

To: State Run Facilities
From: Disability Rights North Carolina
Re: Voting
Date: August 21, 2012

In recent months, Disability Rights North Carolina has been exploring the status of voting opportunities for those living in facilities. The availability of registration and voting varies, and there is a wide range of perceptions as to rights and responsibilities related to voting by people living in facilities. This letter is an effort to outline the voting rights of people in facilities - and the importance of voting to people in facilities - which we hope will provide some clarity.

The North Carolina Constitution provides:

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

N.C. Const., Art. VI § 1 (emphases added). Apart from disqualification of felons and the requirement of being a resident (Art. VI § 3), there are no additional limits on who is qualified to vote.¹ In other words, **the NC Constitution does not allow any infringement on registration and voting** except as noted above.

There is a misperception that individuals with guardians are not allowed to register and vote; this belief is based on a provision in Chapter 122C. See N.C. Gen. Stat. §122C-58 (providing that individuals in institutions are not deprived of the right to vote "unless the . . . right has been precluded by an unrevoked adjudication of incompetency.") This limitation on the right to vote is contrary to the North Carolina Constitution, and is therefore void. See N.C. Const. Art. VI § 1, above; *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198 (1875) ("The General Assembly cannot in any way change the qualifications of voters in State, county, township, city or town elections. Hence, so much of the act [adding a requirement] is unconstitutional and consequently void.") The Attorney General came to the same conclusion in 1973 about a prior version of the statute that had the same limitation. See 43 NCAG 85 (1973)(noting that NC Supreme Court decisions holding "that the General Assembly has no power to change the qualifications of a voter" are applicable to a competency requirement). Thus, **there is no legitimate basis under state law for limiting the right to register and vote because someone has a guardian.**

Restrictions on the fundamental right to vote based on disability also run afoul of the Americans with Disabilities Act and the U.S. Constitution. *Doe v. Rowe*, 156 F. Supp. 2d 35, 59 (Dist. Me. 2001)(rejecting a state constitutional provision that prohibited voting by individuals with mental illness who are under guardianship). The U.S. Supreme Court has noted that the ADA was meant to remedy "a pattern of unequal treatment in the administration of a wide range of public services, programs, and activities, including . . . voting." *Tennessee v. Lane*, 541 U.S. 509, 525 (2004).

Federal law also provides that agencies providing state-funded services to people with disabilities **must** offer each service recipient an opportunity to register to vote. 42 U.S.C. § 1973gg-5. This provision is found in the National Voter Registration Act (NVRA), which is sometimes referred to as the Motor-Voter law because it also requires state motor vehicle offices to offer voter registration. Information about the

¹ The literacy requirement of Article VI § 4 is void pursuant to Federal law. *Gaston County v. United States*, 395 U.S. 285 (1969).

documents and other information needed to comply with the NVRA can be found on the NC State Board of Elections' website, www.ncsbe.gov. We have become aware that most facilities are not currently offering all service recipients the opportunity to register to vote.

Disability Rights North Carolina is committed to working with State-run facilities to ensure that all people with disabilities have access to the electoral process. In the past, we have registered voters at mental health facilities, DD facilities, and elsewhere. It has been an overwhelmingly positive experience for individuals who frequently feel cut off from society because it affords an opportunity to participate in civic life. Voting is a fundamental piece of community inclusion.

Some have expressed concern about the potential for exploitation and the possibility of undue influence. As the protection and advocacy agency for North Carolinians with disabilities, we strongly oppose any type of exploitation and encourage the reporting of any case of suspected exploitation. At the same time, we will not permit a generalized fear to interfere with the rights of those who are fully capable of registering to vote. We also hear the concern that some may not be well-versed in political issues of the day. We note that there is no such requirement imposed on others who may or may not be fully informed before going to the polls. Ideally, each voter should seek to learn about the candidates, and each candidate should seek to make meaningful information accessible to all voters. In reality, society tolerates a wide range of engagement because the fundamental right of each person to vote has more value than these other considerations.

Thank you for your consideration of this information. We would welcome the opportunity to discuss any issues related to voting and look forward to working with you on voting access for residents of your facility.