

February 9, 2023

Frank LaRose  
Ohio Secretary of State  
22 North Fourth Street, 16th Floor  
Columbus, Ohio 43215

**Re: Clarification of HB 458**

Secretary LaRose:

We write to seek clarification of certain provisions in the recently enacted HB 458. We are concerned that, absent appropriate clarification, these provisions will adversely affect voters with disabilities in a manner that violates the requirements of Title II of the Americans with Disabilities Act (the ADA), 42 U.S.C. §12131 *et seq.* We therefore request the prompt clarification of the manner in which these provisions will be implemented in Ohio elections, including those scheduled for May 2, 2023. While the Secretary's recent guidance to local Boards of Elections, Directive 2023-03, addresses certain issues regarding the implementation of HB 458, we note that it does not address the points set forth below.<sup>1</sup>

**(1) Curbside voting.** Pursuant to HB 458, Section 3509.29(C) of the Revised Code states that:

The board of elections shall permit any **elector with a disability** who travels to that elector's polling place, **but who is physically unable to enter the polling place**, to vote, with the assistance of two polling place officials of major political parties, in the vehicle that conveyed that elector to the polling place, or to receive and cast that elector's ballot at the door of the polling place. Under no other circumstance may an elector vote in a vehicle or at the door of a polling place. (Emphasis added.)

We seek four clarifications regarding this provision.

*First*, the phrase "elector with a disability" is not defined in HB 458. We request confirmation that this phrase is construed so that it is consistent with the definition of "a qualified individual with a disability" in the ADA. In particular, we request confirmation that "disability" is defined consistently with 42 U.S.C.

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<sup>1</sup> Because Directive 2023-03 was issued less than 48 hours ago, we note that we are still reviewing the directive, and additional points other than those set forth in this letter may require clarification. We nonetheless wanted to provide this initial letter to you as soon as possible given the impending election in May.



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§ 12102(2)(A) (“an individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual”) and that a qualified individual is defined consistently with 42 U.S.C. § 12131(2) (“The term ‘qualified individual with a disability’ means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”).

*Second*, we request confirmation that the phrase “physically unable to enter the polling place” will be interpreted expansively to allow voters to vote curbside if, due to a disability, they would face a barrier or difficulty with entering, navigating within, or casting a vote inside the polling place. Curbside voting should be available to anyone who faces difficulty or danger voting within the polling place because of a disability on the day in question.

For example, a voter who has a vision-related disability but who could manage to enter a polling place through the use of a cane should still be deemed to be “physically unable to enter the polling place” if entering, moving about, or voting in the polling place posed difficulty or danger to the voter because of their disability. Similarly, a voter with a mobility-related disability who could enter the polling place through the use of a walker or wheelchair should similarly be deemed to be “physically unable to enter the polling place” if entering, moving about, or voting in the polling place was difficult or unsafe for the voter because of their disability. Another example would be an individual who is immunocompromised or has sensory or psychiatric disabilities that would prevent them from entering the building without risking physical harm or distress. As set forth in Directive 2023-03, Section IV.A, please confirm that the statement by the voter that their disability makes it difficult or unsafe to enter the polling place should be conclusive and not subject to challenge.

*Third*, we request clarification regarding whether there will be signage or other efforts to let people with disabilities know that curbside voting is available. In particular, we believe that statewide guidance to local election authorities is required, stating how they should advertise and implement curbside voting. For example, we ask that there be accessible signage informing voters of the availability, location and process for curbside voting. We ask that there be a method for identifying a curbside voter that does not require them to have a cell phone to call a number; in this regard providing as designated parking spots that are monitored by pollworkers would be useful. Further, we think it is important that guidance be provided to boards of election regarding the need to post in advance the specifics of curbside voting process so voters and pollworkers alike know what to expect. *See generally*, Disability Rights Ohio, Report: Election Accessibility for Voters with Disabilities at 9-10 (attached).

**(2) Affidavit alternative regarding the photo identification requirement.** Section 3505.18 of HB 458 creates new limitations on which forms of photo identification will be accepted at the polls. The process of obtaining photo identification can be prohibitively burdensome for voters with disabilities, who will often have difficulties in traveling to identification-issuing offices. Since Ohio law must be read to be consistent with the ADA, the law should permit voters with disabilities who lack the otherwise requisite photo identification document to provide an affidavit attesting to their identity in lieu of a photo identification document where the voter does not have the requisite photo identification document. *Cf.* Directive 2033-03 at 5. Such a modification is consistent with that provided to voters who have religious objections to providing a photo identification (and do not have a photo identification document) as set forth in section 3505.19 of the Revised Code.



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Unless such a modification is available, discriminating against voters with disabilities in this regard runs afoul of the ADA and its implementing regulations. “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

Because the May 2, 2023 election is fast approaching, we respectfully request your prompt attention to this matter. As we are sure you agree, the voters of Ohio deserve clarity regarding the manner in which this new statute will be administered in the elections that will be conducted pursuant to its requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Collin Marozzi". The signature is written in a cursive style with a large, stylized initial "J" and "M".

J. Collin Marozzi  
Deputy Policy Director  
American Civil Liberties Union of Ohio