

The Most Powerful Right:

**Protecting the right to vote and advancing civic
engagement for Montanans with Disabilities**

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DISABILITY RIGHTS MONTANA

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A Letter from David Carlson, Executive Director, Disability Rights Montana

This report is not neutral. It is not academic. And it is not optional.

Disability Rights Montana had to release this report because people with disabilities in Montana are still being shut out of democracy—systematically, predictably, and in some cases intentionally. Not in the past. Now.

Voting is the strongest tool people with disabilities have to influence decisions about where we live, whether we are locked behind institutional doors or supported in our communities, whether we receive healthcare, whether we work, whether we are heard. When access to the ballot is restricted, every other right becomes fragile.

What we document here is not a lack of interest or engagement by disabled voters. It is a failure of systems. A failure of will, by non-disabled people to adjust our processes to ensure we hear from every single disabled Montanan with something to say.

Across Montana, we found people with disabilities who were never told they could vote. People whose ballots were delayed, mishandled, or denied. People whose eligibility was questioned not by courts, but by staff, administrators, or officials acting on assumptions about disability rather than the law. We found settings where voting depended entirely on whether someone happened to care enough to make it happen.

That is not democracy. That is luck.

At the same time, new laws and official actions have made voting harder for disabled people while claiming to protect democracy. They do the opposite. When identification requirements tighten, when mail voting becomes more precarious, when signature matching becomes unforgiving, when vague ideas about “competence” resurface, people with disabilities are among the first to be excluded. History makes that plain. So does the present.

This report is a warning—and a test.

We cannot let it sit on a shelf.

We cannot nod at it and move on.

We cannot treat disenfranchisement as a technical problem instead of a moral one.

If you are a policymaker, this report demands restraint from harm and courage for reform.

If you are an election official, it demands that accessibility be treated as law, not a favor.

If you are a service provider, it demands that voting be recognized as part of a person’s dignity, not a disruption to routines.

If you consider yourself a defender of democracy, this report demands action.

Disability Rights Montana will enforce the law. We will monitor. We will educate. And when necessary, we will litigate. But enforcement alone cannot build the democracy Montanans with disabilities deserve.

That requires people in power to decide—clearly and publicly—that disabled voices belong in the room, on the ballot, and in the outcome.

This report shows what happens when we fail to make that decision. What comes next will show whether we are willing to change.

David Carlson

Executive Director

Disability Rights Montana

“[T]he vote is the most powerful instrument ever devised by human beings for breaking down injustice and destroying the terrible walls which imprison men because they are different from others.”¹

“We call them Americans with disabilities because they are, first and foremost, Americans, and America’s democracy is only as good as its ability to hear the voices of all Americans.”²

Disability Rights Montana (“DRMT”) works to protect and enhance voting rights

For almost 50 years, DRMT has served Montana as the federally mandated and governor designated Protection and Advocacy (P&A) system. P&As “are responsible for enforcing federal and state law on behalf of individuals with disabilities who otherwise would face perhaps insurmountable obstacles to seeing their rights enforced and their interests protected.”³

DRMT fervently enforces the right to vote by educating constituents about their rights and choices; monitoring places where people with disabilities live, work, and vote; assisting

¹ Lyndon B. Johnson, Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act, Online by Gerhard Peters and John T. Woolley, The American Presidency Project, <https://www.presidency.ucsb.edu/node/241195>.

² *Oversight of the Americans with Disabilities Act of 1990: The Current State of Integration of People With Disabilities: Hearing before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 117th Cong. 33 (Statement of Michelle Bishop, Nat’l Disability Rights Network) (2021) (hereinafter “*Bishop Testimony*”), available at, <https://www.congress.gov/117/chr/CHRG-117hhrg48275/CHRG-117hhrg48275.pdf>.

³ *Ind. Prot. & Advoc. Servs. Comm’n v. Comm’r, Ind. Dep’t of Corr.*, 642 F. Supp. 2d 872, 876 (S.D. Ind. 2009).

people with disabilities in voting privately and independently; advocating for more accessible voting processes and protecting against the degradation of existing protections; and, when necessary, litigating to enforce these rights.

People with disabilities are politically engaged, but it is much harder for them to vote

Estimates indicate over 40 million people with disabilities were eligible to vote in the 2024 election, representing nearly 1/6 of the U.S. electorate.⁴ This number is increasing at more than double the rate of voters without disabilities.⁵ More than 72 million estimated eligible voters in the 2024 election had at least one person in their household with a disability.⁶

Despite their large numbers, voters with disabilities faced voting difficulties over three times higher overall compared with people without disabilities⁷

“America’s polling places are woefully, inexcusably, unjustly out of compliance with the [Americans with Disabilities Act (“ADA”)].”⁸ Traditional vote-by-mail systems “[are] not and never have been accessible to voters with disabilities who cannot privately and independently mark, verify, and cast a paper ballot.”⁹ Electronic systems like Montana’s, which allow a person with a disability to mark an electronic ballot are still inaccessible because they still require the voter “to print and return a paper ballot, reintroducing an [inaccessible] paper to the process.”¹⁰

In 2023 the U.S. Election Assistance Commission with Rutgers University published a significant study on Disability and Voting Accessibility in the 2022 Elections.¹¹ According to the study, people with disabilities were only slightly less likely to vote than those with disabilities,¹² but encountered greater barriers across all voting methods.¹³ About 20% of voters with disabilities in 2022 reported either needing assistance or having difficulty in voting, which is more than three times the rate amongst voters without disabilities.¹⁴

⁴ Dr. Lisa Schur & Dr. Douglas Kruse, *Projecting the Number of Eligible Voters with Disabilities in the November 2024 Elections 1* (Rutgers Univ. Program for Disability Research Oct 14, 2024), available https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_Electorate_Projections_Report_Oct2024.pdf.

⁵ *Id.* (5.1% vs. 2.5%).

⁶ *Id.*, 7.

⁷ Dr. Lisa Schur, et al., *Disability and Voting Accessibility in the 2022 Elections*, 9 (U.S. Election Assistance Comm. & Rutgers Univ. Jul. 2023) (hereinafter “*Rutgers Report*”), available at, https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_FINAL.pdf.

⁸ *Bishop Testimony*, 32.

⁹ *Id.*

¹⁰ *Id.*; see also HB488(2025), discussed *infra*.

¹¹ *Rutgers Report*, 2.

¹² *Id.*, 8–9.

¹³ *Id.*

¹⁴ *Id.*, 14, Fig. 4.

“Election officials were most likely to assist in-person voters [(providing 66% of assistance)], and family members were most likely to assist those voting by mail [(providing 34% of assistance)].”¹⁵

Despite the barriers, people with disabilities are slightly more politically engaged than those without disabilities. 48% of people with disabilities “said they follow politics ‘most of the time’ in 2022, slightly higher than among people without disabilities (44%).”¹⁶ But, “[t]he political participation of people with disabilities is constrained by their lower access to personal vehicles for transportation, and lower employment, income, and education levels.”¹⁷

The method of voting impacts access. People with disabilities relied on vote by mail at a significantly greater rate than non-disabled people (42% compared to 35%).¹⁸ People with mobility impairments and those needing help with daily activities are the most likely to vote by mail.¹⁹ In 2022, 61% of voters with disabilities used early voting or vote by mail, an increase of 7% over the 2020 election.²⁰

Voting in person is more difficult for people with disabilities. In 2022, the percentage of voters with disabilities reporting voting difficulties overall rose to 14%, while the rate among non-disabled voters dropped from 6% to 4%.²¹ The rate of difficulties encountered by people with disabilities was greater for in-person voting, increasing from 18% to 20% between the 2020 and 2022 election.

“[I]n-person voters with disabilities in 2022 were more likely than those without disabilities to report difficulties waiting in line, getting inside the polling place, reading or seeing the ballot, or writing on the ballot...”²²

53% of voters with vision impairments “reported difficulty in voting at a polling place, although the rates of difficulty were also high for other disability types, particularly those needing help in daily activities (30%) and with cognitive impairments (28%).”²³ 38% of voters with vision impairments reported difficulty with a mail ballot.²⁴

¹⁵ *Id.*, 8–9.

¹⁶ *Id.*, 18.

¹⁷ *Id.*, 19.

¹⁸ *Id.*, 8–9.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*, 9.

²² *Id.*, 10.

²³ *Id.*

²⁴ *Id.*, 11.

Even with these barriers, voting in person is still more popular amongst people with disabilities surveyed. Asked what method they would prefer in the next election if they were to vote, 47% of people with disabilities chose voting in a polling place and 34% chose voting by mail or dropping their ballot in ballot box.²⁵

These barriers to voting appear to disproportionately create anxiety about expected difficulties in voting for people with disabilities, but they consistently expected mail-in voting would be easier.²⁶ 28% of people with disabilities who *did not* vote in 2022 reported they would expect difficulties voting in person, and 13% reported they would expect difficulties voting by mail.²⁷ Among people with disabilities *who did* vote by mail in 2022, “39% would expect difficulties voting in person, while among those voting in person, about one-ninth (12%) would expect difficulties in voting by mail.”²⁸ In comparison, only 7.4% of those who did not vote in 2022 and do not experience disabilities would expect difficulties voting in person and 12.1% of those without disabilities who voted by mail in 2022 reported they would expect difficulties voting in person.²⁹

Voting is a fundamental right of critical importance to people with disabilities in all areas of life

The right to vote is a critical tool in advancing the civil, legal, and human rights of people with disabilities to live in the world with dignity, equality, and self-determination. These rights have been denied to Montanans with disabilities for too long. Robust protection for and exercise of the right to vote is the salve that starts to heal these wrongs.

Voting is a fundamental right guaranteed by Art. II, Sec. 13 of the Montana Constitution³⁰ and has been fervently guarded by Montana’s courts. “[T]he right to vote freely and unimpaired preserves—and is a bulwark for—other basic civil and political rights.”³¹ “[It] is the basic right without which all others are meaningless.”³² The right to vote is “perhaps the most foundational [in Montana’s bill of rights]... and stands, undeniably, as the pillar of

²⁵ *Id.*, 17.

²⁶ *Id.*, 11.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*, 34, Table 13.

³⁰ *Montana Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 19, 410 Mont. 114, 518 P.3d 58 (hereinafter, *Jacobsen I*) (abrogated in part on other grounds by *Montana Democratic Party v. Jacobsen*, 2024 MT 66, 545 P.3d 1074, *cert. denied sub nom. Christi Jacobsen, Montana Sec’y of State v. Montana Democratic Party*, 145 S. Ct. 1125, 220 L. Ed. 2d 421 (2025) (hereinafter, *Jacobsen II*)).

³¹ *Jacobsen II*, ¶ 23.

³² *Jacobsen I*, ¶ 19

our participatory democracy.”³³ “If we are to have a true participatory democracy, we must ensure that as many people as possible vote for the people who represent them....”³⁴

For people with disabilities, political choices have lifechanging impacts. “Individuals with disabilities constitute one of the most disadvantaged groups in society.”³⁵ Elected officials and their subordinates decide where and with whom Montanans with disabilities live;³⁶ work,³⁷ get healthcare,³⁸ and receive an education.³⁹ Sometimes politicians decide when and how people with disabilities die.⁴⁰

Voting matters. For more than 100 years, politicians have decided to exclude people with disabilities from all areas of public life,⁴¹ instead disposing people “out-of-sight and out-of-mind” in large state-run institutions that did little more than warehouse people until they died.⁴² Politicians in Montana also made intentional choices to engage in a large-scale program of eugenics, including mass sterilization at the institution once euphemistically called the Montana State Training School in Boulder.⁴³ For decades, hundreds of people with disabilities were forcibly sterilized there.⁴⁴ Montana’s Eugenical Sterilization Law was not repealed until 1981.⁴⁵

People with disabilities continually face structural barriers to voting

People with disabilities have long faced barriers to voting.⁴⁶ Until the late 20th century, many were disqualified from voting. Those who were institutionalized, under guardianship,

³³ *Id.*

³⁴ *Id.* (quoting Montana Constitutional Convention, Verbatim Transcript, Feb. 17, 1972, Vol. III, p. 402).

³⁵ 29 U.S.C. § 701(a)(2) (Rehabilitation Act of 1973 findings).

³⁶ *See e.g.*, Mont. Code Ann. § 72-5-321(2)(a) (allowing guardian to determine individual’s residence inside or outside Montana).

³⁷ *See* Mont. Code Ann. § 39-3-406(1)(f) (exempting certain people with disabilities from minimum wage laws).

³⁸ *See e.g.*, Mont. Code Ann. § 53-21-127(6) (allowing for involuntary medication of individuals involuntarily committed).

³⁹ *Id.*, § 72-5-321(2)(b) (allowing guardian to “...whenever appropriate arrange for the ward's training and education.”).

⁴⁰ *See e.g.*, Montana Rights of the Terminally Ill Act, Mont. Code Ann. Title 50, Ch. 9.

⁴¹ *See Id.*, § 701(a)(5); 42 U.S.C. § 12101(a) (Americans with Disability Act findings).

⁴² *See*, Linda Sargent Wood, *We Had to Start Treating Them Like Human Beings*, Montana the Magazine of Western History, at 3 available at <https://lindasargentwood.wordpress.com/wp-content/uploads/2017/10/wood-22we-had-to-start-treating-them-as-human-beings22-montana-spr2017.pdf>.

⁴³ *Id.*, at 8, 13–19.

⁴⁴ *Id.*, at 18.

⁴⁵ *See* Sec. 1, Ch. 286, L. 1981.

⁴⁶ *See e.g.*, *Doe v. Rowe*, 156 F. Supp.2d 35, 51-56 (D. Me. 2001) (Maine’s ban on voting by individuals under guardianship by reason of mental illness violated Equal Protection Clause).

mentally ill, or had cognitive disabilities were denied the right to participate in democracy. For much of history, both physical and legal barriers disenfranchised voters with disabilities.⁴⁷

The voting rights of people with disabilities, particularly those with developmental, intellectual, and mental health disabilities, are widely misunderstood. “As a result, they are often disenfranchised—by unwarranted or paternalistic concerns about their competence to vote, by inappropriate challenges to prevent them from voting, by refusals to provide or permit help with voting, or by help that disregards the voter’s own choices.”⁴⁸

Despite landmark federal civil rights laws, including the Voting and Civil Rights Acts,⁴⁹ the Voting Accessibility for the Elderly and Handicapped Act,⁵⁰ the Help America Vote Act (“HAVA”),⁵¹ and the ADA,⁵² systemic and accessibility voting barriers persist. Today, voters with disabilities still face challenges such as complex voter registration systems, inaccessible polling places, exclusions based on pretexts and stereotypes, and policies, procedures, and practices which unjustifiably burden the right to vote.

This is not old history—it is happening now. Just in 2025 the Montana Legislature considered multiple voter suppression bills and Congress is currently considering legislation which would place significant burdens on people with disabilities. These voter suppression efforts are discussed in more detail below.

People with disabilities living in congregate care and institutional settings have a harder time accessing the vote

“Some providers of residential or other services for people with disabilities have inappropriately kept individuals with mental disabilities from registering, voting, or receiving voting assistance. Staff of hospitals, institutions for people with developmental disabilities, nursing homes, group homes, shelters, and other settings sometimes decide on their own that residents should not be allowed to

⁴⁷ U.S. Dep’t of Justice, *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities* (Apr. 18, 2024), at 1, https://www.ada.gov/ada_voting/ada_voting_ta.pdf.

⁴⁸ Jennifer Mathis, et al., *VOTE. It’s Your Right: A Guide to the Voting Rights of People with Mental Disabilities* (Bazelon Center for Mental Health Law, et al. 2018) (hereinafter “Bazelon Report,” available at: <https://www.bazelon.org/wp-content/uploads/2018/10/2018-Voter-Guide-Updated.pdf>).

⁴⁹ See Pub. L. 85-315 (Sep. 9, 1957) (Civil Rights Act of 1957); Pub. L. 86-449 (May 6, 1960) (Civil Rights Act of 1960); Pub. L. 88-352 (Jul. 2, 1964) (Civil Rights Act of 1964); Pub. L. 89-110 (Aug. 6, 1965) (Voting Rights Act of 65).

⁵⁰ Pub. L. 98-435 (Sep. 28, 1984).

⁵¹ Pub. L. 107-252 (Oct. 29, 2002).

⁵² See 42 U.S.C. § 12132.

vote. Workers at such facilities typically exert significant control over residents' lives, and their decisions have prevented many residents from exercising their right to vote."⁵³

Part of the authority Congress gave DRMT and other P&As is the right to go into any place where people with disabilities live or receive services to monitor conditions, access any place residents or program participants can access and take pictures and video recordings, talk with individuals, including staff, and, in some cases review records.⁵⁴ We call this "access authority."

In addition, the Protection and Advocacy for Voting Access ("PAVA") portion of HAVA requires DRMT to conduct a range of nonpartisan activities "to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places."⁵⁵ "P&As work to ensure that individuals with disabilities can participate in every step of the voting process."⁵⁶ DRMT's non-partisan voting rights activities include:

- **Voter education and outreach:** Providing information about voter registration, accessible voting options, and accommodations available to voters with disabilities.
- **Assistance with voter participation:** Helping individuals navigate registration processes, request accessible ballots, and understand ballot marking tools or procedures.
- **Investigation and resolution of accessibility complaints:** Documenting and addressing barriers at polling places or within election procedures that may impede access.
- **Training and technical assistance:** Supporting election officials, service providers, and community partners with best practices for accessible elections.
- **Systemic advocacy:** Identifying trends in accessibility challenges and advocating for improvements to policies and practices that hinder equal participation in voting.

In 2024 and 2025, DRMT focused significant efforts on understanding barriers to voting for Montanans with disabilities and addressing those barriers, including using our access authority to monitor how people with disabilities access the vote. This work continues. Because the experience and barriers differ across settings, we grouped our findings based on living situation.

⁵³ *Bazon Report*, 16.

⁵⁴ *See e.g.*, 42 U.S.C. § 15043(a)(2)(H-I).

⁵⁵ 52 U.S.C. § 21061(a).

⁵⁶ Administration for Community Living, Protection and Advocacy Systems—Protection and Advocacy for Voting Accessibility (PAVA) tab, <https://acl.gov/programs/pa-programs> (last accessed March 24, 2026).

Voting at the Montana State Hospital

The Montana State Hospital (MSH) is Montana’s only public psychiatric hospital. People are typically placed there following either a civil or criminal commitment by a court.⁵⁷ For years, MSH cooperated with DRMT and assisted in registering eligible voters and allowing them to cast a ballot. Indeed, MSH’s own policy specifically provided:

[MSH] patients retain the right to vote ... unless restrictions on this right are placed by the courts or election officials. [MSH] staff will provide information on voter registration and assistance in obtaining absentee ballots. For patients registered to vote in Deer Lode County [(where MSH is located)], MSH staff may provide transportation to a polling location.⁵⁸

In September 2024, several DRMT staff conducted on-site voter education and registration efforts at MSH, informing patients about their rights and assisting them in completing and mailing voter registration forms. Approximately 30 patients were registered through this effort.

At least two voter registrations were rejected on the claim that individuals committed to MSH were automatically of “unsound mind” (even though that phrase is not defined in the constitution and no court had made that decision) and that people criminally committed to MSH could not vote because, the Government claimed, MSH is a “penal institution.”⁵⁹ DRMT challenged these claims in a lawsuit.⁶⁰ Days later, the Montana Attorney General issued a formal opinion (“the AG’s Opinion”) proclaiming that the Government’s disputed position in the litigation was now the law.⁶¹ Following a hearing, the Court disagreed and issued a preliminary injunction rejecting the Government’s arguments and requiring the election administrator to register the Plaintiff and count his vote.⁶² Final decision is pending in the case. As it stands now, the AG’s Opinion disenfranchises a large group of otherwise eligible voters.⁶³

Following the Court’s ruling on the preliminary injunction rejecting the Government’s arguments, the Attorney General asked the Legislature to change the law to conform to his

⁵⁷ See Mont. Code § 53-21-601 (definition of Montana State Hospital); *id.*, § 46-14-312(2) (criminal commitment to the State Hospital); *id.*, §§ 53-21-101, et seq. (civil commitment process).

⁵⁸ Montana State Hospital Policy and Procedure, PR-05, § II (effective Nov. 1, 2021).

⁵⁹ See First Amended Complaint, *Cypher v. Hofland*, DV-24-75 (Mont. 3d Jud. Dist. Ct. Oct. 18, 2024) (hereinafter “*Cypher*”).

⁶⁰ See *Id.*

⁶¹ See Vol. 60 Att’y Gen. Op. No. 3 (Oct. 22, 2024) (unpublished version).

⁶² *Cypher*, Findings of Fact, Conclusions of Law, and Order, pp. 13–14, 17–18 (Nov 15, 2024),

⁶³ *Id.*, p. 6.

opinion and disenfranchise an even larger swath of people with disabilities, including those who do not live in institutional settings. The Legislature ultimately rejected this effort,⁶⁴ but it came dangerously close to becoming law. The AG’s Opinion still stands at this time, and further legislative attempts to disenfranchise people with disabilities are expected in the state legislative session starting in January 2027.

DRMT also supports broader civic engagement within the disability community. Patients at MSH participated in monthly discussions about voting and civic life. In one instance, DRMT facilitated a patient’s participation in a legislative committee hearing by connecting a phone call from the hospital to the committee’s online system, allowing the patient to provide testimony directly to lawmakers. Lawmakers heard about the patient’s direct experience in a facility which even lawmakers have experienced difficulty accessing. They learned that patients at this public hospital did not have access to participate in policymaking directly impacting their lives without the assistance of external support because their access to the internet and other modes of communication were limited by staff. Shortly after the hearing, MSH patients were given limited internet access. DRMT also helped produce a video featuring a patient discussing the importance of voting, which was distributed to hospital units to educate and encourage others to vote.

Voting in Assisted Living Facilities

Assisted living facilities (ALFs) are defined in Montana as "a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services."⁶⁵ ALFs are residential settings for adults who are “frail, elderly, or disabled” and “provide supportive health and service coordination to maintain the residents' independence, individuality, privacy, and dignity.”⁶⁶ ALFs can serve people with a wide range of capabilities and disabilities, but are not appropriate for people “who are incapable of responding to their environment, expressing volition, interacting, or demonstrating any independent activity.”⁶⁷ For example, a person in a persistive vegetative state who requires long-term nursing care should not be placed in ALF.⁶⁸

⁶⁴ See Bill Status, HB395 (2025), https://bills.legmt.gov/#/laws/bill/2/LC0499?open_tab=status.

⁶⁵ Mont. Code Ann. § 50-5-101(6).

⁶⁶ Admin. R. Mont. § 37.106.2802(1); see also Mont. Code Ann. § 50-5-226.

⁶⁷ *Id.*, § 37.106.2802(2).

⁶⁸ *Id.*

Montana regulates four “categories” of ALF from A–D, with higher letters corresponding to facilities that serve individuals with greater support needs.⁶⁹ The amount of regulatory oversight, staffing, and facility requirements increase as the residents’ level of support needs increase.⁷⁰

Category A facilities serve individuals with the lowest need for supports and the greatest level of independence and have minimal standards for staffing.⁷¹ Individuals who live in Category A ALFs can complete many activities of daily living (“ADLs”) independently or with supervision and assistance, but need physical assistance with at least one ADL.⁷² ADLs are activities people perform in a normal day, like eating, walking, sleeping, moving around, grooming, bathing, going to the bathroom, and transferring from one position to another (like from standing or a wheelchair to bed, the toilet, etc.).⁷³ A resident who needs skilled nursing care, is a danger to herself or others, or needs more than supervision and assistance with ADLs cannot be placed in a Category A facility.⁷⁴

Residents of Category B facilities may need skilled nursing care (i.e., 24-hour care under the supervision of a registered nurse) for an extended period and may “be consistently and totally dependent in more than four [ADLs].”⁷⁵ A person who is a danger to herself or others cannot be placed in a Category B ALF. Category B facilities must employ or contract a registered nurse.⁷⁶ Residents must have written orders for admission from a licensed medical practitioner with prescribing authority.⁷⁷

Residents in Category C ALF, sometimes called “memory care” facilities, must have “a severe cognitive impairment that renders the resident incapable of expressing needs or of making basic care decisions[.]” and “may be at risk for leaving the facility without regard for personal safety[.]” but otherwise cannot be a danger to themselves or others.⁷⁸ Staff must have additional training to assist individuals with these more complex needs.⁷⁹ Category C facilities may have portions or units that are locked to prevent residents from leaving at will.⁸⁰

⁶⁹ See *id.*, § 37.106.2803 and regulations cited therein; see also Mont. Code Ann. § 50-5-226 (defining limitations for each category).

⁷⁰ See *id.* and regulations cited therein; see also Mont. Code Ann. §§ 50-5-225–226.

⁷¹ See *id.*, § 37.01

⁷² Mont. Code Ann. § 50-5-226(2).

⁷³ *Id.*, § 50-5-101(2).

⁷⁴ *Id.*

⁷⁵ Mont. Code Ann. § 50-5-226(3).

⁷⁶ *Id.*, § 37.106.2872(2).

⁷⁷ Mont. Code Ann. § 50-5-226(3)(e); see also, *id.*, at § 50-5-101 (41) (defining “practitioner”).

⁷⁸ *Id.*, § 50-5-226(4).

⁷⁹ *Id.*, at § 37.106.2892(1).

⁸⁰ *Id.*, at § 37.106.2898.

Category D ALFs serve individuals who a medical professional or a court has determined are or may be a danger to themselves or others and who cannot complete two or more ADLs independently.⁸¹ Category D ALFs can be used as a diversion from commitment at MSH, keeping individuals in their communities and closer to family.⁸² Residents must have written healthcare assessments, reviewed monthly, and a written order of care that details when, and if, restrictions on the person’s freedom of movement, such as the use of seclusion rooms and restraints, can be utilized.⁸³

There are currently 207 licensed ALFs in Montana in Categories A–C and none in Category D.⁸⁴ Some providers operate units across multiple categories in the same facility.⁸⁵ Policymakers are currently examining ways to increase access to Category D facilities in Montana and bolster the diversion process to relieve pressure on MSH.⁸⁶

In 2025–2026, DRMT conducted an extensive review of assisted living facilities across the state, visiting 21 facilities across the western half of Montana of varying sizes, ownership structures, and all currently operating licensure categories (A–C).

We found significant variation in both awareness of and support for resident voting activity. Some staff members reported observing substantial resident engagement, noting that many individuals vote regularly, especially through absentee ballots, around election periods. In other facilities, staff reported that they have never personally seen residents vote or remain unsure whether voting occurs in their facility at all.

Across the facilities surveyed, voting by absentee ballot was the most common method used by residents. Many staff members recall seeing absentee ballots arrive through the mail or receiving requests for assistance with voting materials. In some cases, facilities maintain formal tracking systems, such as spreadsheets documenting resident voters.

Transportation to polling locations also varied among the ALFs monitored. Several facilities routinely offer rides for residents wishing to vote in person, sometimes going beyond transportation to assist with related logistical barriers. Staff shared examples of escorting residents to government offices to update their addresses so they could participate in upcoming elections. In more restrictive settings, access to in-person voting was more limited.

⁸¹ Mont. Code Ann. § 50-5-226(5).

⁸² *See id.*, at § 50-5-226(5)(f).

⁸³ *Id.*, at § 50-5-226(5)(d).

⁸⁴ *See* Montana Department of Public Health and Human Services, Public Facility Search Information, Assisted Living Facilities, <https://dphhs.mt.gov/oig/licensure/> (last visited Mar. 25, 2026).

⁸⁵ *See id.*

⁸⁶ *See* SB524 (2025), available at https://bills.legmt.gov/#/laws/bill/2/LC0470?open_tab=sum.

Support for voter registration varied more dramatically. Some facilities partner with organizations such as the League of Women Voters to help residents complete or update registrations. Others report little to no engagement in registration efforts, with staff uncertain whether residents are registered or eligible. One facility incorporates voter registration questions into its social history assessments, reflecting a more structured and proactive approach. Because new residents in an ALF would likely vote in a different precinct than the prior residence, staff support for voter registration is essential to protecting the right to vote for ALF residents.

Family involvement and mail-handling procedures also affect residents' access to voting materials. In several facilities, residents' mail is routinely forwarded to or managed by family members. While this can be helpful, it can reduce residents' timely access to registration forms, absentee ballot applications, or ballots themselves. There are potential risks—family members may inadvertently miss deadlines, misunderstand instructions, or hold incorrect beliefs about a resident's capacity to vote. Some families may even intentionally or unintentionally discourage voting or try to influence how a resident votes.

Finally, staff observations indicate substantial variation in resident interest and facility openness to outside support. Some facilities report strong resident enthusiasm for voting, especially among veterans, tribal members, and individuals with longstanding civic engagement habits. Others observe little engagement, noting that some residents seem disinterested or uninformed about current political figures. Similarly, facilities differ in their willingness to collaborate with external organizations. A number expressed interest in receiving educational materials or hosting informational visits from outside groups, including DRMT. Conversely, some facilities expressed a preference to avoid any conversations that might be perceived as political and may need more education to provide non-partisan support to residents who wish to vote.

Voting in Adult Group Homes for Individuals with Intellectual and Developmental Disabilities

Under Montana law group homes for people with intellectual and developmental disabilities (“I/DD”) are called “community homes.”⁸⁷ “A community home for persons with I/DD is “a family-oriented residence or home designed to provide facilities for two to six persons with developmental disabilities, established as an alternative to existing state institutions.”⁸⁸ The Montana Department of Public Health and Human Services (“DPHHS”) can waive the limit on number of residents in a group home for certain homes licensed

⁸⁷ Mont. Code Ann. § 53-20-302(1).

⁸⁸ *Id.*

before October 1, 2025.⁸⁹ DPHHS also similarly licenses adult group homes for individuals with physical disabilities who do not require skilled or intermediate nursing care.⁹⁰

Under Montana regulations, community homes are supposed to provide residents “a manner of living that is as close as possible to that considered to be normal in the community.”⁹¹ Residents should be “encouraged to engage in meaningful activity, to develop techniques to become increasingly more independent, and to interact with the community in which they reside.”⁹² This includes, among other rights, the requirement that “residents shall not be subjected to treatment of a manner which... limits individual rights without due process.”⁹³

In Montana, there are over 125 licensed group homes for adults with developmental disabilities with a total of about 900 beds.⁹⁴ Due to regular changes in residence, DPHHS does not know how many people with I/DD live in these group homes at any given time but estimates that the state runs at about 90% capacity at any given time.⁹⁵

In 2024–25 DRMT monitored adult group homes and day programs serving adults with I/DD across Montana. Eight members of DRMT staff traveled over 4,000 miles and spent over 300 monitoring hours in 42 cities in 28 of Montana’s 56 counties. We talked with 32 providers, went to over 70 group homes and 20-day services programs, and visited with 775 residents or participants. More information about this monitoring, beyond voting implications, can be found in our September 2025 report.⁹⁶

In our conversations with residents at group homes across the state, we heard from far too many people who were not even offered the opportunity to vote. While some residents in some facilities did vote in the last national election, most we spoke with did not. Asked whether they wanted to vote, many people told us they did.

⁸⁹ *Id.*, § 53-20-302(2).

⁹⁰ See Admin. R. Mont. §§ 37.100.401–402; Mont. Code Ann. § 53-19-102.

⁹¹ Admin. R. Mont. §§ 37.100.301(2), 37.100.401(2).

⁹² *Id.*, §§37.100.330(2), 37.100.430(2).

⁹³ *Id.* at § 37.100.330.

⁹⁴ Public information obtained from DPHHS, Developmental Disabilities Program (DDP). See *Public Facility Search Information* (DPHHS), last accessed Mar. 25, 2026), <http://mt-reports.com/portal/SearchFacility.aspx>.

⁹⁵ Public information obtained from DDP; see also *Public Facility Search Information* (DPHHS), last accessed Mar. 25, 2026), <http://mt-reports.com/portal/SearchFacility.aspx>.

⁹⁶ See Tal M. Goldin, *The Cost of Control: Paternalism Limits the Rights of Montanans with Intellectual and Developmental Disabilities* (DRMT Sept. 2025), available at <https://lifebeyondcompliance.substack.com/p/the-cost-of-control?r=6cteu6>.

Given the structure of Montana’s guardianship laws and the strong protection of the right to vote under the Montana Constitution, it is highly unlikely that many, if any, of the people we spoke to have had their right to vote removed by a court.⁹⁷

Some individuals we spoke with wanted more information about registering to vote. Others had questions about the act of voting, how they could get accommodations in the voting process, and what kinds of things could be voted on. Nearly all participants knew there had been a presidential election in 2024, but many did not realize there were many elections throughout the year and in years between presidential elections.

Beyond having their voice heard through the vote, in our visits with individuals with I/DD we did not hear from anyone who had the opportunity to attend and provide input on important policy decisions impacting their lives, either in person or through written comments. We also heard from people whose access to media, including TV and internet, was severely restricted. Individuals in group homes may not have meaningful access to newspapers or news magazines because these materials are not available in their homes and they do not have regular access to libraries or because these materials are not available to them in accessible formats, such as in digital or audio editions. Lack of access to a variety of media limits peoples’ ability to learn about and engage in matters of public interest and make informed voting decisions.

Voter suppression efforts are particularly harmful for people with disabilities

Efforts to Suppress the Disability Vote at the Montana Legislature

Recently, Montanans with disabilities have encountered legislative attempts to restrict their voting which cut too close to historic suppression strategies⁹⁸ largely banned by the Voting Rights Act of 1965.⁹⁹ We appreciate the efforts of a bipartisan group of legislators who worked to prevent the worst suppression efforts from becoming law. Yet the threat of disenfranchisement is real and ongoing.

For example, **SB439 (2025)**,¹⁰⁰ which failed, sought to purge voter rolls by seeking change of address information from utility companies, clerks of court, and driver’s license

⁹⁷ Under Mont. Code Ann. § 72-5-306 “[a]n incapacitated person [subject to guardianship] may not be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for the limitations.”

⁹⁸ See Russell Brooker, PhD, *Voting Rights for Blacks and Poor Whites in the Jim Crow South*, America’s Black Holocaust Museum (last accessed Mar. 25, 2026), <https://www.abhmuseum.org/voting-rights-for-blacks-and-poor-whites-in-the-jim-crow-south/>.

⁹⁹ See Pub. L. 89–110 (Aug. 6, 1965).

¹⁰⁰ The bill failed in committee.

information. Under that proposal, if a person with a disability inadvertently failed to update their address with the clerk of court and a juror notice was therefore returned undeliverable, that information could be used to purge the person from the voter rolls.

SB276 (2025),¹⁰¹ which passed, removed the opportunity for a voter to verify their identity via several alternative means, including by a sworn statement explaining how they faced a “reasonable impediment” to procuring the required forms of ID, for example, because of “lack of transportation; [] lack of birth certificate or other documents needed to obtain identification;... lost or stolen identification; [or]... disability or illness.” Clearly, this places new voting barriers on people with disabilities who often do not have access to the required forms of identification and cannot independently access their birth certificates.

HB488 (2025), which would have significantly benefited people with disabilities, failed. This bill would have allowed people with disabilities to electronically return their ballot—like servicemembers stationed overseas already do¹⁰²—via “a secure, encrypted electronic transmission system approved by the secretary of state”¹⁰³ (i.e., vote electronically instead of having to mail in a ballot marked electronically). In 2015, the Legislature amended the law to allow a disabled elector to mark an electronic ballot, but still required the individual to print the ballot, place it in the secrecy envelope, complete the affirmation or otherwise verify identify, and return the ballot by regular mail.¹⁰⁴ That law did not allow the elector to actually return the ballot electronically.

A bill nearly identical to HB488(2025) had been introduced in 2021, which would have allowed a disabled elector to return the ballot electronically via a “a secure, encrypted electronic transmission system.”¹⁰⁵ Rep. Darling, HB488’s sponsor, explained that the inability to return the ballot electronically created a barrier to voting for people with a variety of disabilities. She explained the 2021 version of the bill was drafted with the approval of the then Secretary of State, Corey Stapelton.¹⁰⁶

During the committee hearings on HB488 in 2025, disability advocates filled the room and shared their experiences navigating barriers to voting, including challenges with transportation, paper ballots, and the inability to vote privately and independently. One

¹⁰¹ Ch. 381, L. 2025, § 3 (amending Mont. Code Ann. § 13-15-107).

¹⁰² See *Uniformed and Overseas Citizens Absentee Voting Act*, PL 94-410, 100 Stat. 924 (1986).

¹⁰³ HB488, §1(2)(e).

¹⁰⁴ HB400(2015). A person could also complete the affirmation with a fingerprint, mark, or via an agent, or provide a driver’s license number or the last four digits of their social security number to confirm identity. *Id.*, § 1(2)(c).

¹⁰⁵ HB643(2021). This bill failed in the second house committee. See HB643(2021) bill status, https://bills.legmt.gov/-/bill/20211/LC0137?open_tab=status.

¹⁰⁶ Hearing on HB488, H. State Admin. Comm., Intro. of Rep. Julie Darling (Feb. 21, 2025), 10:52:50–10:54:52, <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250221/-1/52398-agenda>.

individual who is blind reflected on his first experience voting, before losing his sight. That was the only time he was ever able to vote without assistance. By passing HB488, he explained, Montana would be “boldly going *where everyone else has already been*.”¹⁰⁷

Long ago, a federal appellate court decided that another state’s absentee ballot system which was nearly identical to Montana’s did not allow certain people with disabilities to vote privately and independently to the same extent as others, therefore violating Title II of the ADA.¹⁰⁸ Despite the testimony of disabled Montanan’s and existing legal exposure, the Montana Legislature failed to pass HB488.

HB395 (2025) sought to disenfranchise large groups of people with disabilities under the Montana Constitution’s prohibition on voting by a person who “is of unsound mind, as determined by a court.”¹⁰⁹ The drafters of the 1972 Montana Constitution intentionally left this term undefined. “[W]ith the new and ever-expanding developments in mental hygiene, [the Delegates decided,] it is unwise to freeze arbitrary mental disqualifications by label into the Constitution.”¹¹⁰ Consequently, the drafting Committee “left such decisions for judges to make on an individual basis.”¹¹¹

Ignoring this directive, at the prompting of the Attorney General in response to the Court’s preliminary injunction ruling in DRMT’s *Cypher v. Hofland* case,¹¹² the legislature sought to impose a draconian definition of “unsound mind” that would have disenfranchised thousands of eligible voters. The proposed definition, buried 15 pages into the bill, disenfranchised any person “incapable of normally managing affairs in a reasonable manner.” The definition continues, “[t]he condition exists when the intellectual powers of a person are fundamentally lacking or when a person is incapable of understanding and acting with discretion in the ordinary affairs of life. The definition, the bill explained, would disenfranchise people with “a range of mental disorders....”¹¹³

On second reading on the Senate floor, several prominent members from the majority and minority parties, including from the majority leadership, strongly opposed the bill, with one member of the majority calling the bill “voter suppression.”¹¹⁴ The Senators explained that the bill language was unworkable, noting that during the intensive 90 day legislative

¹⁰⁷ Hearing on HB488, H. State Admin. Comm., 10:54:52–11:14:15 (emphasis added).

¹⁰⁸ See *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 498 (4th Cir. 2016); 42 U.S.C. § 12132.

¹⁰⁹ Mont. Const. Art. IV, § 2.

¹¹⁰ Cmt. on Majority Proposal, Suffrage and Elections Comm., 1972 Mont. Const. Convention Proceedings, Vol. 1, 337, 338, available at https://courts.mt.gov/external/library/mt_cons_convention/vol1.pdf.

¹¹¹ *Id.*

¹¹² See Findings of Fact, Conclusions of Law, and Order, *Cypher* (Nov. 15, 2024).

¹¹³ HB395(2025), §3(20).

¹¹⁴ Second Reading of HB395, S. Floor Sess. (Apr. 12, 2025), 11:20:35–11:34:12, <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250412/-1/54024 - agenda .>

session many members of the legislature would be “incapable of normally managing affairs.”¹¹⁵ 70% of Senators opposed the bill and voted to indefinitely postpone (i.e. kill) it.¹¹⁶

HB719, which became law, added new absentee voter restrictions, requiring a voter to also write her date of birth on both her absentee ballot application and the ballot envelope, and requiring election officials not to count her ballot unless both the signature and the date of birth on the envelope match those on the voter file.¹¹⁷ DRMT also challenged this law in court because it places unnecessary burdens on voting for people with disabilities.¹¹⁸

Throughout the 2025 legislative session and beyond, DRMT partnered with organizations advocating for disability and voting rights, including MT Voices, the National Federation of the Blind Montana, pro-democracy groups, and independent living centers to advance accessible voting initiatives.

Disabled voter suppression in the federal SAVE Act.

Congress has long recognized that disenfranchisement is a tool to oppress minorities. With the Voting and Civil Rights Acts,¹¹⁹ the Voting Accessibility for the Elderly and Handicapped Act,¹²⁰ the Help America Vote Act (“HAVA”),¹²¹ Section 504 of the Rehabilitation Act of 1973,¹²² and Title II of ADA¹²³ Congress worked to expand the vote, not disenfranchise people.

With HAVA, Congress authorized P&As like DRMT to “to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places.”¹²⁴ Most significantly, the Title II of the Americans with Disabilities Act provides broad protections in all aspects of voting, including by requiring

¹¹⁵ *Id.*

¹¹⁶ See HB395, Bill Status, https://bills.legmt.gov/#/laws/bill/2/LC0499?open_tab=status.

¹¹⁷ HB719(2025).

¹¹⁸ See First Amended Complaint, *Disability Rights Montana v. State*, DV-25-293 (Mont. First Judicial Dist. Ct., July 15, 2025 (filed initially in D. Mont., No. 6:25-cv-00048-JTJ prior to remand to state court).

¹¹⁹ See Pub. L. 85-315 (Sep. 9, 1957) (Civil Rights Act of 1957); Pub. L. 86-449 (May 6, 1960) (Civil Rights Act of 1960); Pub. L. 88-352 (Jul. 2, 1964) (Civil Rights Act of 1964); Pub. L. 89-110 (Aug. 6, 1965) (Voting Rights Act of 65).

¹²⁰ Pub. L. 98-435 (Sep. 28, 1984).

¹²¹ Pub. L. 107-252 (Oct. 29, 2002).

¹²² 29 U.S.C. § 794.

¹²³ 42 U.S.C § 12132.

¹²⁴ 52 U.S.C. § 21061.

effective communication with voters and their support persons.¹²⁵ These legal rights are described in more detail below.

The proposed SAVE Act¹²⁶ is a departure from this trend, placing additional unnecessary documentation burdens on Montanans with disabilities. The Montana Constitution and state statutes are already clear—a person must be a U.S. citizen to vote.¹²⁷ A person may not vote in Montana elections unless they are at least 18 years old, a resident of Montana and the county in which they want to vote for at least 30 days and “a citizen of the United States.”¹²⁸ Likewise, “[a] person may not be permitted to register until the person attains United States citizenship.”¹²⁹

The SAVE Act would add additional requirements that are particularly burdensome for people with disabilities. To register under the SAVE Act an applicant must provide “Documentary Proof of U.S. Citizenship” to include a Real ID identification *that indicates U.S. citizenship* (Montana IDs currently do not¹³⁰); a valid U.S. passport; or a U.S. military ID *plus* a U.S. military record showing the individual was *born in the U.S.*¹³¹ A birth certificate also counts, but only a *certified copy*, bearing an official seal of the government issuer works, not a copy that does not have an official original certification on the document. Notably, a birth certificate is only acceptable where it includes “the full names of one or both of the parents of the applicant” with no exception where the father, for example, is unknown, where a child was abandoned at birth, or where the child was conceived via donor sperm.¹³²

¹²⁵ See 42 U.S.C. § 12132 (ADA Title II anti-discrimination requirement); 28 CFR § 35.160 (effective communication provision); *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 505 (4th Cir. 2016) (Title II applied to state’s absentee voting program and program violated Title II by failing to allow voters with disabilities to mark absentee ballots without assistance); and 28 C.F.R. § 35.130(b)(1)(iii) (disability discrimination under Title II includes providing a person with a disability “an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others[.]”).

¹²⁶ H.R. 22, 119th Congress § 2 (2025) (hereinafter “SAVE Act”).

¹²⁷ Mont. Const. Art. IV, § 2 states, “[a]ny citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.” (Emphasis added).

¹²⁸ Mont. Code Ann. § 13-1-111(1); see also *id.*, § 13-2-206 (“[i]llegal aliens are prohibited from voting in the state of Montana.”). Additionally, a person convicted of a felony cannot vote while “serving a sentence in a penal institution[.]” and determined by a court “to be of unsound mind does not have the right to vote unless the person has been restored to capacity as provided by law.” *Id.*

¹²⁹ *Id.*, § 13-2-206.

¹³⁰ See Montana Department of Justice, *Montana Motor Vehicle Division launches new driver licenses and IDs* Press Release (Dec. 4, 2025), <https://dojmt.gov/montana-motor-vehicle-division-launches-new-driver-licenses-and-ids/>.

¹³¹ SAVE Act, § 2(b).

¹³² *Id.*, § 2(b)(5)(A).

Moreover, the SAVE Act effectively defeats the purpose of absentee voting, requiring absentee voters to present the same “documentary proof of [U.S.] citizenship...*in person* to the office of the appropriate election official” prior to the registration deadline.¹³³ In states, like Montana, that allow a person to register on the same day they vote, the voter must appear *at the polling place* and provide “documentary proof of [U.S.] citizenship.”¹³⁴ While the SAVE Act, like Title II, requires reasonable accommodations in how a person with a disability submits, “documentary proof of [U.S.] citizenship” it does not eliminate the requirement for people with disabilities.¹³⁵

Montanans can currently register to vote by completing a voter registration application, *signed under penalty of perjury* affirming that they meet all voter eligibility requirements, including the citizenship and residency requirements.¹³⁶ Montana does not require additional “documentary proof of United States citizenship” or other facts affirmed under penalty of perjury, but requires election officials to make all voter registrations provisional, pending verification of the voters eligibility by providing their Montana driver’s license, ID, the last four digits of their social security number and, in some circumstances, additional verifying information.¹³⁷ If the person does not meet all eligibility requirements or the election administrator cannot confirm the applicant’s eligibility and the person does not respond to requests for confirming information, the election administrator can cancel the person’s registration.¹³⁸

Additionally, Montana permits voter identification via various official documents beyond the SAVE Act, including Montana driver’s licenses or IDs, military IDs, valid U.S. passports, concealed carry permits, and other alternate methods.¹³⁹ One of the allowable identification methods must be presented to an election judge *before the person can vote* in Montana.¹⁴⁰ And, any registered elector can challenge another person’s right to vote on the basis that they do not meet eligibility requirements, which then requires the election

¹³³ *Id.*, § 2(e)(1)(A) (emphasis added).

¹³⁴ *Id.*, § 2(e)(1)(B); *see also Jacobsen II*, ¶ 84 (prohibition on same-day voter registration violated Montana constitution).

¹³⁵ *Id.*, § 2(e)(3).

¹³⁶ *See* Montana Secretary of State, Montana Voter Registration Application, Available at, https://sosmt.gov/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=46&wpfd_file_id=59393&to ken=&preview=1.

¹³⁷ *See* Admin. R. Mont. § 44.3.2011.

¹³⁸ Mont. Code. Ann. § 13-2-402.

¹³⁹ Mont. Admin. R. § 44.3.2102(3)

¹⁴⁰ *Id.*, §§ 44.3.2210. If the voter does not present satisfactory identification they must return to the polling place with satisfactory identification or cast a provisional ballot subject to further eligibility verification. *Id.*

administrator to investigate the claim according to detailed procedures and documentation requirements.¹⁴¹

Under the SAVE Act, these long-existing Montana requirements are not enough. “Documentary proof of United States citizenship” must be provided.¹⁴² Where it cannot be provided, the applicant must sign an attestation under penalty of perjury (they are already doing this in Montana) that they are a U.S. citizen *and* the election official must also sign an affidavit stating that the official has sufficiently established the applicants’ U.S. citizenship and explaining the basis for that determination.¹⁴³

The SAVE Act tries to solve a problem that does not exist and instead makes it harder for people with disabilities to vote. The Montana Secretary of State now has access to a federal database to independently verify a registered voter’s citizenship.¹⁴⁴ Even with this access, the incidence of non-citizens voting in Montana is infinitesimally small. Of the 800,000 registered voters in 2025, using this verification system, the Secretary of State only flagged 23 voter records, representing just 0.0029% of registered voters.¹⁴⁵

These state and federal voter suppression efforts place particular burdens on people with disabilities.¹⁴⁶ For example, an estimated 7.5% of people with disabilities do not have a state-issued ID compared to 4.8% of people without disabilities.¹⁴⁷ Many Montanans live far from a government office where they can obtain a compliant ID.¹⁴⁸ Montana requires an in-person appearance to obtain an ID for the first time and only offers free IDs in very limited circumstances.¹⁴⁹ People with disabilities are less likely to drive than other adults and have less accessible transportation options.¹⁵⁰ “Voters with mental or physical disabilities who do not already have a photo ID may face particular challenges in obtaining one.”¹⁵¹

¹⁴¹ Mont. Code Ann. § 13-13-101; Admin. R. Mont. § 44.3.2109.

¹⁴² SAVE Act, § 2(e).

¹⁴³ SAVE Act, § 2(j)(2).

¹⁴⁴ Micah Drew, *Montana Secretary of State Says feds confirmed 23 non-citizen voter records*, Daily Montanan (Mar. 17, 2026), <https://dailymontanain.com/2026/03/17/montana-secretary-of-state-says-feds-confirmed-23-non-citizen-voter-records/>.

¹⁴⁵ *Id.*

¹⁴⁶ *Bishop Testimony*, 35–42.

¹⁴⁷ *Id.*

¹⁴⁸ See *Montana Dept. of Justice Motor Vehicle Division Drivers License Exam Stations*, <https://mvdmt.gov/driver-license-exam-stations/> (last accessed Mar. 27, 2026).

¹⁴⁹ Admin. R. Mont. § 23.3.147(3, 4).

¹⁵⁰ *Bishop Testimony*, 37.

¹⁵¹ *Id.*

While the ability to receive and mark a ballot has been made more accessible over time, the ability to actually return the ballot and have it counted has not.¹⁵² Signature matching practices, like those in HB719, are more likely to disenfranchise people with disabilities.¹⁵³ “For many people with disabilities, particularly those with limited manual dexterity, the appearance of a signature can vary drastically from one signing to the next.”¹⁵⁴

Likewise, regressive and ill-defined voter competency laws, like those proposed in HB395(2025), unnecessarily, and often unlawfully, disenfranchise people with disabilities.¹⁵⁵ Laws that use phrases like “of unsound mind” and other “outmoded and stigmatizing terms....are rarely enforced because they are virtually impossible to understand and apply.”¹⁵⁶ A number of states, including our Rocky Mountain neighbors in Idaho and Colorado, have no disability-based restrictions in their state constitutions or laws.¹⁵⁷ As occurred in DRMT’s *Cypher v. Hofland*¹⁵⁸ case, election officials “sometimes impose their own voter competence requirements and prevent individuals with mental disabilities from voting” even where this exceeds their legal authority.¹⁵⁹

Restrictions imposed by election officials, like refusing to register or allow people to vote who have guardians or live in institutions or requiring institutional residents to take examinations not required of others, have been invalidated as unconstitutional by courts.¹⁶⁰ Even poll workers sometimes turn away people with disabilities based on their own judgments about whether these individuals should vote.¹⁶¹

Accessible voting is the law

People with disabilities have substantial legal protections in all aspects of voting. Intimidating, threatening, or coercing a voter is unlawful.¹⁶²

¹⁵² *Bishop Testimony*, 37.

¹⁵³ *See id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Bazon Report*, 12–16 (citing cases).

¹⁵⁶ *Id.*, 14.

¹⁵⁷ *Id.*

¹⁵⁸ *See Findings of Fact, Conclusions of Law, and Order, Cypher, DV-24-75.*

¹⁵⁹ *Id.*, 15.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² 52 U.S.C. §§ 10307(b), 10101(b).

In Montana, only a court can determine a person is not competent to vote.¹⁶³ A person under guardianship does not lose their right to vote unless the court specifically says so.¹⁶⁴ Likewise, but for the inconsistent AG’s Opinion, a person who is involuntarily committed does not lose their right to vote “[u]nless specifically stated in an order by the court.”¹⁶⁵

Section 208 of the Voting Rights Act states that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice....”¹⁶⁶ Despite this requirement, “voter protection hotlines ... across the country receive calls from voters every election who have been denied the assistant of their choice by poll workers unfamiliar with the law.”¹⁶⁷ “For voters who live in long term care facilities, the facility staff and visiting elections personnel may be the only contact they receive all year from any party interested in facilitating their right to register and vote.”¹⁶⁸

Title II of the ADA prohibits state and local governments from discriminating on the basis of disability in government services, programs, and activities.¹⁶⁹ Title II regulations clarify that State and local governments violate the ADA when they outright exclude people with disabilities from participation in government service, programs, activities, aid, or benefits.¹⁷⁰ But, governments also violate Title II with actions short of outright exclusion, including by:

- Failing to “make reasonable modifications in policies, practices, or procedures when...necessary to avoid [disability] discrimination....”¹⁷¹
- Providing “opportunit[ies] to participate...that [are] not equal[;]” that are less effective; or that are different to the opportunities afforded to others (including people without disabilities and people with different types of disabilities)¹⁷²

¹⁶³ Mont. Const. Art. IV, § 2 (person “of unsound mind, *as determined by a court*” cannot vote) (emphasis added); *see also* Mont. Code Ann. § 13-1-111(3) (person “*adjudicated* to be of unsound mind does not have the right to vote.”) (emphasis added).

¹⁶⁴ Mont. Code Ann. § 72-5-316(3) (all rights not specifically limited by the court’s order are retained).

¹⁶⁵ *Id.*, § 53-21-141(1).

¹⁶⁶ 52 U.S.C. § 10508. The assistant cannot be “the voter’s employer or agent of that employer or officer or agent of the voter’s union.” *Id.*

¹⁶⁷ *Bishop Testimony*, 38.

¹⁶⁸ *Id.*

¹⁶⁹ 42 U.S.C. 12132.

¹⁷⁰ 28 C.F.R. § 35.130(b)(1)(i).

¹⁷¹ *Id.*, § 35.130(b)(7)(i). Reasonable modifications are required “unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”

¹⁷² *Id.*, § 35.130(b)(1)(i–iv), unless the difference is necessary to make the aid, benefit, or service as effective as those provided to others.

- “Otherwise limit[ing] a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.”¹⁷³

The government can violate Title II where particular parts of its voting processes, like absentee voting, are not equally accessible even where other voting processes (e.g. in person voting) are accessible.¹⁷⁴

Additionally, under the ADA’s “effective communication” provisions “[a] public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”¹⁷⁵ It is the public entity’s responsibility to “furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities...an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.”¹⁷⁶

These legal requirements are not suggestions. They must be fervently enforced by state and local election officials. State policymakers must ensure election officials and poll workers are sufficiently trained, adequate oversight exists, and funding levels are sufficient to ensure all aspects of the voting process are accessible and comply with state and federal law.

Recommendations for Policymakers, Election Officials, and Service Providers

For Policymakers:

- Support voting policies that enhance accessibility while ensuring privacy and independence.
- Avoid legislation that restricts voting rights based on disability, including misinformed assumptions about an elector’s capacity or competency, signature matching requirements, and laws that place unnecessary steps in the voting process.
- Work to streamline the voting process to the greatest extent possible.
- Advance voting legislation that reduces the State’s liability for violations of the ADA, the Voting Rights Act of 1965, and other state and federal laws.

¹⁷³ *Id.*, § 35.130(b)(1)(vii).

¹⁷⁴ *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 503 (4th Cir. 2016) (Maryland’s absentee voting program, which did not adequately provide for electronic ballot marking, violated Title II).

¹⁷⁵ 28 C.F.R. § 35.160(a)(1).

¹⁷⁶ *Id.*, § 35.160(b)(1).

- Fund and maintain accessible election technology, training, and voter education initiatives, including electronic ballot marking *and return* using existing technology as proposed in HB488(2025).

For Election Officials:

- Ensure polling places and voting systems comply with all state and federal legal requirements, including all accessibility requirements.
- Work to streamline the voting process to the greatest extent possible.
- Train poll workers on disability accommodations and best practices, including under Section 208 of the Voting Rights Act¹⁷⁷ and Title II’s effective communication requirement.¹⁷⁸
- Provide all voter materials in accessible formats (large print, audio, alternative languages), including voter information guides, voting instructions, ballots, ballot envelopes, polling place signage, etc.
- Support and extend ballot access by adding additional polling places and hours, particularly in places where people with disabilities with mobility impairments live, such as assisted living facilities and group homes, utilizing curbside voting, and supporting efforts to enact electronic ballot marking *and return* for disabled electors in Montana.

For Service Providers and Support Staff:

- Provide robust access to media and internet in accessible formats so consumers can make informed choices.
- Proactively educate consumers about voting rights, accessible options, and deadlines, without influencing their choices in modes of communication that accessible to the individual.
- In residential facilities, create protected mail-handling systems that deliver voting-related materials directly to residents and maintain secure logs to ensure timely distribution.
- Offer and provide requested assistance for voter registration, ballot access, or transportation, including assistance in marking ballots if needed and consistent with Section 208 of the Voting Rights Act.
- Coordinate with election officials to facilitate accommodations well in advance of election day.
- Adopt clear, written policies explaining how staff and family members can lawfully and ethically support the access to information and ballots disabled voters need and prohibit them from attempting to direct or influence a resident’s voting choices.

¹⁷⁷ 52 U.S.C. § 10508.

¹⁷⁸ 28 C.F.R. § 35.160.

- Provide private and fully accessible spaces for residents to complete absentee ballots, further protecting autonomy, especially for those who need quiet or adapted environments.
- Provide regular staff training on nondirective assistance and the distribution of accessible voting rights materials, such as information about designating an agent for absentee ballot assistance, can strengthen compliance with these protections and empower residents to understand their accessible voting options.
- Report any interference with a consumer’s right to vote, including challenges to their capacity, to an election official or DRMT.

Conclusion

Voting is our most fundamental right, without which all other rights are meaningless. Montanans with disabilities represent a large swath of the voting public and policy decisions impact every part of their lives. The composition of political bodies should reflect the population served. That means many more people with disabilities should hold decision-making roles—at all levels and in all branches of government—and the decisionmakers should reflect the diverse viewpoints, interests, and attitudes of the disability community. That also means the voices of people with disabilities must be heard through fervent protection of their rights to vote, to participate in public meetings and commissions, and to be heard in every place where decisions about their lives are made. We must recommit to a democracy that represents everyone.

About the Author



Tal Goldin is an attorney and the Director of Advocacy for Disability Rights Montana. He has extensive experience advocating for the civil rights of people with disabilities before federal, state, and administrative tribunals and working closely with the legislative and executive branches to advance these rights. He taught at the University of Montana (UM) School of Law and the UM Phyllis J. Washington College of Education and lectures across the U.S. on the legal rights of people with disabilities. He serves in leadership positions on several national disability civil rights non-profits.