Art Explosion (images).

Similar to our findings in 2000, the majority of potential impediments at polling places in 2008 occurred outside of or at the building entrance, although improvements were made in some areas. In particular, the percentage of polling places with potential impediments at the building entrance dropped sharply—from 59 percent in 2000 to 25 percent in 2008.¹⁸ In addition, polling places made significant gains in providing designated parking for people with disabilities, which decreased from 32 percent with no designated parking in 2000 to only 3 percent in 2008 (see fig. 3).¹⁹ The most common potential impediments in 2008 were steep ramps or curb cuts in the parking area, unpaved or poor surfaces in the path from the parking lot or route to the building entrance, and door thresholds exceeding ½ inch in height.

¹⁸The 95 percent confidence interval for 2000 data is 51.6 to 66.4 and for 2008 data is 16.7 to 34.2.

¹⁹The 95 percent confidence interval for 2000 data is 24.2 to 40.2. The 95 percent confidence interval for 2008 data is 1.6 to 6.0.

Figure 3: Key Locations of One or More Potential Impediments at Polling Places in 2000 and 2008



Source: GAO analysis of polling place data collected on November 7, 2000, and November 4, 2008.

Note: For parking area data, the 95 percent confidence interval for 2000 data is 24.7 to 41.3 and for 2008 data is 29.2 to 45.5. For the path from the parking area to the building entrance data, the 95 percent confidence interval for 2000 data is 50.2 to 63.9 and for 2008 is 44.4 to 54.9.

^aThe difference between 2000 and 2008 data is statistically significant. For the building entrance data, the 95-percent confidence interval for 2000 data is 51.6 to 66.4 and for 2008 data is 16.7 to 34.2. For the path from the building entrance to the voting area, the 95-percent confidence interval for 2000 data is 9.8 to 18.2 and for 2008 data is 3.7 to 8.0.

Many of the polling places that had potential impediments offered curbside voting or other accommodations to assist voters who may have had difficulty getting to or making their way through a polling place. Some polling places provided assistance to voters by bringing a paper ballot or provisional ballot to a voter in a vehicle. The percent of polling places that

had potential impediments that did not offer curbside voting remained virtually unchanged from 28 percent in 2000 to 27 percent in 2008.²⁰

In 2008, in addition to our review of the path to the voting area at polling places, we also examined impediments in the voting area that might facilitate or impede private and independent voting for people with disabilities.²¹ We found that all but one polling place had at least one accessible voting system—typically, an accessible machine in a voting station—to facilitate private and independent voting for people with disabilities. Yet, nearly one-half (46 percent) had systems that could pose challenges for people with disabilities to cast a private or independent vote.²² We assessed four aspects of the accessible voting system that, if not met, could pose a challenge to private or independent voting: (1) voting system is set up and powered on; (2) earphones are available for audio functions; (3) voting system is set up to accommodate people using wheelchairs; and (4) accessible voting system provides the same level of privacy for voters with disabilities as is offered to other voters (see table 1).²³

²⁰The difference between the percentage of polling places with one or more potential impediments that did not offer curbside voting in 2000 and 2008 data is not significant. The 2008 data is subject to sampling error of plus or minus 8 percentage points at the 95 confidence level.

²¹We did not assess polling places' legal compliance with HAVA accessible voting system requirements. For our 2008 Election Day data collection instrument, we compiled a list of commonly known accessible voting machines by consulting with disability experts and others.

²²The 95 percent confidence interval for the data is 36.3 to 54.9.

²³We did not assess polling places' legal compliance with HAVA accessible voting system requirements.

Table 1: Extent to Which Voting System Features to Facilitate Private and Independent Voting at Polling Places Were Not Met

Voting system features that, if not met, could pose a challenge to voting privately and independently	Percentage of polling places where features were not met
Set up to accommodate voters using a wheelchair	29 ^a
Provides the same level of privacy for voters with disabilities as is offered to other voters	23 ^b
Earphones are attached or prominently visible	6 ^c
Set up and powered on	5 ^d

Source: GAO analysis of polling place data collected on November 4, 2008.

^aThe 95 percent confidence interval for the data is 19.3 to 40.5.

^bThe 95 percent confidence interval for the data is 16.0 to 30.3.

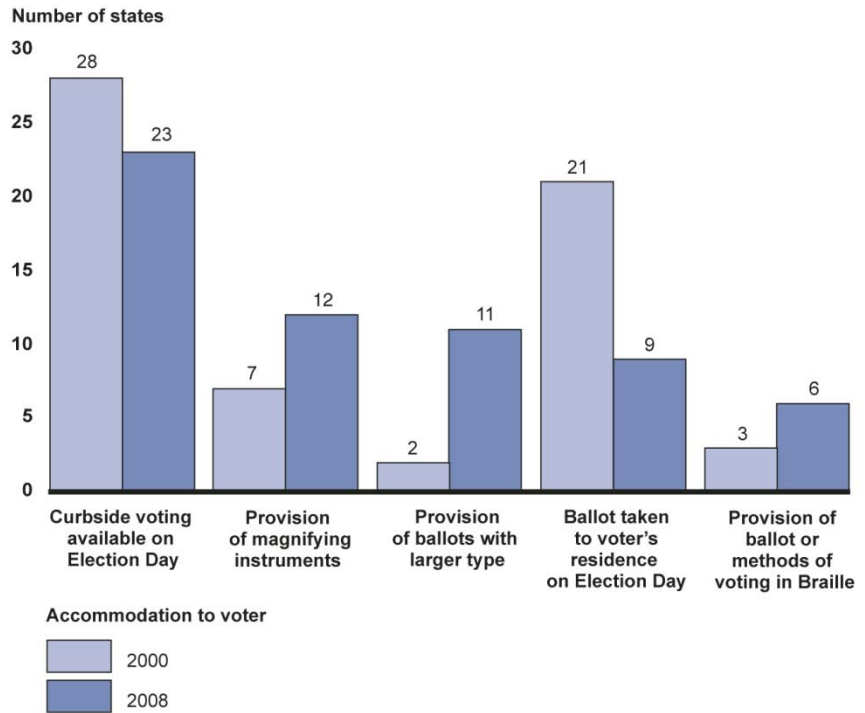
^cThe 95 percent confidence interval for the data is 3.8 to 9.7.

^dThe 95 percent confidence interval for the data is 2.8 to 8.3.

According to our 2008 survey of state election officials, the majority of states established accessibility requirements and funded improvements to help facilitate accessible voting at the polling places.²⁴ Forty-three states reported on our 2008 survey that they set accessibility standards for polling places in 2008, up from 23 states in 2000. Some states reported requiring polling places to provide other accommodations for voters with disabilities, such as curbside voting and audio or visual aids, although fewer states reported requiring some of these accommodations in 2008 than in 2000 (see fig. 4). These practices may have declined because more states reported taking actions to make polling places accessible since the 2000 election, and more states reported allowing people to vote absentee without having to meet specific criteria. Additionally, most states reported that they used federal HAVA funds to improve the physical accessibility of polling places. We also found that there was an increase from 2000 to 2008 in the number of states that reported requiring polling places to be inspected and local jurisdictions to submit inspection reports to the state to help ensure the accessibility of polling places. Although according to our state survey the majority of states established accessibility requirements by 2008, 31 states reported that ensuring polling place accessibility was very or moderately challenging.

²⁴Although we included the four U.S. territories in our survey to compare the results of our 2008 survey of state election officials to our 2000 survey, we are only reporting data from the 50 states and the District of Columbia in our discussion of states' actions to help facilitate voting for people with disabilities. For the purposes of survey results, we refer to the 50 states and the District of Columbia collectively as states.

Figure 4: Accommodations That States Reported Requiring Local Jurisdictions to Offer to Voters with Disabilities, as of the 2000 and 2008 Federal Elections



Source: GAO analysis of data from its 2000 and 2008 surveys of state election officials.

Note: Data include the 50 states and the District of Columbia, but not all states answered every survey question.

In addition to our 2008 nationwide review of polling places, we also surveyed local election officials in 2008 to collect information on local actions taken to facilitate voting in long-term care facilities, including steps taken to improve the accessibility of polling places located in long-term care facilities. According to our 2008 survey of local election officials, some localities we surveyed reported providing voting services directly to long-term care facility residents, who may face physical and cognitive impairments that may make it more difficult for them to independently get to a polling place, find accessible parking, reach the ballot area, and cast a ballot privately and independently. Specifically, close to one-third (29 of 92) of the localities we surveyed reported designating long-term care facilities as Election Day polling places, which allows residents to vote in

an official polling place without having to leave their residence.²⁵ However, local officials from one of these localities reported that they only designate a portion of the long-term care facilities in their election jurisdiction as polling places. Designating long-term care facilities as polling places may provide residents with increased opportunities to vote privately and independently, because HAVA requires each polling place for federal elections to have at least one voting system equipped for people with disabilities. While accessible voting systems provide opportunities for more private and independent voting, only 15 localities we surveyed reported providing long-term care facilities with demonstrations of voting systems equipped for people with disabilities, which could facilitate a greater use of these systems at Election Day polling places by residents unfamiliar with electronic machinery. Finally, one locality we surveyed—Falmouth, Maine—reported providing long-term care facility residents with transportation to polling places on Election Day.

Justice Assessed States' Implementation of HAVA Requirements for the 2006 Deadline, but Its Oversight Had Some Gaps

Justice's Outreach, Guidance, and Oversight

From shortly after the passage of HAVA until 2006, Justice officials provided educational outreach and guidance on polling place accessibility and conducted an initial assessment of states' compliance with HAVA's January 2006 deadline for accessible voting systems.²⁶ Justice provided guidance on the new HAVA voting system requirements while the EAC

²⁵We did not collect information from localities on whether long-term care facilities designated as polling places were open to all voters or exclusively to long-term care facility residents.

²⁶ See 42 U.S.C. § 15481(d).

was being formed. During this time, Justice officials said they made a considerable effort to educate state and local election officials and national organizations representing election officials and people with disabilities on HAVA voting system requirements. As part of these early efforts, Justice provided guidance to poll workers on how to assess and create a physically accessible polling place. Specifically, in 2004, Justice published the *Americans with Disabilities Act: ADA Checklist for Polling Places*, which provided information to voting officials on key accessibility features needed by most voters with disabilities to go from the parking area to the voting area. According to our survey, 34 states found the checklist to be moderately to very helpful. While the checklist provides limited guidance on accessibility features within the voting area, it does not provide information about the configuration of the voting system. In addition to early guidance, Justice also conducted an initial assessment of states' progress toward meeting the January 2006 deadline for compliance with HAVA voting system requirements. For example, in 2003, Justice sent letters to state election officials summarizing HAVA voting system requirements. Justice later followed up with letters in 2005 and 2006, which outlined HAVA voting system requirements, and asked states to respond to a series of questions to help gauge whether every polling place in the state had at least one accessible voting machine and whether poll workers were trained in the machine's operation. Finally, with the full implementation of HAVA in 2006, the EAC took over Justice's state educational outreach and guidance efforts.

Justice's limited oversight of HAVA voting system requirements and polling place accessibility, by 2009, left gaps in ensuring voting accessibility for people with disabilities. For example, Justice supervised polling place observations for federal elections on Election Day 2008, primarily to assess compliance with the Voting Rights Act of 1965. However, Justice did not systematically assess the physical accessibility of the polling places or the level of privacy and independence provided to people with disabilities by the accessible voting system, which limited the department's ability to identify potential accessibility issues facing voters with disabilities. In addition, Justice initiated a small number of annual community assessments—called Civic Access assessments—of ADA compliance in public buildings, including buildings designated as polling places, but these assessments included a small portion of polling places nationwide and were generally not conducted on Election Day. According to Justice, these assessments could be resource-intensive, which, in part, may have limited the number that the department could complete in a given year. Justice initiated Civic Access assessments for three communities in calendar year 2008. When onsite reviews identified

physical barriers and impediments for people with disabilities, Justice generally negotiated and entered into a settlement agreement with the election jurisdiction. Between 2000 and 2008, Justice entered into 69 Civic Access settlement agreements containing one or more recommendations aimed at polling place provisions, but given the small number of Civic Access assessments conducted annually, they did not provide a national perspective on polling place accessibility. In addition, since these assessments were not conducted during elections, they did not assess any special features of voting areas and accessible voting systems that are set up only on Election Day.

Implementation of Recommended Monitoring and Oversight Would Reduce Potential Voting Impediments and Other Challenges

In our 2009 report on polling place accessibility, we recommended that the Department of Justice look for opportunities to expand its monitoring and oversight of the accessibility of polling places for people with disabilities in a cost-effective manner. This effort might include:

- working with states to use existing state oversight mechanisms and using other resources, such as organizations representing election officials and disability advocacy organizations, to help assess and monitor states' progress in ensuring polling place accessibility, similar to the effort used to determine state compliance with HAVA voting system requirements by the 2006 deadline;
- expanding the scope of Election Day observations to include an assessment of the physical access to the voting area and the level of privacy and independence being offered to voters with disabilities by accessible voting systems; and
- expanding the *Americans with Disabilities Act: ADA Checklist of Polling Places* to include additional information on the accessibility of the voting area and guidance on the configuration of the accessible voting system to provide voters with disabilities with the same level of privacy and independence as is afforded to other voters.

Justice generally agreed with this recommendation in commenting on the draft report, and when we reached out for an update in preparation of this testimony, indicated it has taken steps towards addressing the recommendation. For example, Justice noted that it has entered into settlements—with Philadelphia, Pennsylvania, in 2009 and Flint, Michigan, in 2012—to resolve allegations of inaccessible polling places. In addition, Justice stated that it has expanded the scope of Election Day observations to include an assessment of the physical accessibility of

polling places, citing its monitoring of 240 polling places in about 28 jurisdictions for the 2012 general election. However, Justice did not indicate whether its expanded Election Day observations include assessing privacy and independence provided by accessible voting systems. Further, it does not appear at this time that Justice has taken action to expand the scope of the *ADA Checklist for Polling Places* to include additional information on the accessibility of the voting area and guidance on the configuration of the accessible voting system. We believe that expanding these additional steps could build upon Justice's efforts to date in potentially reducing voting impediments and other challenges for voters with disabilities.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or other Members of the Council may have.

GAO Contact and Staff and Acknowledgements

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