Get out the demented vote!
The right to vote vs. impaired voting capacity, elder abuse, and fraud
Sherman, Fredrick T, MD
Geriatrics Magazine 10-01-2004

“No one pretends that democracy is perfect or all-wise’
-WINSTON CHURCHILL

The outcome of the 2000 U.S. presidential election was determined by 537 votes in Florida, a state with at least 280,000
demented older adults. Next month, voters in 19 so-called ‘battleground’ states will determine who will ascend to the highest
office in the land. Could small numbers of demented elderly swing the election in favor of one candidate or the other?

Unfortunately, there is scant medical, scientific, and technological knowledge that guides government, society, and physicians
on what role demented individuals can and should play in the electoral process. And what we do know in the ethical, legal,
philosophical, and , social science arenas raises more questions than answers.1 For example:

* How often do demented older individuals vote? Do mildly demented people vote more frequently than moderately or severely
demented people?
* What tests of voter capacity, if any, have been validated and are acceptable for administration by health care professionals in
their offices or by poll workers prior to voting? What are the implications of a voting judge determining mental capacity?
* When is it appropriate to accompany a demented person into the voting booth to assist? Who should be allowed to do so?

More than 50% of the 1.5 million nursing home residents suffer from dementia. Is it possible that absentee ballots will be
completed by political operatives in 13 of the 19 battleground states where no witness is legally required to be present?
(Political operatives are barred by law to assist in the completion of absentee ballots by 6 of the 19 states.2)

* With more than one-third of these same 19 states allowing political operatives to distribute absentee voter applications and
to collect completed ballots, what protections from voter fraud and elder abuse are offered to older, community-residing
seniors suffering from dementia or mild cognitive impairment?
* More than 50 million of the 150 million registered U.S. voters are expected to use electronic or optical scanning to vote in
this year's presidential election. Have any of these systems been tested on demented persons to determine whether they are
capable of learning new techniques for voting?
* Will demented seniors be able to use the SMART card and touchscreen of the AccuVote-TF, the most popular electronic
voting machine? Will the Americans with Disabilities Act be called into play if a demented voter cannot use the new
equipment but has retained the ability to vote using older skills, such as pulling a lever or punching a card?
* Should political partisans, who may have intentionally misinformed or misled demented seniors about their voting rights or
choices, be accused of elder abuse, in addition to voter fraud?

Ethical responsibilities
As primary care physicians (PCPs), we are frequently called upon to make recommendations to our demented patients and
their families about discontinuing driving, hiring a home health aide or personal care assistant, or moving to an assisted living
facility or a nursing home. Although I have never been asked to determine whether one of my demented patients knows what
voting is, can make an informed choice, and actually record his vote, we PCPs, as well as our neurology and psychiatry
colleagues, have a clinical and ethical responsibility to assist government in routinely assessing voting capacity in our
demented patients.

The only problem is that there is no easily administered, validated performance test to determine whether a demented patient
has the capacity to understand the significance of voting, knows how to vote, or can physically mark the ballot (remember
those pesky ‘hanging chads’ that weren’t punched through completely?).

No practice guidelines exist to help PCPs determine which demented individuals, if any, should vote.

No assessments are routinely made of demented voters at the polling station by election judges, nor is the completion of
absentee ballots in nursing homes regulated.

Given this state of affairs, it would not be unreasonable to conclude that small numbers of cognitively impaired voters could
select the next leader of the free world.

Clearly we need to know more about voting with dementia.
What the data say
Only two retrospective, community studies, which surveyed the voting practices of either the caregivers of and/or demented seniors themselves during the 2000 U.S. Presidential election, have been published:

* A telephone survey of 87 caregivers of Alzheimer’s disease (AD) patients living in the community revealed that 93% of the caregivers voted and 64% of the AD patients (mean MMSE=20, range 4-28) for whom they cared, voted. Of the 36% AD patients who did not vote, three quarters failed to vote because of dementia; one-quarter did not vote for reasons unrelated to dementia. Ninety-two percent of all AD voters did so in a polling booth by themselves. AD patients were more likely to vote if: 1) the spouse, rather than an adult child, is the caregiver; and 2) their MMSE score was higher (22 for voters vs. 14 for nonvoters). 4
* In the second study, 101 consecutive, community-residing seniors with dementia, average age 77, were interviewed about their voting practices. Once again, 60% claimed that they voted in the election; frequency of voting declined with increasing dementia (MMSE=23 for voters and 17 for non-voters). 5

In a third study from England that looked at voting practices by residents of 18 residential homes and 16 nursing homes, nursing staff reported that approximately 70% of residents voted by postal vote in general elections. None of those residents who voted in a polling station were suspected of being incapacitated. 6

Can you regulate voting?
In the United States, some states do require a physician to report that a patient has dementia to the department of motor vehicles. 7 Yet no state requires that a physician notify the state’s voting board about a patient who lacks the capacity to vote. Voting, unlike driving, has not been deemed a public health problem for which government must intervene, establish rules of the road, and determine, through testing, who has or retains the capacity to vote.

The syndrome of dementia is a continuum and being diagnosed with dementia should not necessarily disenfranchise an older citizen. Many patients with mild to moderate AD are capable of making informed decisions about the risks and benefits of certain treatments, advance directives, where they want to live, and participation in clinical research. Furthermore, the abilities assessed in the MMSE or neuropsychological testing may bear little relationship to the performance of competent voting.

Needed: standardized tests
Given that there are no standardized tests to determine whether a demented individual has the capacity to vote, I suggest as a first step that in-office performance tests that can be easily administered by a PCP be developed and validated on AD patients with moderate to severe dementia. State and federal governments need to develop a position on what standards of voting capacity can be applied at:

1) the polling booth and whether caregivers should be allowed to enter the polling booth to assist or direct the demented patient; and
2) the assisted living facility and nursing home where absentee ballots may be completed by adult children or spouses.

Whether ‘...incompetent voting [by demented seniors] is no more hazardous to public welfare than irrational voting by an uninformed citizenry’ will never be proven. 8 Government and the medical community must, however, begin to clarify how we can actually determine which demented seniors have the capacity to vote. Until we have approaches to reliably assess voter capacity, special precautions should be taken by nursing and assisted living homes to protect the voting rights of their residents from fraud and abuse. Recognizing that small numbers of voters in the 19 battleground states could make a great difference in the Electoral College, winning the votes of mild to moderately demented seniors may be more important than those of all the ‘security’ moms and NASCAR dads in our great land!

REFERENCE