

Testimony for Senate Special Committee on Aging hearing on opportunities and challenges for older voters.

Prepared by Jason Karlawish, MD, Associate Professor of Medicine and Medical Ethics,
University of Pennsylvania.

Institute on Aging, 3615 Chestnut Street, Philadelphia, PA 19104

Jason.karlawish@uphs.upenn.edu; 215-898-8997.

INTRODUCTION.

On Election Day, 2004, my colleague Doctor John Bruza was visiting a patient at a nursing home in Philadelphia. She was in tears of anger and frustration. She wanted to vote but she couldn't. Her polling place was at a far away district. She could not get there and she had not been able to re-register at a closer site or apply for an absentee ballot.

In the November 2007 election, a candidate for Philadelphia council lost by some 120 votes. When the machine count was tallied, he won. When absentee ballots were counted, he lost. The papers report that he claims improprieties in how absentee ballots were administered at several nursing homes. He has now filed suit in Federal Court.

What do these two cases tell us? Elderly voters -- especially elderly voters who live in long term care settings -- suffer doubly. People decide whether they can vote and people steal their votes.

Your committee has a unique opportunity to change this. I'd like to tell you the nature of the problems and then suggest a set of solutions.

My name is Jason Karlavish. I am an associate professor of medicine and medical ethics at the University of Pennsylvania. My colleagues and I have done a series of studies examining voting rights for the elderly. You can learn more about these studies by visiting our website at www.pennadc.org and clicking on the link “Facilitating voting as people age.” I particularly want to acknowledge the leadership and dedication of Charlie Sabatino at the American Bar Association and Ned Spurgeon at the Borchard Foundation Center on Law and Aging.

Today, I’d like to share with you the results of our studies of voting in long term care: in 2003, after the Philadelphia municipal election, and in 2006 in Virginia. Both Pennsylvania and Virginia share a common feature. They like 27 other states have no guidelines for voting accommodations for residents of long term care facilities. This is a problem.

THE SIGNIFICANCE OF THE PROBLEM AND THE SHORTCOMING OF THE PRESENT SYSTEM.

As you know, the number of Americans with cognitive impairments is increasing, and advancing age is the key risk factor for these impairments. Many of these people live in long term care settings such as assisted living facilities and nursing homes. While cognitive impairment is prevalent among these residents, the severity of that impairment varies. In these settings, staff have substantial control over residents day-to-day lives: what they can do and what they cannot do. As you shall learn, this includes voting.

Unfortunately, election officials have paid limited attention to two key issues: assuring that residents of long-term care facilities have access to the ballot, and preventing unscrupulous

persons from exploiting their vote. Federal long term care regulations oblige nursing homes to respect residents' voting rights, but they do not provide any guidance on how a facility can satisfy this obligation.

Next week, among the 24 states that will particulate in Super Tuesday, only nine of them have some policies to address voter accommodations in long term care settings. I've prepared a table that summarizes this and taken the liberty to highlight the states that the members of this committee represent.

Most of these guidelines are inadequate. They lack proactive steps to register residents. They rely upon the resident to apply for an absentee ballot. They spring into effect when a facility reaches a threshold number of absentee ballots, or a voter submits a written request for assistance, or a voter has an abrupt move to a facility after the close of the time to request absentee ballots.

THE SHORTCOMINGS IN GREATER FOCUS.

But the majority of states have no guidelines. What happens in these settings? To answer that question, I will present the key findings of our surveys of voting in assisted living facilities and nursing homes. I'm going to focus on the Philadelphia study, because it is published. But I emphasize that we found very similar results in Virginia.

We found that long term care staff – typically a social worker or activities director -- were in charge of voting. Not election officials. Not families.

- There was substantial and unnecessary variability in procedures used for registration and voting and in long term care staff attitudes about who can vote. This variability likely disenfranchised voters.
- Many facilities reported there were residents who wanted to vote but were unable to vote, largely due to remediable procedural problems such as failure to order ballots, register or being unable to get to the polls.
- Much of the voting at long term care facilities is absentee balloting – this kind of balloting is well recognized as among the principle mechanisms for voter fraud. Most residents needed some assistance with absentee balloting and typically, a single staff member provided this assistance.
- Many facilities indicated that the staff assessed whether a resident was capable of voting and the methods they used likely disenfranchised residents who were actually able to vote.

I'd like to talk about that last point in greater detail. The most common method staff used to decide whether someone was able to vote was an assessment of resident cognition, and either an informal assessment of voting capacity based on familiarity with the resident or asking the resident election-related questions. Here is a sample quote from a staff member at a nursing home:

“Is this person aware there is an election going on? What it's for? Is it for the mayor, for the president, or whatever? The irony is that a lot of people who are able to vote would

also fail this test. Would this resident have the capacity to make an informed decision, or just go ‘eenie-meenie-minie-moe?’ It’s pretty subjective on my part.”

Let me leave you with this quote from an interviewee who recognized the extent of their authority over their residents, the consequences of the failure to exercise it properly, and the need for guidelines:

The right to vote is such a basic right—to feel like you’re taking that away from someone, particularly if they’re borderline—guidelines would help to make sure there are fair, objective applications—not ‘I’m sure she’s not going to vote for the person I like, so I’m not asking her to the polling place.’ You do have quite a bit of power and authority over folks.

WHAT WE NEED TO DO.

What have we learned? Our surveys of Philadelphia and Virginia show that in states without guidelines for voting in long-term care, election officials play a limited role, and access to the polls is largely determined by the practices and attitudes of the long-term care staff, typically social workers or activities directors and those practices are inadequate and they are unacceptable.

Your committee has a marvelous opportunity. You have the precedent of Congressional efforts to facilitate voting by people with disabilities and to promote greater uniformity in state electoral

practices. You also have the federal reach into nursing homes through the regulations that govern nursing home inspections and the quality of care.

In the Super Tuesday states that have no guidelines, the residents of long term care facilities will suffer the experiences we discovered in Philadelphia and Virginia.

Simply making a long term care facility a polling site is not a solution. Voters form outside the facility show up and crowd the lines, some residents cannot leave their rooms, none of the problems related to registration are solved.

Simply expanding access to absentee balloting is not the solution. People have to order the ballot, get it, store it and then someone has to help them complete it. Studies of expanded access to absentee balloting show that they generally increase voting among groups that already have high rights of voting, such as community dwelling elderly. In addition, among the elderly, changes in hand writing can lead to the rejection of the ballot. Finally, absentee balloting without proper oversight in congregate settings is one of the chief mechanisms for voter fraud.

What is needed is a model for mobile polling. Mobile polling means election officials or equivalent groups visit facilities prior to registration deadlines to encourage and solicit registration and then in the days prior to the election, they return to the facility and assist voters and gather the ballots. These officials are trained to address the unique issues of voting by the elderly, such as how to assist a voter.

Models do exist. In Australia and Canada, mobile polling is the norm. Maryland has a good set of guidelines, but they are not adequately funded.

To achieve this goal of universal mobile polling, I would propose the United States Election Assistance Commission conduct research to develop a set of best practices for mobile polling in long term care facilities, training for election officials to implement them, and then partner with states to test their feasibility and refine them.

Materials submitted with this testimony.

Smith A and Sabatino C.P. Voting by residents of nursing homes and assisted living facilities: state law accommodations. *BiFocal* (American Bar Association in Focus on Aging and the Law). 26(1);2004: 1-2,4-10.

Karlawish J.H.T., Bonnie R., Appelbaum P.S., Lyketsos C., Karlan P., James B.D., Sabatino C., Lawrence T., Knopman D., Kane R.M. Identifying the barriers and challenges to voting by residents of long-term care facilities: A study of the 2003 Philadelphia mayor's race. *J Aging and Soc Policy*. 2008; 20(1): 65-80.

Sabatino C.P. and Spurgeon E.D. Introduction to Symposium "Facilitating voting as people age: Implications of cognitive impairment." *McGeorge Law Review*. Vol 38(4): 843-860.

Recommendations of the Symposium "Facilitating voting as people age: Implications of cognitive impairment." *McGeorge Law Review*. Vol 38(4): 861-870.