

Pro Bono Week 2020

Ballot Denied: Voting in the Age of Covid-19

By Jennifer Terrell

During Indiana’s primary election this year, held in June, Angela Horne and her mother planned to vote as they always do—by casting a ballot at their polling place. Because of safety concerns amidst the COVID-19 pandemic, however, Marion County opened only 22 polling places in this election—less than 10% of the normal amount. Angela’s mother lives with Parkinson’s disease, and Angela herself struggles with health issues, making it difficult for both women to stand for extended periods of time. Angela and her mother went to four different polling locations that day, but each had a long line of voters waiting in socially distant lines in the hot sun, some of whom had already been waiting over an hour to vote. That’s when Angela called the nonpartisan Election Protection hotline, 866-OUR-VOTE. A volunteer attorney told Angela that she and her mother had the right to bypass the line and vote without waiting. Despite the guidance, Angela felt uncomfortable returning to a polling place and asking to move to the front of the line when so many other voters faced long wait times. Certainly, many other voters with disabilities were also disenfranchised that day.

In that same election, several voters rushed to their polling places at the end of the workday. Indiana has one of the earliest closing times for polling places in the country—6 p.m. The reduction in the number of polling places in June 2020 also meant that the sites were spread further apart from each other than usual, leading to unusually long travel times for potential voters and exacerbating the negative effects of typical



daily disruptions. Near one polling place in Indianapolis, a bus crash on the afternoon of the election closed major thoroughfares, keeping voters from arriving at the polling place until very near the 6 p.m. deadline. Initially, poll workers told these Hoosiers they were too late to vote. But several of these voters, too, called 866-OUR-VOTE and connected with on-the-ground volunteers from Common Cause Indiana. Volunteers encouraged the voters to stay in line and called on local election officials to ensure these voters had access to their ballots. Eventually these voters *were* allowed to vote—an outcome that would have been unlikely without the collaboration of the voters, community, and legal advocates.

Election Protection in Illinois and Indiana

At Chicago Lawyers’ Committee for Civil Rights, we fight for voter access for all

eligible citizens, using a community-based approach and a racial equity lens. Pro bono attorneys fill a critical need by expanding our capacity to respond to voters in real-time on Election Day and by assisting with systemic advocacy the rest of the year. In every election, we partner with the non-partisan national Election Protection network to support voters in Illinois and Indiana. Volunteer attorneys staff the 866-OUR-VOTE hotline and poll watch at locations identified as “high priority” by community contacts. Every election—from national presidential elections to Chicago neighborhoods’ local school council elections—we hear from voters who face a problem accessing their fundamental right to vote. Some of these systemic issues make national news—issues like voter ID laws, voter “purges,” or widespread technological problems. But many of the difficulties faced by voters look similar to the two

stories described above, where decisions to change or to indiscriminately enforce voting protocols may have unintended consequences.

As a high schooler involved in youth community organizing in Albany Park, advocating with elected officials was an essential part of our work. We engaged and advocated with local elected officials even without yet having access to the voting booth. This created a sense of wonder and excitement around turning 18 and being able to vote, to directly choose those elected officials ourselves. Now, after having had access to the ballot for many elections, I've seen how my idealized image of walking to a local poll on a Tuesday morning, quickly checking in, and voting with a smile, is not the reality for all voters. Millions of Americans encounter barriers, intentional or happenstance, that threaten their right to exercise the fundamental tool of our democracy. And, as with many other inequities in our society, these barriers disproportionately impact voters of color, which in turn helps to cement current power structures.

Systemic Barriers & Covid-19

The Covid-19 pandemic, coupled with increased turnout for a presidential election, will likely result in even more pitfalls and disenfranchisement than usual, especially for voters of color. Voters of color already disproportionately face barriers to voting such as:

- (1) In Illinois, voter registration rates for voters of color lag behind those of white voters. *United States Census Bureau, Voting and Registration in the Election of 2016, Table 4b, Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2016, available at <https://www.census.gov/library/publications/2018/demol/p20-582.html>.*
- (2) Voters living in entirely Black census block groups on average must wait longer at the polls than voters living in census block groups with no Black residents. *M. Keith Chen, Kareem*

Haggag, Devin G. Pope & Ryne Rohla, Racial Disparities in Voting Wait Times: Evidence from Smartphone Data, NBER Working Paper No. 26487 (2019), available at <https://www.nber.org/papers/w26487>.

- (3) Uneven access to quality translations of ballots and other voting materials increases the burden on immigrant voters, many of whom are voters of color.
- (4) Given the disproportionate impact of the criminal justice system on Black and Brown community members, the unique barriers to voting faced by citizens held in pre-trial detention are also disproportionately borne by people of color.

The Covid-19 pandemic already led many jurisdictions to undergo drastic changes to their election processes for the primary elections, principally closing polling places and expanding vote by mail, without sufficient time for the community input and planning that would ensure the most equitable outcomes. As seen in Indiana's June 2020 primary, the widespread closure of polling places in response to the pandemic further burdens voters who cannot or will not vote by mail. Black voters move more frequently and are more likely to lack a permanent address than white voters, making mail-in ballots less of an option for Black voters. *See, e.g., Jay Young, Commentary: Sorry, but not all of us can vote from home, Chi. Trib., (May 11, 2020), <https://www.chicagotribune.com/opinion/commentary/ct-opinion-mail-in-ballots-vote-from-home-20200511-ocgmepvt3zae5loeqr6vtdkyfa-story.html>.* Many voters with disabilities and any voter using same-day registration also cannot use a vote by mail system. While an expanded version of vote by mail is one important option to present to voters for the 2020 General Election, it cannot be at the expense of losing other methods of voting.

Of course, for those voters who do choose or need to vote in-person, election authorities must make voter safety paramount. As has been well-documented,

the Covid-19 pandemic also has disproportionately affected people of color, both in infection rates and in deaths. *See, e.g., Richard A. Oppel, Jr., et al., The Fullest Look Yet at the Racial Inequity of Coronavirus, N.Y. Times (July 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.* Without sufficient personal protective equipment for polling place personnel and voters, combined with clear guidelines around safety protocol, the most medically vulnerable voters may not risk casting a ballot. No one should have to choose between their personal safety and exercising their fundamental right to vote.

As evidenced in headlines across national media, many feel that right is coming under increasing threat each day. Recently, the Chicago Lawyers' Committee for Civil Rights and a group of pro bono attorneys moved for an injunction to stop enforcement of Indiana's deadline of noon on election day to receive mail ballots—a seemingly arbitrary cut-off that gains alarming significance in the face of potential cuts to the United States Postal Service. Just as many small acts of disenfranchisement erode a democracy, many small acts of resistance against that disenfranchisement help to shore up our citizenry.

How You Can Help

Actions you can take include spreading the hotline number (866-OUR-VOTE) through your communities or posting Election Protection yard signs near your local polling place. Other actions may be signing up as an individual or with your firm to volunteer to answer hotline calls with us on election day through our volunteer sign-up, <https://www.clccrul.org/pro-bono-works>. Through our combined actions, we can help ensure that more citizens have full and safe access to their right to vote in November. ■

Jennifer Terrell is a Program Counsel at Chicago Lawyers' Committee for Civil Rights.