



Obstacles Remain to Exercise of Voting Rights by Individuals with Disabilities

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As mid-term elections approach, the stakes are high for individuals with disabilities. Budget battles are being waged at every level of government, threatening Medicaid, SSDI, Medicare and other programs that are essential to their quality of life. The Voting Rights Act of 1965, Americans with Disabilities Act and Help American Vote Act of 2002 are just a few of the laws that ostensibly guarantee their voting rights, but many individuals with special needs will still find themselves unable to cast ballots.

Guardianship

Every state has its own guardianship laws, which grant legal authority to handle the affairs of someone who is not deemed competent to act on their own behalf. It's a serious responsibility, involving the loss of personal rights. But disability competency is complex; abilities range on a spectrum. An individual may not be able to manage her finances, yet be perfectly capable of voting. Unfortunately, only a handful of states recognize this difference by preserving the voting rights of individuals, despite the adjudication of incompetence.

In some states, guardianship proceedings routinely disenfranchise those involved. In others, they may have to prove their competence by responding to questions that the average voter might stumble over. Judges, who may be influenced by outdated stereotypes, have enormous latitude and can eliminate voting rights by checking a box, often failing to discuss their decision with either the voter or family members.

Writing for *The Huffington Post*, Michelle Bishop, of the National Disability Rights Network, notes, "Americans with disabilities are the last U.S. constituency whose rights can be taken away based on identity."

Families considering guardianship should ask their special needs attorney what latitude is available in their state with regard to preserving their loved one's ability to vote. Similarly, if an in-place guardianship has terminated rights that the ward is capable of exercising, advocates should investigate the possibility of amending the court's order to allow voting.

Weak Enforcement

Federal law states that the rights of voters with disabilities must be protected at each point in the election process, from registration through ballot casting. Officials are required to supply aids and supports, such as assistive technology and sign language interpreters.

Service animals must be allowed entry to voting locations, and individuals with disabilities have the right to be assisted by a person of their choosing when voting.

But there is ample evidence that obstacles remain. A Ruderman Family Foundation white paper, published just prior to the last presidential election, reported that individuals with disabilities were experiencing limited access to registration materials. And while the GAO reports that physical barriers have declined since 2000, the agency also notes that other impediments appear to be increasing. During the 2008 presidential election, fewer than half of the polling places they inspected had at least one impediment to the voting process, but in 2016, that number jumped to almost two-thirds. GAO further reports that during the same period, state inspections of voting accessibility dropped throughout the nation. Lack of funding, planning and poll worker training are likely at fault.

Polling place hurdles come in various forms:

- Lack of wheelchair accessibility- Curbside voting is not a good option, either, since privacy becomes an issue.
- No accessible voting machines – Many voters with disabilities depend on machines equipped with earphones and other modifications. Advocacy organizations have received complaints about machines not operating properly or of poll workers not being trained in their use. A Rutgers University survey following the 2016 election found that such problems led to decreased voting by individuals with disabilities.
- Cybersecurity fallout – Concerns about tampering have led some jurisdictions to jettison voting machines in favor of paper ballots. Many individuals with special needs are unable to mark such ballots without assistance.

Common Problems

In a broader sense, there has been a failure to address logistical realities. Since understaffed nursing homes may lack the resources to help patients complete mail-in ballots or drive them to the polls, families should be prepared to advocate for the needed services.

But even if living independently, an individual with disabilities may not own a car or be able to drive. Election day rides can be hard to come by since political parties seldom target individuals with special needs for “get out the vote” campaigns.

The proliferation of voter id laws, which vary by state, is another challenge. A U.S. District Court recently overturned a requirement by Kansas, my home state, that voters present photo ids at election sites, but that decision is currently being appealed. For individuals without a driver’s license, this is one more obstacle between them and the voting booth.

Recommendations

In early 2014, a Presidential Commission on Election Administration outlined actions that could help increase voting accessibility for people with disabilities. These included:

- Increased online registration and voting.
- Greater emphasis by state disability offices and other public agencies on assisting with the registration process.
- Expanded opportunities for early voting and absentee voting.
- Mobile voting at locations such as nursing homes.
- Use of super precincts, which may increase the availability of accessible voting options.
- Improved election worker training on how to serve voters with disabilities.

Unfortunately, the current political climate makes it doubtful that many of these suggestions will be accepted. While fears of voter fraud have yet to be substantiated, there are significant efforts afoot to increase voter requirements. In addition, concerns relating to cybersecurity and election tampering make increased online options unlikely.

Steps to Take

If you or a loved one with disabilities experience voting problems, there is plenty you can do. If the person with a disability resides in a facility, talk with the administrator to ensure assistance is being provided to the residents to both register and complete a mail-in ballot.

Every state has its own board of elections or oversight committee; if you experience difficulty with registration or voting, you should contact these officials to learn about the complaint process. In Kansas, for instance, there is both a website and phone number that voters can access in order to understand the procedure.

If you meet resistance on election day, do not assume that the first poll worker you encounter understands what supports you are entitled to. If you encounter resistance, insist on speaking to a supervisor.

Understand your rights and be prepared to stand up for them. The law is on your side in exercising this right essential to a free and well-functioning democracy.

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