



DISABILITY RIGHTS

PENNSYLVANIA

Disability Rights Pennsylvania
301 Chestnut Street, Suite 300
Harrisburg, PA 17101
1-800-692-7443 (Voice)
1-877-375-7139 (TDD)
www.disabilityrightspa.org

VIA EMAIL

April 25, 2022

**To: Members of the Pennsylvania Legislature
The Honorable Tom Wolf
Acting Secretary Leigh Chapman**

RE: Concerns Regarding the Misunderstanding about the Use of Designated Agents in the Upcoming Primary and General Elections

We write with concerns regarding equitable access to the vote for older voters and those with disabilities. We fear recent allegations of “voter fraud” related to the use of designated agents will have a chilling effect, resulting in fewer voters exercising their right to vote. These concerns are shared by Disability Rights Pennsylvania and members of the larger disability and aging communities, of which there is significant overlap. **We believe ignorance about the concept of a “designated agent” both on the part of election officials and the general public, is muddying the waters and risks widespread disenfranchisement of voters with disabilities. Voter education is important and the only tool to ensure that voters with disabilities are knowledgeable about their rights.**

While we understand that widespread use of designated agents is a relatively new phenomenon, given recent changes to the Election Code and the COVID-19 pandemic’s impact on people’s voting behaviors, we believe it is imperative that voters with disabilities are provided with accurate information that makes clear their right to use a designated agent to return a mail-in or absentee ballot. Members of the legislature must lift up this information and fight back against attempts to frame a necessary

disability accommodation as “fraud” by providing funding for improved voter education around the topic of designated agents.

A designated agent is someone who goes to the county election office on the voter’s behalf to effectuate the process of applying for, picking up, or returning the ballot. An agent may also return a ballot through the mail. Anyone with a disability, as defined by the Americans with Disabilities Act, that prevents him or her from applying for, obtaining, or returning a mail-in or absentee ballot is entitled to use a designated agent. Designated agents are a necessary accommodation for anyone with a disability who wishes to vote through the mail but cannot do so without assistance. For example, voters with physical disabilities may be unable to put their ballot into the mail, or those who are susceptible to severe COVID-19 due to age or an underlying medical condition may not feel safe doing so.

In the 2020 General Election, we fielded many calls to our intake line regarding designated agents. Voters were confused about how to use them or were completely unaware they had the right to do so. Many agents also ran into problems when trying to return someone else’s ballot because county election officials did not appear to understand that voters with disabilities were entitled to this accommodation. Some voters were aware of their right to use an agent but were afraid to do so for fear that they or their agent would be accused of engaging in “voter fraud.” As recent news reports have made clear, such fears were warranted. They may become even more pronounced this election cycle, as some groups seize upon a “ballot harvesting” narrative in an effort to disenfranchise elderly and disabled voters.

Voters who live in congregate care settings, such as nursing homes and personal care homes, are particularly at risk of disenfranchisement via these misguided claims of voter fraud and ballot harvesting. These voters are more likely to vote by mail, given their physical limitations and risk of poor outcomes should they contract COVID-19. In addition, for the same reasons, and because their ability to leave the facility may depend on the whim of staff, they are more likely to need the assistance of an agent when returning their ballots.

For people with disabilities, having the right to request that a person of their choice return their absentee or mail-in ballot is fundamental to exercising their right to vote, and this right is protected by Section 208 of the Voting

Rights Act (VRA), which explicitly provides that voters who need assistance to vote by reason of blindness, disability, or inability to read or write have a statutory right to such assistance.¹ This right to assistance applies to voting by mail, as the VRA’s definition of voting is inclusive of “*all* action necessary to make a vote effective in any primary, special, or general election[.]”²

Anyone who serves as a designated agent helps a person with a disability to exercise their right to vote, including those agents who mistakenly do so for multiple individuals with disabilities. On its form where voters can authorize a designated agent to assist them, the Department of State provides that “an agent is only allowed to serve as a designated agent for ONE voter[.]”³ However, that is the extent of the Department’s guidance to voters. The Department only issued a Commonwealth sanctioned “Designated Agent Form” in October 2020. We are not aware of any guidance the Department issued to the counties related to the use of the form, or agents more generally. Based on our experience counseling voters about their right to use a designated agent, we believe the counties remain confused about who is entitled to use an agent, and under what circumstances. Taken together, these facts mean that it would be irrational to expect the average individual, trying to assist someone with a disability, to have a perfect understanding of the rules related to designated agents.

Agents who are not aware of or who do not understand the rules, and who help more than one voter with a disability are *not* engaging in “voter fraud.” They are well-intentioned people who are trying to prevent the disenfranchisement of their loved ones. Rather than lob accusations of voter fraud at people who found themselves in the position of mistakenly assisting more than one voter with a disability, or worse yet, attempt to criminalize their actions, the Commonwealth must instead improve its voter education efforts around this issue.

¹ 52 U.S.C. § 10508 (noting that any such voter “may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of the employer or officer or agent of the voter’s union.”).

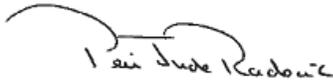
² *Id.* § 10310(c)(1) (emphasis added).

³ This is the general rule. However, according to the Department’s designated agent form, available here: <https://www.vote.pa.gov/Resources/Documents/Authorize-Designated-Agent-for-Mail-in-or-Absentee-Ballot.pdf>, if multiple voters with disabilities live in the same household, the same designated agent may help those voters.

The Department of State must have the resources it needs to provide proper training to county election office staff so that they are positioned to answer questions about the use of agents and inform voters of the general rule that an agent may assist only one voter per election cycle. It must issue guidance to the counties requiring that references to designated agents be included in any information they provide in mailers or on their websites about applying for, picking up, or returning mail-in or absentee ballots. In addition, the Department needs funding to enable it to engage in a Commonwealth wide education campaign regarding designated agents that makes clear that an agent can only assist ONE voter with a disability. These actions will ensure the best use of state and local resources and prevent unnecessary efforts to go after people who were only trying to help people with disabilities to vote.

We know that you share our goal of robust participation in the upcoming elections, and our desire that no eligible voter be disenfranchised by reason of a disability. We thank you for consideration of our concerns. Please contact Jennifer Garman, Director of Government Affairs at 717-236-8110 with questions.

Sincerely,



Peri Jude Radecic
Chief Executive Officer

On Behalf of:

The Arc of Pennsylvania
Pennsylvania Developmental Disabilities Council
Institute on Disabilities at Temple University
Keystone Chapter, Paralyzed Veterans of America
CASA
1Hood Power
SEAMAAC
Pennsylvania Immigration and Citizenship Coalition
ACLU PA
All Voting is Local

Better PA
API Pennsylvania
All In This Together NEPA
Common Cause Pennsylvania
PA Stands Up
League of Women Voters PA
NAACP Philadelphia Branch
Committee of Seventy
PA Youth Vote