

SUMMARY OF SELECTED FEDERAL PROTECTIONS FOR ELIGIBLE VOTERS

Congress has entrusted the Department of Justice with responsibility for enforcing a number of federal statutes designed to ensure full and fair access to the political process for all eligible Americans. The Department is committed to the vigorous enforcement of these laws, and also understands that providing fair and reliable elections requires state and local election officials to confront substantial logistical and budgetary challenges with creativity, pragmatism, thorough planning, and careful attention to operational details. To help support these efforts and to provide the general public with information about the requirements of federal law, the Department offers this information about the administration of elections in line with the federal civil rights statutes that protect the right to vote.

This document sets forth a general overview of some of the most salient federal statutory requirements pertaining to the ability of eligible citizens to cast valid ballots that can be counted, incorporating prior judicial decisions, Department fact sheets, and legal filings.¹ This document discusses some significant protections that bear on the following areas:

- the means to register to vote, and systems designed to ensure that the process is accessible and that rolls are complete and reliable;
- the distribution and receipt of absentee ballots;
- the selection and setup of polling sites and early voting locations, and the distribution of resources among them;
- printed, electronic, and oral communications to voters;
- the selection and deployment of accessible and reliable voting systems;
- the selection, training, and assignment of poll workers and election judges;
- procedures at the polls; and
- decisions concerning which ballots are valid and must be tallied.

An exhaustive overview of federal voting statutes, and their interaction with state and local requirements and separate constitutional constraints in every circumstance, is beyond the scope of a summary document. Nevertheless, the information below is intended to help ensure that all eligible citizens have a fair opportunity to participate in the election process.

¹ Many of the cited legal filings are available at www.justice.gov/crt/voting-section or at www.ada.gov.

I. Voter Registration

A. Methods of Voter Registration

The National Voter Registration Act of 1993 (NVRA) requires covered states² to provide at least three ways for voters to register to vote for federal elections, in addition to any voter registration methods provided under state law:

- (1) as part of the application, renewal, or change of address for a driver's license or similar identification;³
- (2) by mail, using the federal voter registration form;⁴ and
- (3) through state-designated voter registration agencies, including those providing public assistance and disability services.⁵

Courts have made clear that full compliance with these requirements is necessary. For example, federal courts have found a violation where states have conditioned acceptance of a complete federal voter registration form for federal elections on the voter providing additional state-mandated information that is not required by the form itself.⁶

Motor vehicle and other state-designated agencies must provide registration opportunities for both in person and remote transactions.⁷ And those state-designated agencies that offer services other than voter registration must offer the same degree of assistance with voter registration forms that they offer with applications for their own primary services.⁸ For example, if employees at such an agency regularly take time to explain to each applicant the various forms involved in an application for the agency's own services and answer applicant questions before the applicant completes the forms, this type of assistance must also be given to those applicants with regard to the voter registration process. Similarly, if it is agency practice to make sure that agency forms are completed and signed when submitted by an applicant, the same practice should apply to a voter registration application submitted by that applicant.

² A state is exempt from the NVRA if it has no voter registration requirement for federal elections or has allowed voter registration at the polling place for federal elections continuously since August 1, 1994. 52 U.S.C. § 20503(b). Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming are presently exempt.

³ See, e.g., 52 U.S.C. § 20504.

⁴ See, e.g., 52 U.S.C. § 20505; *Arizona v. Inter-Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013).

⁵ See, e.g., 52 U.S.C. § 20506; *Harkless v. Brunner*, 545 F.3d 445 (6th Cir. 2008); [Complaint](#), *United States v. Rhode Island*, No. 11-cv-00113 (D.R.I. Mar. 18, 2011); *United States v. New York*, 700 F. Supp. 2d 186 (N.D.N.Y. 2010).

⁶ See, e.g., *Arizona v. Inter-Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013) (rejecting state attempts to refuse federal voter registration forms submitted without documentary proof of citizenship).

⁷ See, e.g., 52 U.S.C. §§ 20504(a), 20506(a)(6)(A); *United States v. Louisiana*, No. 11-cv-00470, 2016 WL 4055648 (M.D. La. July 26, 2016); *Georgia State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320 (N.D. Ga. 2012).

⁸ See, e.g., 52 U.S.C. § 20506(a)(6)(C).

Deadlines

The NVRA sets deadlines for transmitting voter registration applications and registering voters. Voter registration applications that are accepted through motor vehicle, public assistance or disability offices must be transmitted to election authorities within 10 days. Applications that are accepted within 5 days before the close of voter registration before an election must be transmitted to election authorities within 5 days.⁹

Covered states must also ensure that an eligible applicant is registered to vote when a valid voter registration application is submitted to a motor vehicle authority, public assistance or disability agency, or election authority, or (if mailed) postmarked (1) at least 30 days before a federal election, or (2) within such lesser time as is provided under state law.¹⁰

Delegation to Local Governments and Private Entities

These NVRA requirements apply even when states delegate motor vehicle, public assistance, or disability services to local governments or private entities. Accordingly, federal courts have held states liable for failing to ensure that these partner entities offered the voter registration services required by law.¹¹

B. Assistance with Voter Registration

Race and Language Minority Status

Under Section 2 of the Voting Rights Act, restrictions on the voter registration process must not deny or abridge registration opportunities on account of race or language minority status, whether intentionally or through a discriminatory result.¹²

Other provisions of the Voting Rights Act require jurisdictions to affirmatively assist the registration process. For example, Section 203 requires certain jurisdictions, determined by the U.S. Census Bureau based on a statutory formula, to provide bilingual voting materials and

⁹ See, e.g., 52 U.S.C. §§ 20504(e), 20506(d).

¹⁰ See, e.g., 52 U.S.C. § 20507(a)(1); [Am. Complaint](#), United States v. Cibola Cnty., N.M., No. 93-cv-01134 (D.N.M. Jan. 31, 2007).

¹¹ See, e.g., United States v. New York, 255 F. Supp. 2d 73 (E.D.N.Y. 2003) (finding that state agencies administering services through district offices run by local governments are responsible for ensuring those offices' compliance with the NVRA).

¹² See, e.g., 52 U.S.C. § 10301; League of Women Voters of N.C. v. North Carolina, 769 F.3d 224 (4th Cir. 2014) (finding it likely that plaintiffs would succeed in establishing a discriminatory result under the Voting Rights Act, given local context, based *inter alia* on the elimination of same-day registration); N.C. State Conference of the NAACP v. McCrory, ___ F.3d ___, 2016 WL 4053033 (4th Cir. July 29, 2016) (finding that plaintiffs had established discriminatory intent under the Voting Rights Act, given local context, based *inter alia* on the elimination of same-day registration).

information in the covered minority languages appropriate for the local population.¹³ And if these jurisdictions offer other assistance to voters, including help from registrars in completing applications, that assistance must be available in the appropriate language as well. In these jurisdictions, English-language election forms and information must also be available in the appropriate minority language and distributed with equal effectiveness, so that all citizens will have an equal opportunity to register, learn the details of the elections, and cast an informed and effective ballot.¹⁴ This includes translations of oral, printed, and online materials related to voter registration.

In contrast with Section 203, Section 4(e) of the Voting Rights Act applies nationwide. It precludes disenfranchisement, including in the voter registration process, based on limited English proficiency, for voters educated in American-flag schools in which the predominant classroom language was not English — as in Puerto Rico, for example.¹⁵

The Department has issued guidelines with respect to the language minority provisions of the Voting Rights Act, available at www.justice.gov/sites/default/files/crt/legacy/2011/11/04/28CFRPart55.pdf. The Department has also produced a plain-language brochure with practical steps for achieving compliance, at <https://www.justice.gov/crt/minority-language-citizens>, which is also available in [Spanish](#), [Chinese](#), [Japanese](#), [Korean](#), [Vietnamese](#), and [Tagalog](#).

Disability

Title II of the Americans with Disabilities Act ensures that persons with disabilities have a full and equal opportunity to vote, including the voter registration process. Thus, officials must reasonably modify any policy, procedure, or practice interfering with a person with a disability, to give voters with disabilities the same level of privacy and independence in registering to vote as every other voter.¹⁶

¹³ See, e.g., 52 U.S.C. § 10503. In 2011, the Census Bureau released the most recent determinations describing which jurisdictions are covered for which languages under Section 203. Those determinations are available here: https://www.census.gov/rdo/pdf/2011_26293.pdf.

¹⁴ See, e.g., 52 U.S.C. § 10503; [Complaint](#), United States v. Colfax Cnty., Neb., No. 12-cv-00084 (D. Neb. Feb. 27, 2012) (alleging that the county, *inter alia*, failed to provide all election materials, information and assistance in Spanish that are already provided in English); [Complaint](#), United States v. Alameda Cnty., Cal., No. 11-cv-03262 (N.D. Cal. July 1, 2011) (alleging that the county, *inter alia*, failed to implement effective bilingual election programs for Spanish- and Chinese-speaking voters); [Complaint](#), United States v. City of Walnut, Cal., No. 07-cv-02437 (C.D. Cal. Apr. 12, 2007) (alleging that the city, *inter alia*, failed to implement effective bilingual election programs for Chinese- and Korean-speaking voters); United States v. Metro. Dade Cnty., Fla., 815 F. Supp. 1475 (S.D. Fla. 1993) (granting a temporary restraining order requiring a voter information pamphlet for a special election to be translated into Spanish).

¹⁵ See, e.g., 52 U.S.C. § 10303(e); [Complaint](#), United States v. Orange Cnty., N.Y., No. 12-cv-03071 (S.D.N.Y. Apr. 18, 2012); [Complaint](#), United States v. Lorain Cnty., Ohio, No. 11-cv-02122 (N.D. Ohio Oct. 7, 2011); United States v. Berks Cnty., Pa., 277 F. Supp. 2d 570 (E.D. Pa. 2003).

¹⁶ See, e.g., 42 U.S.C. § 12132; 28 C.F.R. § 35.130.

The ADA also requires that official election-related communications with people with disabilities are as effective as communications with others. State and local officials must provide appropriate auxiliary aids and services when necessary to afford an equal opportunity to participate.¹⁷ This includes communications that offer or collect information pertinent to voter registration, including online and offline registration forms.

The Department has produced practical guidance regarding the various protections in federal law for voters with disabilities and how to meet those requirements. That guidance is available here: www.ada.gov/ada_voting/ada_voting_ta.htm.

C. Ensuring that the Rolls Are Complete and Accurate

Under federal law, standards and procedures for determining whether individuals are qualified to vote in a federal election – including criteria and conditions for successful registration – must be uniform within a jurisdiction.¹⁸ And as with other parts of the election process, voter registration procedures may not deny or abridge the right to vote on account of race or language minority status. This includes, for example, protections against discriminatory purges of the registration rolls or challenges of voters' eligibility.¹⁹

Errors or Omissions

Title I of the Civil Rights Act of 1964 prohibits denying the right to vote in a federal election because of an error or omission on a record relating to a prerequisite to voting — like an error or omission on a voter registration form — if that error or omission is not material to determining the voter's qualifications.²⁰ For example, the Department of Justice has sued to ensure that a jurisdiction may not reject voter registration forms when an eligible voter with an otherwise valid address does not list a ZIP code or uses an outdated version of the registration form that nevertheless contains all of the necessary information to establish eligibility.²¹

¹⁷ See, e.g., 28 C.F.R. § 35.160.

¹⁸ See, e.g., 52 U.S.C. § 10101(a); *Shivelhood v. Davis*, 336 F. Supp. 1111 (D. Vt. 1971).

¹⁹ See, e.g., 52 U.S.C. § 10301; *United States v. Brown*, 561 F.3d 420 (5th Cir. 2009) (affirming liability under the Voting Rights Act for conduct including discriminatory rejection of absentee ballots based on race and announcements of discriminatory challenges based on race); *Toney v. White*, 488 F.2d 310 (5th Cir. 1973) (en banc) (affirming liability under the Voting Rights Act for conduct including discriminatory purging of the voter rolls based on race); [Complaint](#), *United States v. Long Cnty., Ga.*, No. 06-cv-00040 (S.D. Ga. Feb. 8, 2006) (alleging that discriminatory challenges based on race or language minority status violated the Voting Rights Act); [Complaint](#), *United States v. City of Hamtramck, Mich.*, No. 00-cv-73541 (E.D. Mich. Aug. 4, 2000) (alleging that discriminatory challenges based on race violated the Voting Rights Act).

²⁰ See, e.g., 52 U.S.C. § 10101(a); [Complaint](#), *United States v. Waller Cnty., Tex.*, No. 08-cv-03022 (S.D. Tex. Oct. 9, 2008); *Wash. Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264 (W.D. Wash. 2006); *Schwier v. Cox*, 412 F. Supp. 2d 1266 (N.D. Ga. 2005), *aff'd* 439 F.3d 1285 (11th Cir. 2006).

²¹ See, e.g., [Complaint](#), *United States v. Waller Cnty., Tex.*, No. 08-cv-03022 (S.D. Tex. Oct. 9, 2008).

Movers and Registrants Becoming Ineligible

States must make a reasonable effort to remove records from the voter registration list for individuals who are or have become ineligible to vote, with safeguards to ensure that eligible voters are not removed in error.²² In NVRA-covered states, any program to systematically remove ineligible voters from the rolls must be completed no later than 90 days before a federal election.²³ With respect to the November 8, 2016, general election, that final day for systematic removal was **Wednesday, August 10, 2016**. Federal primary, special, or runoff elections will have their own 90-day deadlines for systematic removals, varying based on the election date in each jurisdiction. Likewise, any such list maintenance program must be uniform, non-discriminatory and in compliance with the Voting Rights Act.

In addition, the NVRA provides that covered states cannot remove registrants from the voter registration list solely because the registrants did not vote.²⁴

The NVRA also protects voters who may have moved. In covered states, it requires registrars to update the rolls when voters move locally, within the jurisdiction, and it ensures that such voters can update their registration at the polls and vote a regular ballot in a federal election, even when they have not previously notified the registrar of their address change.²⁵ The NVRA also has a fail-safe provision preventing the immediate outright cancellation of a voter's registration based solely on the assumption that a postal change-of-address form or an apparent match between databases shows a move, whether officials obtain that information directly or rely on information provided by challengers or other private parties to the same effect.²⁶

The Department has produced more detailed guidance regarding the various provisions of the NVRA, and how to comply with those provisions. That guidance is available here: www.justice.gov/crt/national-voter-registration-act-1993-nvra.

²² See, e.g., 52 U.S.C. § 20507; *Janis v. Nelson*, No. 09-cv-05019, 2009 WL 5216902 (D.S.D. Dec. 30, 2009).

²³ See, e.g., 52 U.S.C. § 20507(c)(2); *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014).

²⁴ See, e.g., 52 U.S.C. § 20507; [Brief for the United States as Amicus Curiae](#), Ohio A. Philip Randolph Institute, No. 16-3746 (6th Cir. July 18, 2016); *Statement of Interest of the United States, Common Cause v. Kemp*, No. 16-cv-00452 (N.D. Ga. May 4, 2016).

²⁵ See, e.g., 52 U.S.C. § 20507.

²⁶ See, e.g., 52 U.S.C. § 20507; *Montana Democratic Party v. Eaton*, 581 F. Supp. 2d 1077 (D. Mont. 2008) (explaining that local registrars would have violated the NVRA had they given effect to private challenges of voters' registration based solely on postal change-of-address information and comparisons between databases with residential information).

II. Absentee Ballots

Many of the global protections described above also apply to absentee voting. For example, absentee balloting procedures — including procedures relating to applying for or handling absentee ballots, as well as casting and counting them — may not deny or abridge the right to vote on account of race or language minority status.²⁷ And the protections for language minorities and voters with disabilities described above, in the voter registration process, also fully apply to the absentee voting process, including provisions governing communications like absentee ballot applications and the absentee ballot itself.²⁸ For example, the federal courts have required that where a jurisdiction has reliable and secure technology that allows blind voters to cast absentee ballots with the same degree of privacy and independence as voters without visual impairments, states must permit the use of that technology.²⁹

Moreover, Section 202 of the Voting Rights Act protects the right of eligible citizens who move less than 30 days before a presidential general election to vote absentee in their former jurisdiction. It also protects eligible citizens' ability to vote absentee in a presidential general election if they will be away from the jurisdiction on Election Day.³⁰

A. Sending Timely Absentee Ballots to UOCAVA Voters

The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) requires that the states and territories allow uniformed service members serving away from home, their families, and Americans living abroad to register and vote absentee in federal elections.

Among its key provisions, UOCAVA requires states to send qualifying voters an absentee ballot early enough to give the voter time to receive, vote, and send it back in time to be counted. Specifically, absentee ballots must be sent to UOCAVA voters by the 45th day before a federal election, if a request for that ballot is received by that date.³¹ For the November 8, 2016, general election, ballots must be transmitted by **Saturday, September 24, 2016** to eligible UOCAVA voters who request them. Other federal primary, general, special, and runoff elections will have their own 45-day deadlines.

²⁷ See, e.g., 52 U.S.C. § 10301.

²⁸ See, e.g., 52 U.S.C. § 10503; 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.160; Nat'l Fed'n of the Blind v. Lamone, 813 F.3d 494 (4th Cir. 2016) (affirming the finding, given the record in the case, that Maryland violated the ADA by refusing to make an online ballot marking tool available to absentee voters with disabilities).

²⁹ See, e.g., Nat'l Fed'n of the Blind v. Lamone, 813 F.3d 494 (4th Cir. 2016).

³⁰ See, e.g., 52 U.S.C. § 10502; Project Vote v. Madison Cnty. Bd. of Elections, No. 08-cv-02266, 2008 WL 4445176 (N.D. Ohio Sept. 29, 2008).

³¹ See, e.g., 52 U.S.C. § 20302(a)(8); United States v. Alabama, 778 F.3d 926 (11th Cir. 2015); United States v. West Virginia, No. 14-cv-27456, 2014 WL 7338867 (S.D. W.Va. Dec. 22, 2014).

B. Accepting Ballots from UOCAVA Voters

UOCAVA also requires states to accept otherwise-valid voted ballots even if they are not notarized, and even if they are printed on a nonstandard paper size or sent in a nonstandard type envelope.³²

Federal law further requires states to accept the special federal write-in absentee ballot from UOCAVA voters.³³

The Federal Voting Assistance Program (FVAP) at the Department of Defense can assist UOCAVA voters who need assistance with registering and voting absentee.

<https://www.fvap.gov/>.

III. Voting Location Selection and Setup

As with the procedures above, there are a few important ways in which federal statutes apply to the selection and setup of physical voting locations such as polling places, early voting sites, and absentee ballot drop points.

A. Choosing Sites and Hours

The Voting Rights Act's prohibition against the denial or abridgement of the right to vote based on race or covered language minority status applies to the selection of voting locations, days, and hours, just as it applies to the practices above. Officials may not dilute the franchise either by intentionally precluding or burdening voters' participation based on their race or language minority status,³⁴ or by taking an action that results in a denial or abridgment of the right to vote on account of race or language minority status.³⁵ The decision to open or close voting locations, to site them in particular places, or to make them available at certain times must not impose a disparate burden in a way that interacts with social and historical conditions to yield or further a discriminatory result.³⁶

³² See, e.g., 52 U.S.C. §§ 20302(i); 20303(f).

³³ See, e.g., 52 U.S.C. § 20303.

³⁴ See, e.g., 52 U.S.C. § 10301; N.C. State Conference of the NAACP v. McCrory, ___ F.3d ___, 2016 WL 4053033 (4th Cir. July 29, 2016) (finding that plaintiffs had established discriminatory intent under the Voting Rights Act, given local context and the details of the statute, based *inter alia* on the restriction of days on which to vote in person before election day).

³⁵ See, e.g., 52 U.S.C. § 10301; Thornburg v. Gingles, 478 U.S. 30 (1986).

³⁶ See, e.g., 52 U.S.C. § 10301; Ohio State Conference of the NAACP v. Husted, 768 F.3d 524 (6th Cir. 2014) (affirming preliminary injunction under the Voting Rights Act for the 2014 general election based on the discriminatory result, given local context, caused by a reduction in early voting days and hours), *vacated after stay* by 2014 WL 10384647 (6th Cir. Oct. 1, 2014); Poor Bear v. Jackson Cnty., S.D., No. 14-cv-05059, 2015 WL 1969760 (D.S.D. May 1, 2015) (refusing to dismiss claims of discriminatory intent and discriminatory result under the Voting Rights Act based on specific allegations relating to the refusal to open a satellite office for voter registration and in-person absentee voting on a Native American reservation); Spirit Lake Tribe v. Benson Cnty.,

This is a legal standard heavily dependent on local context, and evaluated in the totality of the circumstances. Different factors will bear in different ways on different local situations, and it is clear that no one factor is universally dispositive. That said, in determining whether action like the selection or availability of particular voting locations violates the Voting Rights Act, among the many factors that courts will consider are factors like: the relative accessibility of sites to communities of eligible voters and the relative capacity of the sites to serve expected crowds; the relative ability of voters to reach the sites at the times and in the locations where voting is offered; the social significance of the sites or of the times at which they are open (whether particularly welcoming or particularly forbidding to various communities); the local political context in the jurisdiction and its history, in voting and beyond; and the nature and extent of any public and private discrimination and the extent to which communities bear the continuing effects of that discrimination.

The Voting Rights Act is not the only federal law bearing on site selection for voting locations. The ADA, for example, also requires public entities to ensure that people with disabilities can access and use their voting facilities, including polling places.³⁷

The Department of Justice's ADA Checklist for Polling Places (www.ada.gov/votingchecklist.htm) provides guidance to election officials for determining whether a polling place already has the basic accessibility features needed by most voters with disabilities or can be made accessible using temporary solutions. A short separate document (www.ada.gov/ada_voting/voting_solutions_ta/polling_place_solutions.htm) presents specific solutions for five common ADA access problems at the polls.

B. Pollworkers, Voting Systems, and Other Resources

Federal law applies to the deployment of pollworkers, ballots, voting booths, voting machines, and other resources among polling places as well. Under the Voting Rights Act, for example, a jurisdiction must ensure that, in the totality of circumstances, eligible citizens have equal opportunity to participate in the electoral process regardless of race or language minority status.³⁸ In jurisdictions with present or lingering effects of discrimination, inequitable distribution of resources leading to discriminatory burdens like excessive lines falling with particular force on minority communities may amount to a violation of the Voting Rights Act.

N.D., No. 10-cv-00095, 2010 WL 4226614 (D.N.D. Oct. 21, 2010) (granting a preliminary injunction under the Voting Rights Act based on the discriminatory result, given local context, caused by closing several polling places on or near a Native American reservation).

³⁷ See, e.g., 42 U.S.C. § 12132; 28 C.F.R. § 35.130; [Complaint](#), United States v. Harris Cnty., Tex., No. 16-cv-02331 (S.D. Tex. Aug. 4, 2016) (alleging a failure to make polling places accessible to voters with mobility and vision disabilities); [Complaint](#), United States v. Augusta Cnty., Va., No. 15-cv-00077 (W.D. Va. Nov. 4, 2015) (same); *Disabled in Action v. Bd. of Elections in the City of New York*, 752 F.3d 189 (2d Cir. 2014) (affirming the finding that New York City violated the ADA by failing to remedy barriers to access for voters with disabilities at polling places).

³⁸ See, e.g., 52 U.S.C. § 10301.

For pollworkers, federal law may implicate not merely their equitable distribution among voting locations, but also their skills and training. For jurisdictions covered by Section 203 of the Voting Rights Act, for example, if pollworkers are available to provide assistance in English, there must also be trained bilingual pollworkers available to provide assistance in the covered minority language.³⁹ Indeed, in jurisdictions covered for historically unwritten Native languages, bilingual pollworker assistance may be the only effective means to provide effective assistance to the covered language minority communities.⁴⁰

Similarly, jurisdictions covered by Section 203 must ensure that written forms and information relating to the voting process are available in the covered minority language. This includes not only ballots but also other information — for example, the information that federal law requires to be posted at every polling place,⁴¹ including the dates and hours of the election, sample ballots, information on how to cast a regular ballot and provisional ballot, and information on how to contact officials to file a complaint.⁴² The language requirement of Section 203 applies to information available by phone and online just as to printed documents at the voting location. And under the ADA, jurisdictions across the country must make sure that these communications are accessible to voters with disabilities, sufficient to ensure that such communications are as effective for persons with disabilities as persons without.⁴³

Voters with disabilities are also protected by federal law in the distribution of voting systems at voting locations. The Help America Vote Act (HAVA), for example, requires officials to deploy voting systems in federal elections that meet certain minimum standards,⁴⁴ including having at least one voting system in each polling place in a federal election that makes voting accessible in a private and independent manner to voters with disabilities.⁴⁵ And the ADA requires officials conducting any elections — federal, state, or local — to provide communication with voters with disabilities that is as effective as that provided to others,

³⁹ See, e.g., 52 U.S.C. § 10503; [Complaint](#), United States v. Cochise Cnty., Ariz., No. 06-cv-00304 (D. Ariz. June 16, 2006) (alleging, *inter alia*, the failure to provide an adequate number of trained bilingual pollworkers).

⁴⁰ See, e.g., 52 U.S.C. § 10503; [Complaint](#), United States v. Bernalillo Cnty., N.M., No. 98-cv-00156 (D.N.M. Feb. 6, 1998) (alleging the failure to provide effective language assistance in the Navajo language, which is historically unwritten); Transcript of Status Conference, Toyukak v. Treadwell, No. 13-cv-00137 (D. Alaska Sept. 3, 2014); [Order re Interim Remedies](#), Toyukak v. Treadwell, No. 13-cv-00137 (D. Alaska Sept. 22, 2014) (requiring both oral and written language assistance in the Yup'ik and Gwich'in languages).

⁴¹ 52 U.S.C. § 21082(b).

⁴² See, e.g., [Complaint](#), United States v. Cochise Cnty., Ariz., No. 06-cv-00304 (D. Ariz. June 16, 2006) (alleging, *inter alia*, the failure to provide voter information materials at the polling place as required by HAVA, and the failure under section 203 of the Voting Rights Act to provide election-related information in Spanish).

⁴³ See, e.g., 42 U.S.C. § 12132; 28 C.F.R. § 35.160.

⁴⁴ These standards include a mandate that the voting system meet federal standards for error rates, that it provide an audit capacity, and that it permit voters to verify the votes selected on the ballot before the ballot is cast and counted, with an opportunity to correct errors. 52 U.S.C. § 21081.

⁴⁵ See, e.g., 52 U.S.C. § 21081(a)(3); [Complaint](#), United States v. N.Y. State Bd. of Elections, No. 06-cv-00263 (N.D.N.Y. Mar. 1, 2006) (alleging, *inter alia*, a failure to provide voting systems accessible to persons with disabilities to the extent required by HAVA).

including providing voting systems or ballots in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.⁴⁶

IV. Voting Procedures

Federal law bears on some aspects of the procedures by which ballots are cast and counted. For these practices, as in other portions of the election process, no procedure or set of procedures may deny or abridge the right to vote on account of race or language minority status.⁴⁷

A. Closing the Polls

If the time for closing the polls in a federal election has been established by a State law in effect 10 days before Election Day, HAVA provides that any voter who votes in that election as the result of an order extending the closing time may only do so by casting a provisional ballot.⁴⁸ This provision does not apply to individuals who are already in line to vote by the poll closing time established by State law, if one exists.

B. Checking Identity

HAVA requires certain first time voters who registered by mail to either (1) provide verifiable identifying information like a driver's license number or the last four Social Security digits, *or* (2) present identification — a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address — before voting a regular ballot.⁴⁹

State law may impose other generally applicable identification requirements, so long as they do not otherwise violate federal law. The Voting Rights Act prohibits any other such requirements from, in the totality of circumstances, depriving eligible citizens of the equal opportunity to participate in the electoral process, on account of their race or membership in a language minority group. For example, federal courts have found that the imposition of a particularly stringent identification regime in Texas has interacted with significant local social and historical conditions linked to discrimination against racial and language minorities to yield results that deny an equal voting opportunity to racial and language minorities and thereby amount to a violation of the Voting Rights Act.⁵⁰

⁴⁶ See, e.g., 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.160.

⁴⁷ See, e.g., 52 U.S.C. § 10301.

⁴⁸ See, e.g., 52 U.S.C. § 21082(c).

⁴⁹ See, e.g., 52 U.S.C. § 21083(b).

⁵⁰ See, e.g., 52 U.S.C. § 10301; *Veasey v. Abbott*, ___ F.3d ___, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc).

C. Seeking Assistance

Section 208 of the Voting Rights Act, applicable throughout the country, provides that voters who need assistance to vote by reason of blindness, disability, or inability to read or write in English may be given assistance with the voting process by a person of the voter's choice so long as that person is not an agent of the voter's employer or union, but does not otherwise limit whom the voter may choose to provide assistance.⁵¹ The opportunity for voters to receive such assistance applies not only to the process of reading and marking a ballot, but to all activities required of voters at a polling place to meaningfully and effectively exercise their right to vote, including navigating the polling place, filling out forms, and answering questions posed by election officials.⁵²

D. Provisional Ballots

HAVA requires that individuals must be allowed to cast a provisional ballot in a federal election when they declare that they are eligible and registered to vote in a jurisdiction but a relevant official believes them to be ineligible, or their names do not appear in the poll book where they present themselves to vote.⁵³ At the time that an individual casts a provisional ballot, the election official must give the individual written information on how the voter may ascertain through a free access system whether the vote was counted, and, if the vote was not counted, the reason why.⁵⁴

⁵¹ See, e.g., 52 U.S.C. § 10508; Order, *OCA-Greater Houston v. Texas*, No. 15-cv-00679 (W.D. Tex. Aug. 12, 2016); *United States v. Berks Cnty., Pa.*, 277 F. Supp. 2d 570 (E.D. Pa. 2003); [Complaint](#), *United States v. Orange Cnty., Fla.*, No. 02-cv-00737 (M.D. Fla. June 28, 2002); [Complaint](#), *United States v. Miami-Dade Cnty., Fla.*, No. 02-cv-21698 (S.D. Fla. June 7, 2002).

⁵² See, e.g., Order, *OCA-Greater Houston v. Texas*, No. 15-cv-00679 (W.D. Tex. Aug. 12, 2016).

⁵³ See, e.g., 52 U.S.C. § 21082(a); *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004); *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004).

⁵⁴ See, e.g., 52 U.S.C. § 21082(a); [Complaint](#), *United States v. Fort Bend Cnty., Tex.*, No. 09-cv-01058 (S.D. Tex. Apr. 9, 2009); [Complaint](#), *United States v. San Benito Cnty., Cal.*, No. 04-cv-2056 (N.D. Cal. May 26, 2004).