

Voting Accommodations

More Help Is Needed for Persons with Cognitive and Other Brain Impairments, Especially Those in Long-term Care Facilities, Who Want to Vote

By Ellen Klem, Staff Attorney, ABA Commission on Law and Aging

Voting is a fundamental right and persons with cognitive or other brain impairments,¹ especially those who live in long-term care facilities (LTCFs),² are entitled to participate as fully as possible in the electoral process. Unfortunately, election officials nationwide are faced with so many obstacles in making voting fair, accessible, and accurate that voting by this vulnerable population is often overlooked.

Questions have been raised about the extent to which states and localities are helping the increasing numbers of persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, to exercise their right to vote. To answer these questions, the **ABA Commission on Law and Aging** began a project to identify and publicize state and local policies and practice strategies that promote proper access to the polls by this cohort and protect against the fraudulent manipulation of their vote.

The ABA Commission asked members of the National Association of State Election Directors (NASED) for help identifying state and local activities or resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs. The ABA Commission sent NASED members a brief six-question survey on September 25, 2008, and followed up on the results via e-mail and telephone on February 26, 2009, and March 16, 2009. The ABA Commission also examined activities and resources in states that did not respond to the survey. The results of that research are summarized as follows.

Scope and Methodology

Our objective was to identify activities and resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, at (1) the state level and (2) the local level. We administered a Web-based survey of NASED members, including the chief official in each of the fifty states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands, whose primary responsibility is election administration at the state level.³ The survey included six questions about state and local actions to support or promote voting by persons with cognitive and other brain



impairments and, in particular, those individuals living in LTCFs. The survey was conducted using a self-administered questionnaire posted on the Internet. Survey data was collected between September 25, 2008, and April 10, 2009. We received completed surveys from 37 states, the District of Columbia, and the U.S. Virgin Islands (a 71 percent response rate). In some instances, individual NASED members were contacted to gain a deeper understanding of their survey responses and relevant documentation from selected states was obtained and reviewed.

Findings

State Support Increasing

Several states support or promote voting by persons with cognitive and other brain impairments and, in particular, those individuals living in LTCFs, by conducting voter outreach and education, partnering with advocacy groups, and conducting poll-worker education and training. States also reported that they support or promote voting by visiting LTCFs to help with voter registration, delivering absentee ballots, conducting “mobile polling,” and conducting outreach and education to staff and residents.

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Nineteen States Conduct Outreach and Education Activities

Voter outreach and education was the most commonly reported type of state activity. Specifically, 18 states reported some activity of this nature.⁴

Some states publish brochures, booklets, or flyers. For example, the Minnesota Secretary of State developed a flyer titled *Know Your Voting Rights* to educate citizens that voters who have brain injuries, are experiencing severe memory loss, are developmentally disabled, and have some other cognitive impairment, may be entitled to vote.⁵

Election officials in Nevada reported that they provide public radio messages during election season to publicize polling locations. The broadcast messages also serve to remind voters that voting machines are compliant with the Americans with Disabilities Act and encourage individuals who cannot make it to the polls to vote by absentee ballot.

Other states reported that they demonstrate accessibility features of voting systems and auxiliary aids to citizens prior to elections.

Ten of the 18 states reported partnering with advocacy groups to support or promote voting by persons with cognitive and other brain impairments.⁶ For example, the North Dakota Secretary of State's office works cooperatively with the North Dakota Association of Counties and the North Dakota Protection and Advocacy Project to promote voting by persons with a full range of disabilities. Together the three entities have produced two videos to inform and help persons with disabilities to vote. One video instructs poll workers on how to provide assistance to voters with disabilities and the other helps voters understand their rights, regardless of their disability.⁷

Seven states reported conducting poll-worker education and training.⁸ Some states include information relevant to voters with cognitive and other brain impairments in the poll workers' training manual.⁹ Other states produce and distribute videos to teach poll workers how to assist voters with disabilities. For example, a Pennsylvania video titled *Training to Assist Voters with Disabilities* was distributed to

all sixty-seven counties in the state and uploaded to the department of state's Web site.¹⁰

Eleven States Visit Long-term Care and Other Facilities or Deliver Ballots

Seven states reported visiting LTCFs to facilitate voter registration, deliver absentee ballots, and conduct voting.¹¹ For example, the District of Columbia Board of Elections and Ethics (BOEE) arranges visits to LTCFs and veterans health facilities to facilitate voter registration and deliver absentee ballots to the residents. At the request of residents, BOEE also provides assistance in completing absentee ballot request forms and voting via absentee ballots.

Vermont's pioneering "mobile polling" initiative utilizes election officials to bring ballots to convenient and accessible locations, such as LTCFs, and skilled, non-partisan election workers to provide assistance when needed, and where permitted, to registered voters.¹²

Four states reported conducting outreach and educational activities for the benefit of staff and residents of LTCFs.¹³ Some states offer to conduct presentations for or provide written materials to staff and residents. For example, Hawaii sends letters and makes phone calls to all LTCFs, retirement homes, and senior citizens centers offering to conduct presentations and send written materials on voting.

Limited Local Support

In our survey, only six local jurisdictions reported taking actions to support or promote voting by persons with cognitive and other brain impairments. The most common action was voter outreach and education. Localities also reported conducting mobile polling and transporting accessible voting units to locations with immobile voters.

Two Local Jurisdictions Conduct Outreach and Education Activities

Voter outreach and education was the most commonly reported type of local activity. Specifically, two localities reported they have a Web page or pamphlet for voters with cognitive and other brain impairments. In Clark County, Nevada, the election department maintains a Voters with

See the chart *Summary of Promising Practices, Resources, and Contact Information* for a list of state and local jurisdiction activities and resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, on the Web page of the ABA Commission at: <http://tinyurl.com/yk454dn>.

Disabilities Web page.¹⁴ The Web page lists all the local services, as well as state laws, that a voter with a disability can take advantage of to vote independently.

Washington County Elections in Washington County, Oregon, distributes a pamphlet on the Voter Assistance Program, which supports the rights of voters with disabilities by providing alternative methods of voting that ensures privacy, independence, and the right to vote a secret ballot. One such method—the Voter Assistance Teams (VAT)—is described below.¹⁵

Four Local Jurisdictions Visit Long-term Care and Other Facilities or Deliver Ballots

Visits to LTCFs with accessible voting units or absentee ballots was the most commonly reported type of local activity to support voting by this vulnerable population. Specifically, two localities reported visiting with accessible voting units and one locality reported visiting with absentee ballots when requested.¹⁶

Kitsap County, in Washington, purchased a van to transport its accessible voting unit to LTCFs and other locations to reach voters who may have difficulty getting to a voting center. Another locality in Washington, Cowlitz County, contacts every LTCF to arrange for the transportation of an accessible voting unit to the facility.

Two localities reported using voter assistance teams (VATs) to assist persons in LTCFs with the voting process. Multnomah and Washington counties, in Oregon, provide teams made up of two registered voters that do not have the same political affiliation. The teams assist voters who have requested help with either a person-to-person approach or by using the Alternate Format Ballot (AFB) and the Accessible Computer Station (ACS).¹⁷ The goal is to ensure voting is secure, convenient, fast, independent, private, and accessible to all voters.

Conclusion

Despite research that shows activities like mobile polling can enhance proper access to the polls by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, and protect against fraudulent manipulation of their vote, most jurisdictions do nothing to ensure the voting rights of these vulnerable individuals are protected.¹⁸

The field needs guidance in making a critical step forward to ensure that this population group has the opportunity to vote.

The need for such guidance will become more critical as the population continues to age and the number of Americans with cognitive and other brain impairments increases. The



failure to provide such guidance compromises the electoral process and disenfranchises an entire voting population.

The promising practices described here and in the accompanying chart titled *Summary of Promising Practices, Resources, and Contact Information* (see link on page 56) provide states and local jurisdictions with the opportunity and resources to learn from each other's success and challenges. They demonstrate that states and local jurisdictions can conduct activities and provide resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs.

Notes

1. For brevity in this article, the term “cognitive and other brain impairments” includes not only impairments resulting from Alzheimer’s disease and other causes of dementia, but also impaired cognition caused by any other disease, disorder, or condition, including traumatic brain injury, stroke, and mental retardation.
2. Unless otherwise indicated when necessary, this article will use the term “long-term care facilities” to include nursing homes and assisted living facilities.
3. This article refers to these jurisdictions generally as “state” or “states.”
4. California, District of Columbia, Hawaii, Idaho, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, New Hampshire, North Dakota, Oregon, South Carolina, Texas, Vermont, and Washington.
5. Office of Minnesota Secretary of State, Elections Center, *Know Your Voting Rights, 2008*, available online at <http://tinyurl.com/m3ku8y>.
6. California, District of Columbia, Hawaii, Idaho, Maine, Maryland, Minnesota, Nevada, North Dakota, and Washington.
7. Secretary of State North Dakota, *A New Experience for the Experienced Voter, Large Captioned* (30Mb), n.d., available online at <http://tinyurl.com/mg2uc2>. Secretary of State North Dakota, *A New Experience for the Experienced Voter, Large Non-Captioned* (30Mb), n.d., available online at <http://tinyurl.com/lpaow4>. Secretary of State North Dakota, *The Right to Vote: Accessible*

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Options for All, Large Captioned (37Mb), n.d., available online at <http://tinyurl.com/lhy373>. Secretary of State North Dakota, *The Right to Vote: Accessible Options for All, Large Non-Captioned* (37Mb), n.d., available online at <http://tinyurl.com/l23nknf>.

8. District of Columbia, Maryland, New Hampshire, Oregon, Pennsylvania, South Carolina, and Vermont.
9. For example, the Maryland State Board of Elections includes information in statewide poll workers' manuals and training curricula about voters with disabilities, including a specific section on voters with cognitive disabilities. Maryland State Board of Elections, *Licensed Nursing Homes and Assisted Living Facilities: Absentee Ballot & Voter Registration Procedures*, November 2007, available online at <http://tinyurl.com/l64kjd>.
10. Pennsylvania Department of State, Division of Help America Vote Act (HAVA), *Training to Assist Voters with Disabilities*, October 3, 2008, available online at <http://tinyurl.com/p6akrg>.
11. District of Columbia, Iowa, Maine, Maryland, Missouri, Nevada, and Vermont.
12. Mobile polling differs from absentee voting in several ways critical to persons with cognitive impairments. Voters must apply for an absentee ballot, wait for it to arrive, fill it out independently or with someone's assistance, and then return it. For mobile polling, election officials bring ballots to convenient and accessible locations, such as LTCFs, and skilled, non-partisan election workers provide assistance when needed and, where permitted, register voters. In some nations, such as Australia, mobile polling is the norm. For more information on mobile polling in Vermont, see *Bringing the vote to residents of long term care facilities: A study of the benefits and challenges of mobile polling*, Jason Karlawish, et al., (Forthcoming 2010).
13. Hawaii, Idaho, Louisiana, and Minnesota.
14. Election Department - Clark County, Nevada, *Voters with Disabilities*, April 20, 2009, available online at <http://tinyurl.com/r549tu>.
15. Washington County Elections, *Voter Assistance Program Pamphlet*, n.d., available online at <http://tinyurl.com/mt8hrc>.
16. For example, White Pine County, Nevada, reported they make trips to nursing or assisted living homes to deliver absentee ballots when requested.
17. The Alternate Format Ballot (AFB) is a voting tool for voters unable to use a printed ballot. The AFB lets voters with print disabilities (e.g., vision impairment, learning disability, etc.) to vote privately and independently at home using their own computer, Web browser, assistive technology, and printer. Voters who do not have a computer and printer can still vote with an AFB by using the Accessible Computer Station (ACS) located at the Elections Office. Washington County Elections, *Alternate Format Ballot (AFB) Request*, n.d., available online at <http://tinyurl.com/y857on2>.
18. Jason Karlawish, et al., *Addressing the Ethical, Legal, and Social Issues Raised by Voting by Persons with Dementia*, Journal of the American Medical Association, 292, 1345-50 (2004); Jason Karlawish, et al., *Identifying the Barriers and Challenges to Voting by Residents of Long-term Care Facilities: A Study of the 2003 Philadelphia Mayor's Race*. Journal of Aging and Social Policy, 20, 65-75 (2007); Paul Freedman, et al., *How Does Voting Occur in Long-term Care: A Survey of Virginia LTC Facilities*. Center for Survey Research, University of Virginia (2008); *Recommendations of the Symposium*, 38 McGeorge L. Rev. 861, 2007; Jason Karlawish, et al., *Bringing the Vote to Residents of Long-term Care Facilities: A Study of the Benefits and Challenges of Mobile Polling*, (Forthcoming 2010).

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