

You First Podcast: Your Voice, Your Vote!

Episode 1: Disability Voting Laws

Keith Casebonne: You're listening to "You First, The Disability Rights Florida Podcast." Let's talk about disability voting laws on the first episode of our new series, "Your Voice, Your Vote."

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Keith: Hi. I'm Keith.

Maddie Crowley: I'm Maddie.

Keith: We're the hosts of You First. We're happy to present the first episode of our new six-episode series we call Your Voice, Your Vote.

Maddie: In today's episode, we talk with Michelle Bishop, the National Disability Rights Network's voter access and engagement manager. She has extensive academic and embodied knowledge about laws protecting disabled voters, voting accessibility, barriers set up against disabled voters, and where the current state of voting is for the disability community.

Keith: Indeed. Michelle offers great insight into the world of disability and voting. We're thrilled to have her on. Without further ado, please enjoy my interview all about disability voting laws with Michelle Bishop.

Hey, Michelle. Thanks so much for coming back to the podcast. It's been six years. We're really glad to have you back. If you could tell us a little bit about yourself, we'd appreciate it.

Michelle Bishop: Thanks so much for having me. It's great to be back. I did not realize it had been a sixth whole year. That is amazing. Congrats on the continued success of the podcast.

Keith: Thanks.

Michelle: I am the voter access and engagement manager at NDRN, the National Disability Rights Network. We're based in Washington, DC. That's where I'm coming from today.

We're actually the national membership association for a nationwide network of disability rights organizations that are federally mandated. They're in every state and every district, every territory in the US. Of course, in Florida that is actually you all, Disability Rights Florida. We are huge fans of your work.

Keith: Thanks. Let's kick into this talk about some of the national voting laws. Tell us a little bit about what national laws are out there that protect voters with disabilities.

Michelle: Sure, that's a great question because it's complicated. Our federal protections for access to vote are a patchwork of several different laws that work in concert. It goes all the way

back to the Voting Rights Act of 1965, which includes federal protections for people with disabilities who need assistance voting.

You have the right to the assistant of your choice. There's only two exceptions to that. It's your employer or your union rep. Other than that, anyone you want can assist you. They don't have to be voting. They don't have to share your polling place. They don't have to be over 18, or be a citizen, or speak English, or any of those things. It's whoever you are comfortable with and you want to assist you to vote.

Really important rights, we have yet to make voting fully accessible for people with disabilities. Moving forward, we have the Voting Accessibility for the Elderly and the Handicapped Act. It's old. It's from the early '80s, so I'm sorry it has the word handicapped in it, but it does.

It gives us some important rights. It does say that polling places have to be accessible, which before we had the Americans with Disabilities Act, and that if you can't make polling places accessible, there have to be other options.

That's why in a lot of places where you'd have to have an excuse to vote absentee, being a person with a disability or a primary caretaker for a person with a disability is listed as a reason.

It also gives you the right to request to move up in line. They don't have to move you to the front of the line at your polling place. If they don't, they're definitely going to have to find some other way to accommodate you -- bringing you a chair, whatever it may be that's going to make it work for you when there's a long line.

In the early '90s, we got the National Voter Registration Act. It's known as motor voter more commonly. It's that bill that says the DMVs have to register you to vote. It also includes a little known fact -- any state offices that provide services to people with disabilities. Very specifically, there's an effort in there to make sure that we're getting people with disabilities registered to vote.

The two biggest, probably the Americans with Disabilities Act and the Help America Vote Act. The ADA is still the gold standard for access for people with disabilities as a whole. That extends to voting. That is the piece of legislation that provides all the standards we have to make sure that polling places are going to be accessible.

Voter registration, voting by mail, however it is you interact with the process, it has to be made accessible according to those ADA standards. It also gives the Department of Justice the authority to enforce that. That's why sometimes you see the Department of Justice will come in and enter settlement agreements with counties that don't have accessible polling places.

Then the last, the Help America Vote Act, is the most recent. It came about in 2002. That's a little more laser-focused on how we actually cast our ballots, and finally -- it took until 2002 -- a recognition that a lot of the ways that we were voting were not accessible. We had those punch cards. Oh, I'm sorry to bring up punch cards in Florida.

Keith: Hopefully, we're over it by now, but who knows?

Michelle: I think it might still be too soon. Wherever you had those punch cards, or if you just had to use pen and paper to hand mark the ballot, there are folks who are never going to be able to do that. That's never going to work for every voter.

That's why we have the accessible voting system that you typically see today, whether it's those touch-screen machines or whatever it may be. There are several different laws that work together to make sure wherever people with disabilities interact with the system, the electoral process, that we're making it as accessible as possible.

Keith: Wow. There's such a history behind all of this. Of course, each one of those laws brings more access, more rights, more protections. At the same time, it's also why it seems just the process of voting has become so complex and, in some ways, even cumbersome.

There's so many different laws. There's so many different provisions. Of course, the states have the right to do what they want under those laws. On that note, if you look at it on a national scale, what key states out there are expanding access to voting and which ones are restricting access? Where do we see these trends going?

Michelle: That's a great question for a couple of reasons. One, because you're right, we did talk about federal laws that protect the vote. Most voting laws are state laws. We don't regulate election at the federal level. It's mostly done at the state and it's different everywhere.

Also, because we're seeing so much movement now around state voting rights laws, following the 2020 election, because it was such a huge election. We had historic levels of turnout. It was also an incredibly contentious election in the United States. It's just trying to make a lot of discussion around making changes to how we run elections.

What we're seeing, ever since 2020, is a bit of a mixed bag. Something new that we're seeing are what's being called election interference laws. These are proposed laws that would change how we administer election in ways that are maybe a little more partisan. It's increased the ability of partisan actors to interfere with how we run elections or to actually overturn election results at the state level.

It would maybe direct new resources to prosecuting election crimes or actually create criminal penalties for election officials. Those things we're seeing proposed and, I hate to say it, because I know we're in Florida right now. This is largely a southern phenomenon. We're seeing these things introduced this year in Alabama, Arizona, Florida, Georgia, Oklahoma, Kentucky.

They're the main culprits, although I will say, in total, there are 27 different states that have proposed at least 148 of these types of bills, as of May of this year. We're seeing a lot of those.

Not to bring up what's probably the electrified third rail of talking about elections, but those are being generated by what you could call the Big Lie, coming out of 2020, the completely baseless accusations that election results of 2020 were not accurate, but that the election was in some way stolen.

We, of course, know that's not true. It's honestly one of the best-run elections I have ever seen. Our elections officials stepped up and did their jobs under immense pressure. There are consequences to that type of rhetoric coming out of an election year.

We're also seeing laws that just generally restrict access to the vote -- stricter ID requirements, stricter proof of citizenship requirements to get registered are common this year. We've already seen in the last couple of years attempts to roll back early voting, use of mail voting, and drop boxes, and those things. They're starting to focus in now on ID and proof of citizenship requirements.

As of May of this year, we've seen about 34 different bills make significant progress through maybe 11 different states. Overall, it's shocking. I'd say in 2022, we've seen almost 400 bills introduced in 39 different states.

Keith: Wow.

Michelle: Yeah, absolutely. Since the beginning of 2021, about 18 states passed about 34 different restrictive laws that would really have an impact on people with disabilities, but there is some good stuff.

Keith: Good.

[laughter]

Michelle: That was all the bad stuff. There is some good news.

We've also seen because of COVID in 2020, it made a lot of good changes to how we run elections. When we were concerned that people weren't going to be able to vote during the pandemic, we did things like create early voting in places where it didn't exist, or lengthen that early voting period.

We reduced some of the barriers to voting by mail, said you didn't have to have an excuse or you didn't have to get signatures.

A record number of states used ballot drop boxes as a return option for your vote-by-mail ballots. We used curbside voting in places where we hadn't used it before to help people isolate during the pandemic.

Decisions we made based on COVID actually also are great for people with disabilities and expand our options, as well, to make the system a little more accessible. We have seen some of those 2020 changes come work. We've seen states expand use of mail voting, drop boxes, no-excuses absentee, making it easier to register to vote.

Some states are actually moving on voting rights restoration for people with felony conviction, which I know has been a real hot-topic issue in Florida, as well.

Making vote by mail more accessible through electronic delivery of those ballots or changing the requirement to sign those ballots, the ability to just make a mark if you're a person with a disability who is unable to sign. We've seen some good things, I'd say.

As of this past May, at least around 50 bills maybe with expansive provisions are moving through about 16 different state legislatures and the District of Columbia where I am. That includes some states like Arizona, which we also dinged earlier in this conversation for some of those more restrictive laws.

It is a mix. Overall, DC and about 44 states -- almost all of the states -- have considered almost 600 bills in 2022 that would be pro-voter reforms and really expand access.

There's good and there's bad. It's just so many bills moving. I've mentioned hundreds upon hundreds of bills. We don't usually see that much action at any one time in state legislatures.

Keith: The states have been busy. They really have been.

You touched on something I want to talk a little bit more about, electronic ballot return. If you could, tell us a little bit more about what that is and maybe some of the key states that are either for or against having it.

Michelle: Sure. This is the huge issue right now. Voting by mail was one of the rock stars of 2020 because when we were all isolating and staying home, voting by mail became a great option for making sure you were going to get to pass your ballot without having to stand in long lines and go to crowded polling places.

Especially for people with disabilities, who are absolutely on that list of people who are at high risk for severe forms of COVID, that isolation was even more important. We had options for a long time for receiving your ballot electronically, marking it electronically, and in some cases even returning it electronically. The paper is what makes voting in all forms less accessible.

Vote-by-mail traditionally is mailing you a piece of paper. You've got to be able to read it, hand mark it, and mail it back. A lot of people with print disabilities just can't do that.

This is required. Sending the ballot electronically is required in every state under federal law for military and overseas voters. In many states, they have some options for electronic return. I'm going to say 30-something, maybe 30-31 states also allow some form of electronic return for military and overseas voters.

What we've seen is far behind that for people with disabilities. We saw an increase in that following 2020, because what we've always argued is that if it's needed for military and overseas voters, we should extend it to people with disabilities even if they're state-side. Taking the paper out of the process just makes it more accessible.

Right now, I'm going to say about 19 or 20 states allow electronic delivery to people with disabilities, as well. They receive it, mark it electronically, but at the end of the process, you have to print it, and return and mail a paper ballot.

Around 12 states are extending their options for electronic return. A lot of that, that means fax, but in eight or so of those states it means email return. In about three of them, it includes an actual online portal where you receive it, you mark it, and you return it, all through one online portal.

It's far behind what we're offering to military and overseas voters, but we've seen an improvement for sure. It's on the rise. We're pushing for it really hard in a number of states.

Keith: Wow. Slowly, but surely, we hope it will grow even further. That's interesting that there's even that many states that have it for overseas now. Once something is in place, you hope you can make the argument to then expand it to more people. It's there, so at that point it's just policy.

Michelle: Exactly. They already have it. They already invested in it. We're not asking them to acquire a whole new system, allocate money for it. We're just saying you already have it. Let these folks use it, as well, because they need it for access also.

Keith: As you know, there's an age-old debate when it comes to elections between election security and election accessibility. Electronic ballot return is now another option in there that you can argue pros and cons against.

What does electronic ballot return mean for election security and accessibility? Can it exist in the same space? Or is one affected by the other, and it's a trade-off?

Michelle: I think all of those things are true. You're absolutely right. The election security concerns are the thing that's really holding back use of especially full electronic return, but even delivery of a blank ballot electronically.

Every time, for people with disabilities, the more we use technology to take paper out of the process, the more accessible we're making voting. For election security folks, the more they see technology and especially Internet, email, the more they see opportunities for security risk.

Part of working in cybersecurity is the weak points in the system. You're right. There is an age-old tension between folks who work on election accessibility and those who work on election security. Electronic return is absolutely one of those hot-button issues right now.

I do think that there is a way to navigate that. The security accessibility thing, it's about ballots. It's about trying to do both to the greatest extent that we can. I think at some point, we have to accept that elections will never be 100 percent secure or 100 percent accessible.

The only way to guarantee that ballots will never be stolen, or influenced, or hacked would be for there to be no ballots at all. Just live under a dictatorship, which is the opposite of the point. We have to accept that as long as votes exist, there's always a risk.

It's the same thing for accessibility. As long as there are votes of people with disabilities, there are some folks for whom it's really hard to make voting fully accessible, fully private and independent.

We talked about the Help America Vote Act. One of the important things about it that I forgot to mention, it guarantees everyone the right to a ballot that's private and independent. It's really hard when we talk about people with multiple disabilities. We have yet to solve that problem for people who are deaf, blind, or people with significant disabilities.

Somebody with locked-in syndrome who has extremely limited movement, we may never reach that point. We're always striving for private and independent for everybody. It's going to be hard to get there 100 percent.

In my line, security and accessibility, it's about creating a balance. We're never going to be able to do either one 100 percent. We have to make it as secure as possible, while also not disenfranchising any voters, making it as accessible as possible, which, as we talked about, is protected by federal law.

It's an actual legal obligation to make it accessible. We have to do that. I think that election security is important, but not at the expense of our votes. We have to make sure that our people who can still vote. We can create as many private and independent votes as technology will allow right now.

It's a calculated risk. We talked about military and overseas voters. We allow full electronic voting for some of those folks. We know that we have to. Deployed military are not going to be able to vote any other way.

No one is willing to say it's OK to disenfranchise our deployed military. We should feel the same way about people with disabilities. We're willing to take a calculated risk for people with a disability.

I'm not necessarily out here saying Internet voting for everyone tomorrow. Electronic delivery and return of ballots for people with disabilities who need it most is a limited amount of risk that we're calculating to make sure that no one is being disenfranchised right now, until we can secure it better.

Keith: Wow. It's an interesting, deep dilemma.

Michelle: It is.

Keith: It's going to be a while before we ever get to the point where we all feel, whew, we figured it out, we made it. I think it's going to be a little while there.

Michelle: Accessibility, like security, is a moving target. Every time we figure out one accessibility barrier, it creates a new one, or one we didn't anticipate pops up, which is why I say we'll probably never be there. Everything is always changing around us all the time. The more we introduce new ways of voting, it raises accessibility concerns that weren't a problem 10 years ago.

We'll never really be there, but it's not about the endpoint. It's about constantly making sure that we're helping as many people to be able to vote as independently and privately as we possibly can.

Keith: Absolutely. Michelle, I've got one last question for you. Let's talk about who can return your ballot. If you, yourself, are unable to return your completed ballot, who can do that for you? How do state and federal laws about that conflict?

Michelle: Your questions are so on point today. This is everything we're grappling with right now nationwide, honestly. We talked early in this conversation about the Voting Rights Act, and how it gives you the federal right to the assistant of your choice, other than your employer or your union rep.

That holds here when it comes to returning your ballot. Whoever you choose, other than your employer or your union rep, can return your ballot for you. Whether that means they went with you to vote in person and they're taking it and sliding it to the scanner box for you, dropping it in a mailbox or a post office to get it to a polling place, putting it in a drop box.

Whatever ballot return means for you, the assistant of your choice has the right federally to help you do that.

We are seeing proposed state laws and some existing state laws that try to put extra limitations on that, and try to say that only elections officials can do that, or staff who work in long-term care facilities can't do that, or whatever else. They're trying to come up with limits as who can assist you.

They can't do that under federal law. There have been lawsuits raised in states where this has been an issue. These are battles we've been fighting in places like Wisconsin, North Carolina, because you do have that federal right.

I think we'll continue to wage some of these battles. Voters getting assistance comes up every time you start talking about voting rights, election fraud, any of those sorts of things. There is no evidence to suggest that the people who assist people with disabilities to vote are doing anything sneaky, to be completely honest. There's just no proof that's happening, but it comes up every time.

Periodically, we do have to fight these battles in multiple states where you cannot limit that right to assistance. It's a federally protected right, one of the most important voting rights bills we've ever passed in the United States.

Know that you have that right. Think about who you want to assist you, who you trust, who's going to return your ballot, return it in a timely manner, help you mark it the way you want it marked for the people and the issues that you're choosing.

That, to me, is such an important right because you should be able to know that your ballot is going to be marked the way you want, and returned, and counted.

Keith: Indeed. Thanks so much, Michelle. This has been a lot of great information. There's so much going on right now in this space. It has been for a while. I really appreciate your clear, concise explanations of everything. It helps us understand it a little better.

Thanks, again, for being here. Let's hope that it's not six more years before we get you back.

[laughter]

Michelle: You know what? We're only two years away from the next presidential election.

Keith: That's right.

Michelle: How frightening is that? I feel like we just got past the last one.

Keith: You're right. We're halfway to it already.

Michelle: We can have this conversation again in 2024. I will be happy to come back.

Keith: Sounds good. We'll make sure we get that set up.

Michelle: I hope I didn't throw too much information at you all. That was a lot, but there's so much going on right now. It's all really crucial to access for people with disabilities, so I'm glad we're having this conversation.

Keith: Absolutely. Thanks, again. I really appreciate it.

Michelle: Thanks so much for having me.

Maddie: Thank you to Michelle Bishop for joining us today on the podcast and for sharing such crucial background information that lays the foundation about what elections look like for folks with disabilities.

Keith: Definitely. It was great to talk with her, such a great way to start the series. Tune in next week to hear all about accessible vote-by-mail.

Maddie: This series, Your Voice, Your Vote, will come out each Thursday for the next five weeks. Make sure to subscribe to the You First podcast and be alerted when new episodes drop. We're on Apple Podcasts, Spotify, YouTube, and almost anywhere you get your podcasts.

Keith: For more information, visit disabilityrightsflorida.org/podcast. We hope you'll join us.

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