Election Law (Report No. 116)

BE IT RESOLVED, That the American Bar Association supports efforts to insure the participation of homeless persons in the electoral process.

BE IT FURTHER RESOLVED, That the American Bar Association recommends that federal, state, territorial and local election laws, regulations and policies regarding residency determinations and the methods by which persons vote and by which voter registration is verified should not hinder or prevent registration and voting by homeless persons who are otherwise qualified to vote.

BE IT FURTHER RESOLVED, That the American Bar Association recommends, and supports legislation to assure, that no voting qualification or prerequisite to voting, standard, practice, or procedure, shall be imposed or applied by any state or political subdivision to deny or abridge the right to vote of any citizen who resides at or in a nontraditional abode, which shall be read to include among other things (1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); and (2) a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

BE IT FURTHER RESOLVED, That the American Bar Association encourages federal, state, territorial and local election officials to undertake active outreach efforts to inform homeless persons of voter registration and voting procedures.
Sponsoring Entities

The Standing Committee on Election Law was created in October 1973 by the Board of Governors of the American Bar Association to examine and develop ways to improve the election process. The activities of the Committee reflect the ABA's continuing commitment to ensure that the nation's election laws are legally sound and are drafted to permit the broadest, least restrictive access by Americans to the ballot box with appropriate safeguards.

The Commission on Homelessness and Poverty was created in August 1991 by the Board of Governors to continue and expand the work of the Representation of the Homeless Project. The Commission fosters state and local bar association programs through which pro bono lawyers can meet the legal needs and concerns of homeless and other very poor people. The Commission also works to develop ABA policy that enhances and further the efforts of these volunteer lawyers and seeks to assure the rights of homeless and poor people.

The Hispanic National Bar Association (HNBA), founded in 1972, is the incorporated, nonprofit, national association of 20,000 Hispanic attorneys, judges, law professors, and law students committed to promoting the goals and objectives of the Association. The HNBA has been the principal force behind the increased representation of Hispanics in all sectors of the legal profession and has served as the legal voice for Hispanics for twenty years.

The Section of Litigation provides a forum within the ABA addressed to the problems and interests of the trial practitioner who specializes in litigation. It aims to establish and maintain a working liaison with the federal and state judiciary toward achieving procedural reform, and to initiate study and research toward the development of improvements in the field of litigation.

The Commission on Legal Problems of the Elderly, established in 1978, examines the legal rights and law-related concerns of older persons, particularly as they affect personal autonomy. In this regard, the Commission has addressed laws and policies on advance directives, alternatives to guardianship, access to the court system for older persons and persons with disabilities, rights of frail older tenants under the Fair Housing Amendments Act, and housing options which permit older people to remain independent for as long as possible. The right to vote is an extension of that autonomy. While the exact percentage of elderly persons among the homeless population has been difficult to determine, a number of recent studies estimate that 19% of homeless people in large urban areas are at least fifty years of age.

Why homeless people want to vote

Homeless people want to vote for the same reason others do: the desire to participate in the democratic process, to influence
election results and to have an impact on public policy. They, too, have "a political stake in their future and a sense of caring about their community." Collier v. Menzel, 176 Cal. App. 3d 24, 26, 221 Cal. Rptr. 110 (1985). But, because of "the very nature of their living circumstances, [they] have been unable to exercise any political influence in order to make their particular problems and needs known." Id. Homeless people should be able to vote with the same ease as other citizens for reasons that comport with our vision of our government as a democracy - making the ballot box equally accessible to all.

While the recommendations do not endorse any specific legislation, we note that Representative John Lewis of Georgia has introduced H.R. 1457, the "Voting Rights for Homeless Citizens Act of 1993," which prohibits the states from denying otherwise eligible persons who live in "nontraditional abodes" the right to vote. The recommendations do reflect the bill's definition of "nontraditional abodes."

Existing ABA Policy

The ABA has never specifically addressed the voting rights of homeless people and barriers to their enjoyment of this fundamental right on the same basis as other citizens. Nonetheless, it has adopted policies on many other voting procedures and with respect to other rights of homeless people.

As a result of judicial and legal action supported by the Standing Committee on Election Law and the American Bar Association, most of the legal obstacles to registration have been removed. The American Bar Association has also endorsed increased efforts to encourage voting by its own members and by all citizens. For example, the ABA has supported legislation that "encourages voter participation, and eliminates mechanical barriers to voting..." (February 1979), that facilitates "the ability of citizens to vote..." through voter registration by mail and "use of federal resources to improve and simplify state and local registration procedures," including creating "more registration facilities located in places nearer to people such as high schools, hospitals and factories," and by encouraging "state and local governments to institute... voter registration improvements..." (August 1974).

The ABA has supported reauthorization of the Voting Rights Act of 1965 (August 1981), legislation that increased voter registration sites, outreach and education to potential voters (August 1989), and the "National Voter Registration Act," the so-called "Motor-Voter" bill which was signed into law on May 20, 1993.2/ The ABA has also recognized the rights of homeless people. Specifically in 1986, it adopted policy supportive of federal, state and local legislation that would "prohibit interference with the exercise of civil rights solely on the basis of transient or homeless status;... and... adopt public policies and programs that
will contribute to the ability of homeless people to become productive citizens."

Barriers to the franchise for homeless people

The policy proposed seeks support for increased efforts to enhance homeless persons' participation in the electoral process. Homeless persons experience unique obstacles in attempting to register to vote. Many homeless persons have been deprived of the franchise because they lack a permanent residence, do not have a street address, or do not own or rent their home. In addition, homeless persons have little or no money and often find it difficult to travel to the polling place. To remedy these difficulties, the ABA should encourage states and localities to simplify laws, regulations and policies regarding residency requirements (including expanding the definition of residence or abode), the methods by which homeless persons vote, and registration verification procedures so that they do not hinder or prevent voter registration by homeless persons.

States should permit a citizen to vote even though his or her residence is a shelter or park bench. Homeless people can describe to a registrar with enough specificity the geographic area they inhabit to make a sufficient determination of the voting district. States should also make voting locations more accessible to shelters and other sites where homeless people gather.

Simplified registration laws, regulations and policies for the homeless must also be accompanied by on-going education and outreach efforts. Homeless persons often feel alienated from the system. Efforts to appoint deputy registrars, in those states that allow them in homeless shelters; make voting more accessible to homeless voters. Providing adequate information regarding election dates, polling places, important issues and candidates is also a key element of any successful homeless voter participation program.

Election-day voter registration, which links the process of registration with the process of casting the ballot in place and time, currently exists in four states, and in one additional state for primaries only. While the ABA has not adopted any position on election-day voter registration, the Standing Committee on Law and the Electoral Process (now the Standing Committee on Election Law) has "recognized that some jurisdictions have successfully chosen not to require advance registration and others may adopt an enrollment system in the future." Because election-day registration could significantly ease access to the ballot for all citizens, the ABA should encourage the federal government to study its viability on a national scale with a particular emphasis on whether voter fraud is a significant concern and the steps that could be taken to provide visible and fraud-free election-day registration procedures. A federal study would provide the optimal opportunity to clarify the advantages and difficulties in doing
soon a national basis. The sponsoring entities will give further consideration to this important issue.

Need for additional ABA policy

A number of voter registration activities occurring around the country make it important for the ABA to have considered the voting rights of homeless people. The National Coalition for the Homeless and its 50 state chapters have begun working to register homeless citizens. Lawyers will be asked to represent those who have been unjustly denied the right to vote. With increasing frequency, state legislatures and Congress are considering amendments to existing laws which will expand voting opportunities for homeless citizens.7/ and the "National Voter Registration Act," endorsed by the ABA, has become law.8/ Now more than ever, as the Standing Committee on Election Law noted in 1979, the American Bar Association is "in a unique position to play a leadership role - as it has done with other subjects of electoral reform - in an effort to combat the problem."9/

Respectfully submitted,

Jan Witold Beran
Chairman
Standing Committee on Election Law

Paul L. Friedman
Chair
Commission on Homelessness and Poverty

John H. Pickering
Chair
Commission on the Legal Problems of the Elderly

William Mendez, Jr.
Liaison to the House of Delegates
Hispanic National Bar Association

Louise A. LaMothe
Chair
Section of Litigation

August 1993
Endnotes


2. ABA Washington Letter (July 1, 1992), pp.6-7, quoting June 16 1992 letter to President George Bush from ABA President Talbot D'Alemberte; Letter to Hon. Al Swift, Chair, Subcommittee on Elections of the Committee on House Administration, from J. Michael McWilliams (March 30, 1993) at page 3.


5. North Dakota does not require voters to register. Three states (Maine, Minnesota, Wisconsin) have election-day registration (EDR) procedures and Connecticut has implemented EDR for primaries only. Utah requires residents to register 5 days before elections; Alabama, Iowa, Idaho, Nebraska, New Hampshire and Oklahoma require registration 10 days prior to elections; and Kansas and Connecticut require registration 14 days before elections. South Dakota requires registration 15 days before voting; and residents of Vermont must register 17 days before elections. Arkansas, Oregon and Missouri require registration within 20 days of voting; Delaware requires registration within 21 days of voting; and North Carolina requires registration within 21 business days of elections. Voters in Louisiana must register 24 days before elections; and voters in Colorado and New York must register 25 days before casting the ballot. Massachusetts, New Mexico, and Kentucky require registration 28 days before elections; and Arizona, California, Illinois, Indiana, Maryland, New Jersey, and Ohio require registration 29 days before elections. Voters in Alaska, Florida, Georgia, Hawaii, Mississippi, Virginia, Michigan, Montana, Nevada, Pennsylvania, Rhode Island, South Carolina, Texas, Tennessee, Wyoming, Washington, West Virginia, and the District of Columbia must register within 30 days of going to the polls. In addition, with the passage of the "National Voter Registration Act," Wyoming will change its current system to one using EDR.


8. ABA Washington Letter (April 1, 1993)(ABA President Talbot D'Alemberte wrote in 1993 to the Senate and House conferees on the "National Voter Registration Act," "[w]e believe it is essential
that the bill ...reflect the basic goal of providing simple means of facilitating voter registration for all eligible citizens, regardless of economic circumstances, disability, race or other factors."

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form)

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Submitting Entities: The Standing Committee on Election Law; The Commission on Homelessness and Poverty; The National Hispanic Bar Association; The Commission on Legal Problems of the Elderly

Submitted By: Jan Witold Baran; Paul L. Friedman; William Mendez, Jr.; John H. Pickering; Louise A. LaMothe

1. Summary of Recommendation(s). Support efforts to enhance the participation of homeless persons in the electoral process; recommends that federal, state and local election laws, regulations and policies regarding residency determinations and the methods by which persons vote and by which voter registration is verified should not hinder or prevent registration and voting by homeless persons who are otherwise qualified to vote; recommends and supports legislation to assure that no voting qualification or prerequisite to voting, standard, practice, or procedure, shall be imposed or applied by any state or political subdivision to deny or abridge the right to vote of any citizen who resides at or in a nontraditional abode, which shall be read to include among other things (1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); and (2) a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings; and encourages federal, state and local election officials to undertake active outreach efforts to inform homeless persons of voter registration and voting procedures.


3. Has this or a similar recommendation been submitted to the House or Board previously?
No.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption? Related ABA policies include: Support for legislation that facilitates the ability of citizens to vote, register by mail, and the use of federal resources to improve and simplify state and local governments to institute voter registration improvements (8/74); for legislation that encourages voter participation and eliminates mechanical barriers to voting (2/79); support for increased voter registration sites, outreach and education to potential voters (8/89). This recommendation enhances these by extending their reach to include homeless people.

5. What urgency exists which requires action at this meeting of the House? A number of voter registration activities are occurring around the country; state legislatures and Congress are considering amendments to existing laws which will expand voting opportunities for homeless people; the "National Voter Registration Act," legislation that addresses many of the issues involved in the ability of homeless people to vote, has become law.

6. Status of Legislation. (If applicable.) The "National Voter Registration Act" was enacted on May 20, 1993.

7. Cost to the Association. (Both direct and indirect costs.) None.

8. Disclosure of Interest. (If applicable.) N/A

9. Referrals. (List the entities to which the Report has been referred, and give the date of the referral.)
   - Senior Lawyers Division, May 28, 1993.
   - Standing Committee on Legal Aid & Indigent Defendants, May 28, 1993.

10. **Contact Persons. (Prior to meeting.)**
Leanne Pfautz, ABA, 1800 M St., N.W., Washington, DC 20038; 202/331-2652; Patricia M. Hanrahan, ABA, 1800 M St., N.W., Washington, DC 20036; 202/331-2291.

11. **Contact Persons. (Who will present the report to the House.)**
Jan Witold Baran, 10th Fl., 1776 K St., N.W., Washington, DC 20006, 202/429-7000; Paul L. Friedman, 1747 Pennsylvania Ave., N.W., Ste. 500, Washington, DC 20006; 202/872-0013.

12. **Contact Person Regarding Amendments to This Recommendation.**
(Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.)
No.