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Elections: Allowing Disabled Voters to Transfer to Accessible Polling Places Does Not Avoid Duty to Modify Inaccessible Polling Sites

Disabled in Action v. Board of Elections in the City of New York, No. 12-4412-cv (2d Cir. May 14, 2014).

Merely affording disabled voters the opportunity to transfer their voting registrations to accessible voting facilities does not absolve the board of elections of its responsibility to eliminate barriers and make modifications to existing sites, according to the Second Circuit.

Disabled in Action is a nonprofit organization representing people with disabilities. The New York City Board of Elections (BOE) is responsible for designating polling sites in the City City, including for the disabled. Plaintiffs claimed the BOE fails to provide disabled people with meaningful access to voting, violating the Rehabilitation Act and the ADA. The District Court found that the BOE did violate such laws with pervasive and recurring barriers to the disabled and granted plaintiffs summary judgment, ordering that a remedial plan be put in place. The BOE appealed.

HELD: The Second Circuit affirmed.

DISCUSSION: The Rehabilitation Act "prohibits programs and activities receiving federal financial assistance from excluding, denying benefits to, or discriminating against 'otherwise qualified'" individuals with a disability. Title II of the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." The standards for each are nearly identical and require a plaintiff to show that "(1) he is a qualified individual with a disability; (2) the defendant is subject to one of the Acts; and (3) he was denied the opportunity to participate in or benefit from the defendant's services, programs, or activities, or was otherwise discriminated against by the

defendant because of his disability." Public entities that fail to provide “meaningful access,” which can occur in public buildings due to architectural barriers or absence of modifications necessary to afford access, discriminate against qualified individuals. The entities must make “reasonable accommodations” for the disabled – modifications that do not fundamentally alter the nature of the service provided and do not impose undue financial or administrative burdens on the public entity.

The BOE did not challenge whether the individuals in the suit were qualified, but only whether the plaintiffs were discriminated against because of their disability. Specifically, the BOE argued that, because no plaintiff could show he or she was deprived of the right to vote as a result of barriers to access, the claim had to fail. As for reasonable accommodation, the BOE argued it wasn’t liable under either Act since there were no reasonable alternative facilities in the vicinity to serve as polling places (and plaintiffs had failed to demonstrate the existence of any such alternatives). More importantly, the BOE already offered a reasonable accommodation by allowing disabled voters to transfer their voter registrations to “accessible” polling places.

The Court disagreed. Plaintiffs did not have the burden of proving disenfranchisement; the burden was to show that BOE failed to provide “meaningful access” on Election Day. The Court found that BOE did fail to provide such access by designating inaccessible polling places throughout the City and failing to provide access to those places through ramps, specialized voting equipment, personnel, and temporary architectural modifications. Surveys showed that 80% of polling places had at least one barrier to access, including inadequate signage to indicate how disabled people could access the voting booths, dangerous ramps, blocked entryways, and inaccessible interior spaces.

As for BOE’s argument that it already reasonably accommodated the disabled by letting them transfer from inaccessible to accessible polls, the Court again disagreed: while this might be one means of accommodation, offering this single solution was not sufficient.

The Court also noted that even when accessibility issues on Election Day were brought to the attention of BOE staff by the disabled, the agency and its employees did not fix them.

Finally, the Court held that, once plaintiffs made a prima facie showing of inaccessibility, it was BOE’s responsibility to show that any accommodations the plaintiffs proposed were unreasonable due to financial or administrative hardship or because such changes would fundamentally alter the nature of the service. The accommodations suggested in the District Court’s remedial plan did not fundamentally alter the voting program or impose undue financial or administrative burdens.

http://www.ca2.uscourts.gov/decisions/isysquery/9616d959-b949-495d-8580-1be07d7db1a5/3/doc/12-4412_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/9616d959-b949-495d-8580-1be07d7db1a5/3/hilite/ (last accessed May 30, 2014).