

Assisting Cognitively Impaired Individuals with Voting: A QUICK GUIDE

Prepared by
the American Bar Association
Commission on Law and Aging
and the Penn Memory Center



Difficulties in communication can occur when interacting with a person who has cognitive impairment. This can impact those who are helping persons with cognitive impairment cast an election ballot.

The techniques and tips described in this guide can improve communication with a person who has cognitive impairment, consistent with election laws.

These techniques are especially important when interacting with persons who are diagnosed with Alzheimer's disease or other brain illnesses and disorders such as stroke or head injury.

The Question of Capacity to Vote

The right to vote is one of the most sacred privileges in a representative democracy and it should be available to all citizens, whether they are cognitively impaired or unimpaired. Evaluating a person's capacity to vote outside the voting process itself is inappropriate and should not be done except by a court authorized to do so.

Ask a person if he or she wants to vote. If he or she answers yes, ask if any assistance is needed with registering, ordering, or completing the ballot. Your opinion of a person's choice—their vote and rationale—is not relevant. If the individual indicates a choice among available ballot selections, their reasons for such choice are not relevant. The helpers' opinion of the choice is not relevant. What matters is that the person for whom you provide support is allowed to vote and his or her preferences are respected. People who are otherwise cognitively healthy may base their votes on any whim or reason. Similarly, persons with cognitive impairment may also choose according to their own preferences. If a person can indicate a desire to vote, he or she can also indicate a choice among available ballot selections.

Capacity to vote is much like the capacity to ride a bicycle, which can be determined accurately only by allowing the individual to mount a bike and start pedaling. If capacity is lacking, the task just won't be completed. Likewise, an individual simply will not be able to make or communicate a choice on a ballot, even with assistance, if capacity to vote is lacking. The process stops by its own lack of momentum. It may mean that only part of the ballot is completed, but that is perfectly okay. There is no requirement to complete every ballot.

A medical diagnosis does not disqualify a person from voting. A diagnosis of Alzheimer's disease, traumatic brain injury, or other cause of cognitive impairment does not disqualify a person from being eligible to vote. In fact, many persons diagnosed with a condition that involves cognitive impairment are able to cast a ballot. This means that chart notes, medical diagnoses, or cognitive test scores do not disqualify a person from voting. Everyone should be approached about voting, and everyone who wants to vote should be given the opportunity.



Communication Challenges

Voting may require persons with cognitive impairment to communicate with his or her supporter about preferences. Trouble communicating can take different forms:

- Difficulty finding the right words
- Easily losing one's train of thought
- Difficulty organizing words logically
- Speaking less often
- More often relying on gestures instead of speaking

These communication challenges can be successfully overcome with the following techniques that are consistent with election laws.

Hone your listening skills

Listen carefully to what the person is saying. If his or her speech is hard to understand, give the person time to speak and do not finish sentences. Repeat information and questions. If the person does not respond, wait a moment. Then ask again.

Get the person's attention

Catch and hold the attention of the person before you start to communicate. Make sure he or she can see you clearly. Eye contact is critical. This will help the person focus on you.

Time your discussion

Persons with cognitive impairments may be more alert and focused at different times of the day. Time discussion about voting and the voting process at times when the person is not fatigued. Find an environment that is free from distractions.

Notice body language

All of us read body language. Agitated movements or a tense facial expression can make communication more difficult. Be calm and still while you communicate to prevent distractions.

Speak clearly

Ask questions one at a time. Speak clearly and calmly. Do not use "baby talk." Use your normal tone of voice but do recognize that you may need to talk more slowly and at a lower register so that you are heard. Use simple, short sentences. Processing information may take the person longer than usual. Allow enough time for the conversation to unfold.

Show respect

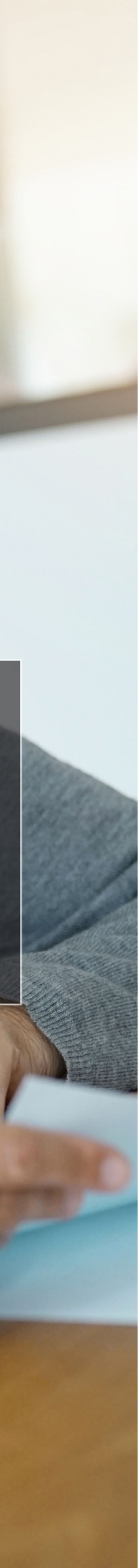
Do not speak down or judgmentally to the person with cognitive impairment. Do not treat them like a child, even if they do not seem to understand. Physically position yourself to be at eye level with the person to show respect.

Make sure you understand

If you do not understand what is being said, ask the person to point, gesture, or repeat. People who live in a long-term care facility may not trust volunteers from the outside as much as they do the staff, who they know. Making genuine efforts to understand a person can improve trust.

A young woman with long brown hair is leaning over a table, assisting an elderly woman with short white hair and glasses. The elderly woman is holding a black pen and appears to be signing a document. The young woman is wearing a light pink top and a gold bracelet. The elderly woman is wearing a grey sweater and a gold necklace. The background is a warm, indoor setting with wooden paneling.

Challenging Situations and Suggested Solutions When Assisting a Voter:



CASE 1.

SOMEONE, SUCH AS A CARE PROVIDER OR FAMILY MEMBER, QUESTIONS WHETHER A PERSON IS CAPABLE OF VOTING.

A person who is legally eligible and wants to vote should be given a ballot to vote. If you ask a person “Do you want to vote?” and he or she answers yes, he or she should have the opportunity.

If the person requests support or needs it, you should provide support, consistent with voting laws. You should not ask the person questions to test whether he or she is capable of voting.

CASE 2.

A FAMILY MEMBER OR OTHER PERSON CLAIMS TO BE THE PERSONS’ GUARDIAN AND SAYS THE PERSON MAY NOT VOTE.

Some state laws or guardianship orders may, in some cases, curtail a person’s right to vote. You must inspect whether the guardian has this authority. In many states, the law provides that a “person under guardianship retains the same legal and civil rights under the state and United States constitutions.” This may limit a guardian’s authority to override the voting rights of a person with impairments.

CASE 3.

A PERSON MAY NOT BE ABLE TO READ OR MARK THE BALLOT ON HIS OR HER OWN.

It is permissible to offer support in reading and marking the ballot. You should only mark the ballot according to what the person indicates is his or her choice. If a person cannot communicate a choice, you may not mark that person’s ballot. If a person communicates a choice on some ballot items (e.g., election of a president), but not others (e.g. election of a Senator), you may mark only those ballot items for which a choice was communicated.

CASE 4.

THE VOTER ASKS YOU WHO HE OR SHE SHOULD VOTE FOR.

You should not attempt to influence their preferences, even if he or she asks you to tell them who to vote for. A person with impairments is free to vote for whomever they wish. If they do not communicate a choice independently, then they do not vote. If a person with impairment asks you who to vote for, a suggested response is: "The choice is yours, not mine. You are free to choose whomever you wish."

CASE 5.

THE VOTER ASKS YOU QUESTIONS ABOUT A CANDIDATE'S BACKGROUND OR POSITIONS.

You are permitted only to convey the information written on the ballot. You should not communicate additional information to the voter. Communicating additional information that is not contained on the ballot could bias the voting process. The person with impairment should be free to vote for whomever they wish, without biasing their preferences.

CASE 6.

A VOTER WANTS TO MARK THE BALLOT FOR SOMEONE WHO IS NOT ON THE BALLOT.

Persons with impairment are free to vote for whomever they wish, whether they appear on the ballot or not. If the person expresses a clear choice for a candidate who does not appear on the ballot, you should write in that choice as allowed by state voting laws.

CASE 7.

SOMEONE ELSE, SUCH AS A FRIEND OR FAMILY MEMBER, SAYS THEY KNOW HOW THE PERSON WOULD VOTE AND THAT IS HOW THE BALLOT SHOULD BE MARKED.

When supporting a person with impairment, you are permitted only to mark a ballot with the choice the voter makes at the time. If the voter cannot make a choice at the time of voting, you cannot mark the ballot based on previous knowledge of the voter's preferences. A suggested response to a friend or family member who is stating previous knowledge of voting preferences is: "This ballot belongs to [Mr. X / Ms. X] and it needs to be marked with [his / her] current choice. If [he/she] cannot communicate that choice, then I cannot mark the ballot."

CASE 8.

A FAMILY MEMBER INSISTS ON BEING PRESENT WHILE YOU ASSIST THE PERSON IN VOTING.

A family member of a person with impairment may be present when you support the person in voting, but only if the person agrees for the family member to be present. You should ask the person if he or she wishes to vote privately or not. It is up to the voter to decide who is to assist them in voting.

The person may ask a family member to be present during the voting in case he or she needs additional support from their family member.

CASE 9.

IF A RESIDENT IN LONG TERM CARE IS REGISTERING FOR THE FIRST TIME IN THE FACILITY, THE RESIDENT MAY BE FEARFUL OR CONFUSED ABOUT THE IMPACT OF CHANGING HIS OR HER ADDRESS.

A change of address for voter registration is for voting purposes only. It is neither permanent nor irreversible. However, if the person is from another state and registering in-state for the first time, steps should be taken first to confirm his or her in-state residency. A family member or the nursing home may be able to verify which state is paying for the resident's care if Medicaid is involved.

CASE 10.

THE PERSON INDICATES A DESIRE TO VOTE BUT THINKS SHE MAY HAVE ALREADY VOTED ABSENTEE OR IS NOT SURE.

In some states, voters can track their absentee ballot online. Otherwise, the local election office may be able to confirm the absentee ballot request but will not be able to confirm receipt of the completed ballot. For residents in long-term care facilities, the activity director or social worker may know who requested absentee ballot.

If the individual seeks help at a polling place, the officials there can confirm whether the individual already voted at the site. The person should not cast more than one vote.

With Thanks

“Assisting Cognitively Impaired Individuals with Voting: A Quick Guide” was developed through a collaboration between the American Bar Association’s Commission on Law and Aging and the University of Pennsylvania’s Penn Memory Center.



Portions of this text were adapted from:

- 1) “Communication: Best ways to interact with the person with dementia” Alzheimer’s Association, 2005
- 2) “Comprehensive Training Manual Chapter 5: Communication.” National Long Term Care Ombudsman Resource Center, 1992

To learn more, see “Bringing the Vote to Residents of Long-Term Care Facilities: A Study of the Benefits and Challenges of Mobile Polling,” by Jason Karlawish, Charlie Sabatino, Deborah Markowitz, Jonathan Rubright, Ellen Klem, and Robert F. Boruch in March 14, 2011, edition of The Election Law Journal.

Please visit the American Bar Association’s Voting and Cognitive Impairments page: www.americanbar.org/groups/law_aging/resources/voting_cognitive_impairments/.