SBOE Numbered Memo 2012-27

TO: Directors of County Boards of Elections
FROM: Gary O. Bartlett, Executive Director
DATE: October 30, 2012
RE: Voter Assistance

The Voting Rights Act of 1965 contains a provision requiring that in elections where there are federal offices on the ballot that "any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice . . . " 42 USC § 1973aa-6. This was a 1982 addition to the act and became effective January 1, 1984.

North Carolina currently complies with this mandate by G.S. §163-166.8(a)(2) which provides that on election day that voters that qualify obtain assistance not only in elections that have federal offices on the ballot, but in all elections conducted in the state. Even before the 1982 amendment to the Voting Rights Act of 1965 as far back as 1939, North Carolina had voter assistance statutes. G.S. §163-166.8 was passed in 2001 as a revision of the then current voting assistance statute. Below are the statute and the State Board of Elections regulation that supplements the assistance statute.

Who can receive voter assistance?

§ 163-166.8. Assistance to voters.
(a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots in accordance with the following rules:
   (1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.
   (2) A voter in any of the following four categories is entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union:
       a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.
       b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.
       c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.
       d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.

Voter assistance is normally a very straightforward and uneventful situation arising in a voting place. The laws allowing voters to request assistance are new safeguards that ensure eligible voters are able to cast a ballot without undue hardship or difficulty. Outside the normal experience, however, difficult
circumstances occasionally can arise. The following suggestions should be of help to precinct and one-stop voting officials when they face difficult or unusual circumstances regarding voter assistance.

**What minimum level of initial communication is sufficient from the voter to the precinct official?**

G.S. § 163 - 166.7(a) provides that an official at the polling place is to “ask the voter to state current name and residence address.” It then provides that “[t]he voter shall answer by stating current name and residence address.”

*What is the minimum communication that will constitute stating “current name and residence address?”*

No rigid rules defining a minimum level of communication can be stated, because the varieties of possible circumstances are too great. The statute cannot mean what a rigidly literal meaning might imply -- that the voter must enunciate in spoken words his or her name and address. Such a literal reading would disenfranchise voters, who for whatever reason, cannot speak. The rules of the State Board of Elections recognize that not every voter will have the same capacities or the same understanding of voting procedures, when they provide, “[i]n some cases, the precinct judge may prompt the voter to provide this information. 08 NCAC 10B.0103(b). The statute must be interpreted with common sense, with a preference for inclusion over exclusion. A voter might hand the precinct official a piece of paper, for instance, containing the voter’s name and address. The precinct official might say:

- “Are you John Doe?” A nod or other affirmative response from the voter would be a sufficient.
- “Is your address 500 Main Street?” Again, a nod would suffice.
- “Do you wish to vote today?” Again, a nod is permissible.

As long as it appears to the precinct official that the voter has understood that he or she is providing his name and address, the requirement of the statute is met. In the absence of evidence of systematic fraud, the presumption should work in favor of the opportunity of the voter to vote.

**What minimum level of communication is sufficient to trigger the voter’s request for assistance in voting?**

N.C.G.S. § 163-166.8(b) provides that a voter seeking assistance is to “request permission from the chief judge to have assistance and state the reason.”

*What is the minimum communication that will constitute a “request” and will meet the requirements of “stating the reasons?”*

As with the first question, no rigid rules can be stated. It is clear, however, as with the first question, that a rigidly literal reading of the statute is not appropriate. We simply do not require enunciated spoken words and we do not set out to inquire into the nature of a voter’s disabilities. If there is a reasonable indication that the voter would like assistance, the precinct official can ask the voter
questions which would enable the precinct official to assert that the voter understands he or she is requesting assistance. The presumption should work in favor of the opportunity of the voter to vote. A voter who enters the polling place and is non-communicative and non-responsive to inquiry cannot be said to be requesting assistance. A companion to such a non-communicative and non-responsive voter cannot request assistance on behalf of the voter unless that request is verified by the voter in some way of oral or reactive communication. The voter must be able to participate personally in some fashion in the voting act attributed to them.

**What minimum level of communication is sufficient to identify the individual who the voter wishes to provide the assistance?**

G.S. § 163-166.8(b) provides that the chief judge is to “ask the vote to point out and identify the person the voter desires to provide such assistance.

**What is the minimum communication that will constitute “pointing out” and “identify” the person to assist?**

As with both of the previous questions, no rigid rule can be stated. The precinct official simply must satisfy himself or herself that the voter understands that he or she is identifying a particular individual to provide assistance. Again, presumption should work in favor of the opportunity of the voter to vote.

**What is the proper conduct in the voting booth on the part of the person providing assistance?**

G.S. § 163 – 166.8(c)(1) makes clear that the person providing assistance “shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.” The task of the precinct official is to satisfy himself or herself that the voter has the capacity to communicate the voter’s choices to the person rendering assistance. Since, by this point, the voter has met the minimum communication standards to identify himself or herself, ask for assistance, and identify the person to provide assistance, it is highly likely that the precinct official will reach the conclusion that the voter should be permitted to vote with the assistance of the identified individual. That individual is bound by law to mark the ballot according to the voter’s wishes.

**What happens if another voter or an observer believes that precinct officials have permitted an individual to vote with assistance who does not meet the minimum communication standards outlined above?**

The voter or observer should express those concerns to the chief judge. If the chief judge’s response is unsatisfactory, then the voter or observer should call the county election’s director. Ultimately, the voter or observer may file an election protest with the county board of elections under 08 NCAC Chapter 2, or a charge against the precinct officials with the State Board of Elections under 08 NCAC Chapter 3. It is inescapably true that no infallible test exists for determining that a voter with severe disabilities has sufficient capacity to state his or her name and address, properly request assistance, properly identify the person to render the requested assistance, and properly communicate voting choices to that person. Therefore, it is also true that there may be occasions when a voter who falls short of the needed
capacity will be permitted to vote. That consequence is preferable to the conflicting consequence of inappropriately disenfranchising voters merely because of their communication shortcomings. In the absence of systematic fraud, this imperfect outcome is simply one with which we must live.

The law does not contemplate that the person providing assistance to a voter will vote in lieu of the voter or for vote for choices not agreed to be those of the voter being assisted. It also does not contemplate the precinct officials or any other election officials are capable of making a medical assessment of a voter’s capabilities. We must rely on the judgment of precinct officials to discern when the voter is being assisted properly. Precinct officials have sworn to conduct the election without fear or favor and to consistently apply the same standards to all voters who present to vote. The bottom line is that a person providing assistance may not usurp the voter’s right to vote and the voter must be able to participate personally in some fashion in the voting act attributed to the voter. The person providing assistance also may not memorialize what occurs in the voting booth and may not reveal how the person voted.

**What happens if it appears that a systematic pattern of disregard for the standards outlined above is disregarded?**

If an elections official notices what appears to be a systematic disregard for these standards, then the chief judge or designated judge should contact his or her county board of elections to determine what action is needed.

Finally, keep in mind that every effort should be made not to embarrass a voter making a request for assistance and there are no legal restrictions on the number of times a person can assist voters.