

## *RECOMMENDATIONS OF THE SYMPOSIUM*

### **Facilitating Voting as People Age: Implications of Cognitive Impairment**

March 2006

#### **1. Basic Principles and Goals**

While the symposium focused on disability caused by cognitive impairments, the principles underlying these recommendations apply to all disabilities caused by other causes of functional losses, including physical, sensory, cognitive, and mental. Therefore, “disability” as used in these recommendations is intended to be as broad and inclusive as possible. Where the recommendations expressly focus on “cognitive impairment,” the intention is for emphasis and is not intended to exclude other disabilities. The term “cognitive impairment,” as used here, includes not only Alzheimer’s disease and other causes of dementia, but also to other diseases, syndromes and developmental disorders that impair cognition.

##### **Basic Principles:**

1. A democratic society should facilitate access to the voting process while preserving its integrity.
2. People with disabilities should not be held to a different or higher standard than the general population.
3. Public and private entities must provide reasonable accommodations to ensure that people with disabilities have access to voting.

##### **Goal 1:** Preventing unfair and/or unlawful exclusion from voting.

- A. In those states with eligibility limits based on lack of capacity, everyone should be presumed to have capacity to vote absent a constitutionally adequate adjudication that they lack capacity vote.
- B. It is inappropriate for any population to be screened for mental capacity to vote based on age, disability, diagnosis, place of residence, guardianship status, or other characteristics.

##### **Goal 2:** Maximizing access by providing adequate and appropriate assistance.

- A. People are entitled to assistance from the person of their choice to help formulate, express, and record their vote.
- B. People providing assistance should not make a determination of capacity, but should decline to provide assistance if they are unable to ascertain a person’s intent.

- C. Assistance must be accompanied by safeguards to ensure that the ballot reflects the voter’s intent, such as an affirmation signed by the person providing assistance.

**Goal 3.** Improving the administration of elections to facilitate voting by all individuals, particularly people with cognitive impairments.

- A. The Elections Assistance Commission (EAC) and other governmental and non-governmental organizations should study and establish best practice guidelines for ballot design to maximize access by people with cognitive impairment.
- B. States and localities should adapt their laws, create practices and procedures, develop technologies, and invest resources to permit mobile polling. At minimum, mobile polling technology should provide access to the statewide voter checklists and the ballots of multiple jurisdictions, and assure ballot integrity.
- C. State and localities should ensure that instructions, signage, and other communications regarding elections are accessible to people with cognitive impairments.

**Goal 4:** Ensuring individuals with cognitive impairments have the opportunity to register to vote.

- A. People registering voters should not assess capacity to vote.
- B. States and localities should comply fully with the National Voter Registration Act and all other applicable federal laws and the federal government should vigorously enforce these laws.
- C. States should examine registration deadlines and consider innovative approaches to increase registration opportunities, such as Election Day registration or automatic registration.

**Preliminary Recommendation 1: Voter ID**

States with voter identification requirements should allow sufficient alternative forms of verification to enable all persons, including persons with disabilities, to register and cast ballots.

**Preliminary Recommendation 2: Private Right of Action.**

Persons with disabilities who have been denied access to vote privately and independently should have a private right of action under HAVA.

## **2. Capacity and Voting**

- A. **Presumption of Capacity.** To promote the democratic process to the fullest extent possible, no governmental entity should exclude any otherwise qualified person from voting on the basis of medical diagnosis, mental disability, or type of residence. A person’s capacity to vote should be presumed regardless of guardianship status. State

laws, including guardianship and election laws, should explicitly state that the right to vote is retained, except by court order in accordance with recommendations 2-B and 2-C.

**B. Due Process Protection.** If state law permits exclusion of a person from voting on the basis of incapacity, such exclusion should have legal effect only if:

- (1) The exclusion is based on a determination by a court of competent jurisdiction;
- (2) Appropriate due process protections have been afforded; and
- (3) The court states on the record that the basis for the exclusion has been established by clear and convincing evidence.

**C. Capacity Standard.** If state law permits exclusion of a person from voting on the basis of incapacity, a person should be determined to lack capacity only if the person cannot communicate, with or without accommodations, a specific desire to participate in the voting process.

### **3. Absentee Voting**

**A. Vote at Home.**

- (1) Governments and other stakeholders in the election process should adopt the term “Vote at Home” as a substitute for terms such as “permanent absentee voting,” “no excuse absentee voting,” or “mail ballot voting.”
- (2) All jurisdictions should be required to permit voters to Vote at Home. At the time of registration, registration forms should provide voters with this option. Voters should be allowed at any time to change their choice. Jurisdictions should make it as easy as possible for voters to exercise their choice.

**B. Voting Jurisdiction.**

Federal and state governments should develop a uniform standard for determining the jurisdiction in which people should register to vote. The default presumption for registration should be that individuals register to vote where they are physically located.

**C. Privacy and Independence.**

All voters who Vote at Home should be enabled to cast a private and independent ballot. Federal and state law needs to be sensitive to potential tensions between the secrecy of the ballot and the request of some voters for assistance.

**D. Signature Verification**

Federal and state laws regarding signatures on absentee and Vote at Home ballot return envelopes should be amended to take into account the problems that will arise with signature verification for people with disabilities. This is important because signatures can change over time.

**E. Vote at Home Information.**

Federal and state election officials should provide simple and accurate information about the Vote at Home option to voters, individuals assisting voters, and facilities. Such information should be written in plain language and include:

- (1) Periodic information to all voters explaining the Vote at Home option. Each Vote at Home ballot packet should contain an explanation of the Vote at Home option and instructions on how to complete and submit the ballot. Packets should also indicate how to receive assistance in completing the ballot and how to contact election officials with additional questions.
- (2) Information to all voters explaining how other private individuals can assist them in casting their ballots. This information should set out clearly what actions are permissible and what actions are prohibited. Permissible actions might include reading the ballot to the voter, physically marking the ballot as directed by the voter. Impermissible actions include telling the individual how to vote or casting a vote without an express indication of the voter's preference.
- (3) Information to long-term care facilities explaining any affirmative legal obligations a facility may have to assist residents in voting, permissible assistance facilities can provide residents, and any involvement that is prohibited by law.

#### **4. Voting in Long Term Care**

For purposes of these recommendations, the following definitions apply:

*Mobile Voting* – A process by which two or more election officials visit a long-term care facility to provide residents the appropriate ballot, conduct voting at a common location, or in the case of residents who can not come to the voting location, conduct voting in their room or another location convenient for the resident.<sup>1</sup>

*Long-Term Care Facility* -- Institutions licensed to provide room, board, and any level of personal care to persons in need of assistance with activities of daily living (ADLs) or instrumental activities of daily living (IADLs).

##### **A. States' Responsibilities**

- (1) States and local election officials should play an active role in facilitating voting in long-term care facilities.
- (2) States should enact laws and regulations to provide for mobile voting for residents of long-term care facilities.

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<sup>1</sup> While the ideal behind this definition is a system of mobile voting that brings the appropriate ballot to residents no matter where they may be registered, it is recognized that current realities limit that ability to in-state jurisdictions at the most. See also Goal 3-B above.

- (3) Where states do not provide for mobile voting in long-term care facilities, states should provide for teams of election officials at the local level to conduct absentee voting in long-term care facilities.

**B. Long-Term Care Facilities' Responsibilities**

- (1) States should require by law or regulation all long-term care facilities to provide a resident with information about how to register to vote in the facility's locale and how to change their address for the purpose of voting, including necessary forms, within fourteen days (14) of the resident's admission to the long-term care facility.
- (2) States should require by law or regulation all long-term care facilities to ask each resident if he or she wishes to register to vote and should assist those who, when asked, indicate that they wish to do so. This assistance shall consist of, within a reasonable period of time prior to the registration deadline for a statewide or national election, providing proper forms and assisting with their completion and submission. This can be done either by long-term care facility staff, in collaboration with non-partisan voter registration drives, or through election officials.
- (3) States should require by law or regulation, where mobile voting is not available, all long-term care facilities to actively assist residents in requesting absentee ballots. Active assistance shall mean asking each resident within a reasonable period of time prior to the absentee ballot request deadline for a statewide or national election if he or she wishes to absentee vote and, if so, providing proper forms and assisting with their completion and submission. This can be done either by long-term care facility staff or by election officials.
- (4) States should require by law or regulation, where election officials are not available to do so, long-term care Facility staff to assist a resident with ballot completion if he or she is unable to mark his or her ballot, but is able to communicate how he or she wishes the ballot to be marked and requests assistance with marking the ballot.

**C. Providing Assistance**

State law should declare that unless adjudicated as lacking capacity to vote, a resident shall have the right to vote and shall be entitled to assistance with obtaining and completing registration forms and obtaining and completing a ballot if he or she is unable to do so independently, but is able to communicate that he or she wants such assistance and, in the case of ballot completion, is able to communicate how he or she wishes the ballot to be marked and requests assistance with marking the ballot.

**D. Verification of Voter Identity**

States with voter identification requirements shall allow by law a long-term care facility's identification of a resident to constitute a sufficient verification of voter identity. The federal government shall by law provide that a long-term care facility's identification of a resident shall constitute a sufficient verification of voter identity where required by federal statutes, including the Help America Vote Act.

### **E. Residency Requirements**

- (1) States shall by law accommodate as much as possible residents desire to register to vote either in the location of the long-term care facility or their previous residence.<sup>2</sup>
- (2) To the extent that a state otherwise limits eligibility to cast an absentee ballot, states should by law make all residents eligible to vote by absentee ballot based on their residency in an long-term care facility.

### **F. CMS Implementation**

The Centers for Medicare and Medicaid Services should amend its Interpretive Guidelines for 42 CFR 483.10(A) to implement the above facility requirements pertaining to voting in long-term care facilities, as appropriate and to the extent possible, given state-to-state variations in voting law.

## **5. Voting Technology**

Congress, State Legislatures and Election Administrators should authorize the following:

### **A. Election Materials.**

Voting and election materials, including ballots, should be in plain language and accessible to people with all disabilities, including those with cognitive impairments, even if this requires providing multiple formats.

### **B. Voting Systems.**

Voting systems should be developed with the goal of achieving universal design, such that all voters in a given polling place, including voters with disabilities, can cast ballots on the same type of system, adaptable to multiple needs. The system should be universally accessible so that persons with any disability -- physical, sensory, cognitive, or mental -- can vote privately and independently. The system design should be clear, redundant, and multi-modal. If computers are used, they should display one race per screen. Voting systems should incorporate memory aids, include the full names of all candidates, include icons, produce the same type of ballot for all voters, and record voter selections anonymously. The efficiency, effectiveness, and satisfaction of the voter experience should not be degraded by the system used.

### **C. Quality Development.**

Federal funding should be provided for a coordinated and competitive process of prototype development. Voting systems proposed for deployment in federal elections must undergo an independent and transparent testing process that includes both usability

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<sup>2</sup> This recommendation should be read in conjunction with Absentee Balloting Recommendation 2-C which calls for a uniform standard for determining the jurisdiction in which people should register to vote and a default presumption that individuals register to vote where they are physically located. The default presumption is consistent with giving long-term care facility residents a choice of venue to the extent practicable.

and accessibility testing, in coordination with accuracy testing. An independent national clearinghouse should collect and make public data on the use of voting technologies.

**D. Online Voter Registration.**

State law should authorize online voter registration as one registration method.

**E. Polling Places.**

Polling places should be universally accessible, safeguard privacy, and ensure that all equipment – including any system used for accessibility if different from the primary voting system – be accessible, prominent, and ready to use.

## **6. Research**

Government and private funders should support research on voting and disability, including but not limited to the following matters:

- (1) The impact of current laws on the exclusion of persons from voting.
- (2) The extent of barriers to registration and voting for people with cognitive impairment, wherever they reside.
- (3) Effective communication strategies to overcome impediments to voting by individuals with cognitive impairments.
- (4) Voting practices in long term care facilities and other residential settings, including staff determinations of capacity.
- (5) Voting practices concerning persons with cognitive impairments living in the community, including de facto determinations of capacity and proxy voting.
- (6) The relationship between the standard used to determine residence for voting and standards used to determine residence for other purposes, such as Medicaid, the census, and other state and federal programs.
- (7) Determining what ballot form(s) and technologies would maximize the ability of voters to cast effective, private, and independent votes at home. In particular the research should consider the specific needs of voters with disabilities, including those with cognitive impairments. The feasibility and cost effectiveness of the following types of programs should be explored: on-site voting assistance, mobile voting assistance (group and individual), HTML and other computer assisted ballot formats, portable voting machines, and ballots with pictures and/or icons.
- (8) In connection to problems that may arise with signature verification for people with disabilities, research on signature verification procedures, in particular how election officials currently determine what constitutes a signature “match” and whether other,

less exclusionary, forms of voter ballot verification are possible, such as signature stamps.

(9) Discrepancies between the symposium recommendations and current standards and procedures to determine voting capacity.

(10) Evaluation of the outcome and impact of the symposium recommendations

## **7. Education & Training**

**A. Legal Obligations.** Public and private entities should provide guidance and training to ensure that people providing assistance with voting understand their obligations and limitations.

**B. Voter Assistance Training.** All people providing voting assistance should be trained to assist voters to successfully express their intent.

**C. Long-Term Care Training.** State and local election officials should promote the education of staff in long term care facilities and other residential settings, community service providers, guardians, others involved in the care of persons with disabilities, and such persons themselves about the rights of such persons to vote and the community resources available to facilitate voting.

**D. Poll Worker Training**

(1) States and localities should create poll worker recruitment and training programs that specifically address the needs of voters with cognitive impairment.

(2) Poll worker training should include practice setting up a polling site. This can be supported by interactive simulation, via DVD and/or online materials. Poll workers should be required to demonstrate in advance of their election duties that they can perform their tasks. Poll worker recruitment should include persons with disabilities.

**To read all the articles of the Symposium,  
see Vol. 38, Issue 4 of the McGeorge Law Review (2007)**