

Best Practices and Recommendations for Ensuring Voting Access for People with Disabilities

The following information was compiled by submissions provided by the participants of the disability voting roundtable, convened for the benefit of the Presidential Commission on Election Administration on July 11, 2013:

Best Practices:

- **San Francisco, CA** – The San Francisco Department of Elections developed a training video for election workers on setting up an accessible voting place (<http://sfgov2.org/index.aspx?page=837>). The San Francisco Department of Elections also has ballot information in large print, recorded and available in the libraries as well as to be sent out, and available in electronic format online.

- **Rhode Island** – Prior to election day, the Rhode Island Governor's Commission on Disabilities and its partners – RI Disability Law Center; RI State Board of Elections; National Federation of the Blind of RI; Opportunities Unlimited for People With Differing Abilities, Inc; RI Department of Human Services, Office of Rehabilitation Services; Secretary of State's Office, Elections Division; RI Commission on the Deaf and Hard of Hearing; RI Department of Human Services, Assistive Technology Access Partnership; Perspectives Corporations; and AccessPointRI – conduct voter training & registration; training of election officials and poll workers; and access surveys of any new (proposed) polling places. Since 2012 was the first election cycle that Voter IDs (non-photo) were required, an extensive outreach and training was conducted to ensure voters with disabilities knew which document(s) to bring with them to vote. There were no reported complaints from the disability community regarding disenfranchisement by the Voter ID law. On Election Day, November 6, 2012, the Rhode Island Governor's Commission used: 15 volunteer polling place access monitors (who receive a \$60 stipend for their time & expenses) you were assigned at least 10 polling places in their area; 4 Commission staff; and 31 State Board of Elections' Technicians, to visit every polling place while the polls were open to conduct voter access surveys. Most of RI's polling places are in public schools. The Commission was concerned that heightened security at schools in response to the Newtown shooting may create new barriers to voting. The Rhode Island Governor's Commission allocated up to \$340,000 to renovate the remaining polling places (following re-districting) that still have barriers to voting, initially focusing on schools that will be renovating school entrances to ensure safety and accessibility not just on election day, but throughout the school year. The Rhode Island Governor's Commission sent out a Request For Proposals to the local boards of canvassers and school districts, and are in the process of working with districts on proposals to make the main entrances accessible to all.

- **Generally – Ten Suggested Practices to Improve Accessible Voting**
(developed by Paraquad)
 1. Work with community members with disabilities and disability advocacy groups year round.
 2. Troubleshoot accessibility issues well before the Election.
 3. Integrate information on accessibility, accommodations, and disability as much as possible into regular training materials.
 4. Consider basing poll worker training on teaching workers how to use job aids instead of information memorization.
 5. Utilize well-designed and accessible signage at the polling place.
 6. Hire people with disabilities as poll workers and election staff.
 7. Train poll workers on how to use commonly used accessible features of voting machines, in addition to training on voting equipment set-up.
 8. Create and utilize networking and problem solving opportunities with other administrators and disability advocacy groups.
 9. Keep yourself and your staff up to date on ADA and HAVA Guidelines.
 10. Evaluate yourself, your staff, and poll workers!

Recommendations:

- **The Commission should recommend that states examine their voter qualification requirements and take steps to bring those into compliance with federal law.**

The Voting Rights Act provides that no person "acting under color of law" shall "in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." 42 U.S.C. Sec. 1971(a)(2)(A). That is, any test for determining whether someone is qualified to vote (including based on competency standards) must be applied to all voters equally.

Currently, this requirement is violated in many states, in practice and/or by law. For example, many states apply different rules to individuals under guardianship than to others, placing significantly higher burdens on them to demonstrate the capacity to vote. These individuals are asked many types of questions that individuals without disabilities are not required to answer in order to vote. In some other states, individuals under guardianship are barred from voting altogether, regardless of whether they have the capacity to vote.¹ In many states, irrespective of what state law provides, voters with disabilities in certain settings are routinely required to meet higher burdens than

¹ See, e.g., Bazelon Center for Mental Health Law and National Disability Rights Network, *Vote. It's Your Right: A Guide to the Voting Rights of People with Mental Disabilities*, at 5-6, at http://www.bazelon.org/LinkClick.aspx?fileticket=8GRTfqaH_Qc%3d&tabid=543.

others in order to vote: service providers, poll workers, and/or election officials have frequently required individuals with disabilities to take tests or answer questions not required of other voters, or simply prevented these individuals from voting or refused to count their ballots.² These practices have occurred even in states that do not have any voter competence requirement.

- **The Commission should recommend that if states choose to have a voter competence requirement, either it should be applied to *all* individuals seeking to vote, or it should be tailored to impose no greater burden on individuals with disabilities (including individuals under guardianship) than individuals without disabilities.**

There are eleven states that have adopted the best practice of not imposing any voter competence requirement or disability-based restriction on the right to vote (Colorado, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, New Hampshire, North Carolina, Pennsylvania, and Vermont). An additional two states have adopted the best practice of a voter competence standard that is designed to ensure that people with disabilities are not held to a higher standard than people without disabilities (Maryland: “An individual is not qualified to be a registered voter if the individual . . . is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process,” and Nevada: “A person is not ineligible to vote on the ground that the person has been adjudicated mentally incompetent unless a court of competent jurisdiction specifically finds by clear and convincing evidence that the person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process and includes the finding in a court order.”).

- **The Commission should recommend that states follow the rules adopted by these states concerning voter competence requirements.**
- **The Commission should recommend that poll workers, election officials, and disability service providers be trained concerning the above federal requirements concerning voter competence.**
- **The Commission should recommend that poll workers, election officials, and disability service providers should be trained concerning what types of voter assistance are permitted (and by whom) and what types are not.**

The Voting Rights Act and National Voter Registration Act, as well as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, apply to state voting systems and require that voters with disabilities be provided with certain types of assistance in the registration and voting process. See below. These requirements appear to be poorly understood and are too often not followed.

² See, e.g., *id.* at 6-8.

- **The Commission should recommend that poll workers, election officials, and disability service providers should be trained concerning the requirement that each of these types of entities must make reasonable modifications to afford equal opportunity to voters with disabilities (including, for example, helping residents of nursing homes and other service settings to register, get to the polling place, or apply for and complete an absentee ballot if the resident chooses to vote by absentee ballot).**

The following principles, taken from the Bazelon Center and National Disability Rights Network voter guide for individuals with disabilities, should be included in any training of poll workers, election officials and service providers with respect to the voting rights of individuals with mental disabilities.³

- **The Commission should urge all polling places to provide physical and communication access consistent with the ADA and HAVA. In addition, the Commission should recommend that the Department of Justice increase its enforcement of the ADA and HAVA.**

Key Legal Principles:

- A state does not need to require a voter to demonstrate competence, and some states don't.
- If a state chooses to impose a voter-competence requirement, that requirement cannot be so broad that it takes away the right to vote of people who are capable of voting. For example,
- a state generally may not have laws that impose a blanket ban on voting by anyone under guardianship.
- If a state chooses to impose a voter-competence requirement, that requirement must be applied to *all* voters. It cannot single out a particular group of voters, such as people who are the subject of guardianship proceedings.
- In virtually all states, only a court can find that a person is not competent to vote. In fact, it would present serious constitutional concerns for election officials or anyone else to make such a determination without the procedural safeguards of a court proceeding.
- Service providers, such as nursing homes, hospitals, assisted living facilities and group homes, cannot bar residents from voting based on staff or administrators' decisions that residents are not competent to vote.

³ *Id.* at 3-4 (including legal citations).

- Questions about a voter's competence can form the basis for a voter challenge only under very limited circumstances, if at all. Most states' laws restrict the grounds on which a voter may be challenged, the people who may bring a challenge and the types of evidence that can form the basis for a challenge.
- Many states do not permit any voter challenges based on competence.
- People with disabilities have the right to get help with voting and to decide who will help them vote.
- A person with a disability can get help from a friend, family member, caregiver, residential service provider or almost anyone else of his or her choosing except an employer or union member. The person can also ask a poll worker for assistance with voting.
- A person helping a voter with a disability should ask the voter what choice he or she wants to make, if any. It is the voter who makes the choice whether to vote and how to vote, not the person providing help.
- The person providing help should not mark a ballot to reflect any choice other than the choice expressed by the voter.
- The person providing help must respect the voter's privacy at all times during the voting process.