CHARLES M. BLOW

Although voting is the hallmark of a democracy, it isn't easy if you are in a long-term care facility. Nursing home and other long-term care facility residents face several challenges to voting, from registering to vote to casting an actual ballot.

How to Vote While in a Nursing Home

The Americans with Disabilities Act explicitly prohibits discrimination against people living with disabilities, including nursing home residents, regarding their right to vote in state and federal elections.

Fortunately, there are many ways that people living in long-term care facilities can have their voices heard during an election.

First, Register to Vote or Check Your Voter Registration Status

You must be registered to vote to participate in a state or federal election. There are numerous ways to register to vote, including:

- **In Person** — You can register to vote in person at your local election office or at the Department of Motor Vehicles office in your area. Find your local election office online or your local Department of Motor Vehicles.
- **Mail** — Complete the National Mail Voter Registration Form and send it into your local election office. Note that this form is available in 21 languages.
- **Online** — Thirty states allow residents to go online to register to vote. Find out whether your state allows online registration.
- **Check to See If You Are Already Registered to Vote** — You may already be registered to vote. If you are unsure, you can find out on this website.

Voting Options for Long-Term Care Facility Residents

- **Absentee Voting** — Absentee voting lets people vote through the mail or by drop box before Election Day. Each state offers absentee voting, but every state has its own requirements for voters who want to cast an absentee ballot.

  For voters with disabilities that prevent them from getting to their polling place, each state allows them to vote by mail or drop box. You can go online to check your state's requirements for absentee voting.

  What Is the Process to Cast an Absentee Ballot?
  - Get an absentee ballot from your state.

    - Make sure that you meet the requirements for absentee voting in your state.
    - Learn your options regarding how to return your absentee ballot.
    - Comply with your state's deadlines to return your absentee ballot.
- **All-Mail Voting** — Many states allow all-mail voting. All-mail voting gives people living in nursing homes the opportunity to receive their ballot and cast their vote through the mail without needing to appear at a polling place or finding a drop box.

  States that allow all-mail voting will automatically send every registered voter a mail-in ballot. The voter does not have to request an absentee ballot. This option is fantastic for seniors who cannot leave their nursing home facility, but still want to vote.

- **Early Voting** — Early voting is available in most states without the voter having to provide an excuse, unlike absentee voting. People living in nursing homes or other long-term care facilities may face challenges getting to a polling place if their opportunity to vote in person is limited to one day. Early voting gives voters flexibility.

  If you wish to participate in early voting, check your state's requirements for this option.

- **Mobile Polling** — Mobile polling is beneficial for nursing home residents because they do not need to get to their polling place to cast their vote. Mobile polling is essentially supervised absentee voting.

  Some states allow volunteers to go into nursing homes and have the residents complete their ballots. Others also allow long-term care residents to choose someone who can assist them with the mobile polling process. With these options, those in nursing homes can vote without worrying about some of the issues they may face if they participated in absentee or early voting.

- **What Happens When I Cast My Vote Via Mobile Polling?**
    - You must present some identification that matches the information on your voter registration card. You will receive a digital ballot.
    - Complete your ballot digitally. You may use a smartphone, tablet, or computer.
    - Return your ballot. You may print your ballet and return it, or submit your vote digitally.

Visit NBC News' Plan Your Vote website to find other information about primary and general elections specific to your state.

If your long-term care facility fails to provide you an avenue for participating in the voting process, be sure to connect with a long-term care ombudsman program in your state.

https://www.orlandoweekly.com/news/dyers-best-shot-2260040

Terri Cantrell, State LTC Ombudsman

Florida State Long-Term Care Ombudsman Program

4040 Esplanade way
Tallahassee, FL 32399
Work: 1 (888) 831-0404

Voting Rights for Residents of Long-Term Care Facilities

Individuals receiving long-term services and supports retain their voting rights, no matter where they live or what type of care they receive.

However, residents of long-term care facilities have a harder time voting due to mobility, health, and other issues that inhibit their ability to vote.

Fortunately, there are many resources available for residents of long-term care facilities to help them register to vote, obtain mail-in ballots, and learn what to expect on the ballot.

- **Questions for nursing home residents to ask to make sure you're ready to vote.**

- **Everything you need to know about voting rules in your state including upcoming elections, registration and mail-in ballots.**
- **Find out what's on your ballot and learn about candidates.**

Federal regulations guarantee residents' rights, including their rights as citizens, which includes the right to vote:

- §483.10(b) Exercise of Rights. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

- §483.10(b)(1) The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.

- §483.10(b)(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights as required under this subpart.

Long-Term Care Facilities Must Work with Their Residents to Ensure They Are Able to Vote

Long-term care facilities must "have a plan to ensure residents can exercise their right to vote, whether in-person, by mail, absentee or other authorized process," according to **2020 guidance** from the Centers for Medicare & Medicaid Services "affirming the continued right of nursing home residents to exercise their right to vote."

Facilities can support residents' right to vote by:

- Coordinating with their states to take advantage of existing programs to help residents to vote. This includes, mobile polling, and assistance in registering to vote, requesting an absentee ballot, or completing a ballot from an agent of the Resident's choosing, including family representative, LTC Ombudsman or nursing home staff.
- Transporting individuals to polling places.

- Providing access to stationery, postage, writing implements, and the ability to send mail.
- Helping residents promptly send and receive mail.

A long-term care facility must not interfere with a resident exercising his or her right vote, nor may a facility coerce a resident during the voting process.

Government guidance on voting applies to residents of long-term care facilities, and requires facilities to make accommodations to support residents in voting. **Consumer Voice calls on all long-term facilities to immediately adopt practices that ensure all residents are able to vote and recommends:**

- Requiring facilities to help any resident to vote who expresses a desire to vote, and ensure staff does not make their own determinations about who is eligible to vote.
- Requiring facilities to help resident's register to vote, obtain ballots, and assist residents with filling out ballots and returning them. Facilities should provide stamps and envelopes to residents to return ballots.
- Permitting residents to designate a person to help them to vote, and facilitating meetings with the designated person in the facility and in a manner that follows infection control guidelines.

All Citations

119 R.I. 384, 378 A.2d 1061

While disabled people and those who are 'shut-in' (by illness or age) have different needs, educational programs will, in both cases, only succeed if there have been adequate arrangements made for them.

Overcoming Discrimination

A societies' treatment of the vulnerable and disabled provides a good judge of its commitment to democracy and human rights. But the manner in which voter education will be conducted will depend heavily on the arrangements that a country is willing to make to encourage such people to participate in the society. There are those who work with the disabled who consider the primary educational task to be not amongst this segment of the society but amongst the able-bodied.

Awareness of ways in which society discriminates against the disabled through its architectural, infrastructural, and legal arrangements has to be the first priority of any education programme. And election arrangements have to be in place that enable and encourage participation (see Equal Access to the Electoral Process) before there can be any confidence that a voter education programme for the disabled should be undertaken.
Once this confidence is there, strategies have to be developed that deal with different categories of disability. In some cases, it may be enough to communicate in standard voter education programmes that are accessible to the disabled that the elections themselves will be accessible.

All other information may not change nor may the educational approach.

Reaching Out

In other cases, educators will have to reach out to those who are shut in by identifying the institutions where they are under care and preparing materials and contact with such institutions. There are societies that have been structured in such a way that the shut-in and disabled are invisible. In such societies, educators must make the invisible apparent, at least to the planners and implementers of the voter education programme. This can be done by making contact with organisations of care-givers,

relatives, and the disabled themselves. It can also be done in a dramatic way, and a way that ensures that the programme takes account of special needs, by enlarging the education team to include disabled people. Certainly, face-to-face programmes are likely to be considerably enhanced if disabled people are trained as educators and communicators.

Deafness

Certain afflictions cut people off from the world in special ways. Deafness is one of these. Educators will want to work with those who use sign language. They will also want to ensure that television broadcasts and large scale events have subtitles or other visual signs, or that special television programmes for the hearing impaired deal with preparation for elections. In general, societies that have alternative educational opportunities for disabled people are more conducive to voter education. Those with reduced facilities are always going to be at a disadvantage unless their society has an ethic of care and incorporation.

Blindness

With the development of improved technology for the production of braille materials, it is possible to replicate many of the materials for sighted people. And where an election authority has prepared for blind people to use their own braille ballots, such materials will need only to be adapted to provide good information on how to make use of this system. Where braille materials are not available, and voting has to take place with assistance, legislation should make sure that the normal concerns for secrecy are not overlooked for the blind.

Those who are disabled do not thereby become unable. The blind can hear, the deaf can see. Voter educators will use methods that take this into account. For the blind this means radio, audio tape, oral communication; for the deaf, illustration and demonstration.

Accessibility

All disabled people need one additional message. And this message needs to be communicated universally through choice of images in posters, television and displays. This message is that the disabled can vote. A climate of acceptance and accessibility should follow the arrangements for this in the election authority. While there will be those disabled people who will vote despite the constraints imposed upon them, election authorities and educators who take the care to remove these constraints are needed. These constraints and their removal are discussed in Accessibility Issues.

Where the necessary arrangements have been made, whether for special voting services, such as use of a mobile ballot box, or special voting stations in institutions, or for wheelchair access or voter assistance programs, this specific information has to be publicized widely. Here the networks and institutions that work with the shut-in and disabled should be alerted in good time, as they need both to communicate this information and to make any special arrangements.

https://ldftribe.com/uploads/files/Court-Ordinances/1601927659_CHAP11-Election-Code.pdf

Residents' Voices

https://theconsumervoice.org/issues/other-issues-and-resources/voting-rights

https://www.eac.gov/sites/default/files/document_library/files/Quick_Start-Serving_Voters_in_Long-Term_Care_Facilities.pdf

101.655 Supervised voting by absent electors in certain facilities.—

(1) The supervisor of elections of a county shall provide supervised voting for absent electors residing in any assisted living facility, as defined in s. 429.02, or nursing home facility, as defined in s. 400.021, within that county at the request of any administrator of such a facility. Such request for supervised voting in the facility shall be made by submitting a written request to the supervisor of elections no later than 28 days prior to the election for which that request is submitted. The request shall specify the name and address of the facility and the name of the electors who wish to vote by mail in that election. If the request contains the names of fewer than five voters, the supervisor of elections is not required to provide supervised voting.

(2) The supervisor of elections may, in the absence of a request from the administrator of a facility, provide for supervised voting in the facility for those persons who have requested vote-by-mail ballots. The supervisor of elections shall notify the administrator of the facility that supervised voting will occur.

(3) The supervisor of elections shall, in cooperation with the administrator of the facility, select a date and time when the supervised voting will occur.

(4) The supervisor of elections shall designate supervised voting teams to provide the services prescribed by this section. Each supervised voting team shall include at least two persons. Each supervised voting team must include representatives of more than one political party; however, in any primary election to nominate party nominees in which only one party has candidates appearing on the ballot, all supervised voting team members may be of that party. No candidate may provide supervised voting services.

(5) The supervised voting team shall deliver the ballots to the respective absent electors, and each member of the team shall jointly supervise the voting of the ballots. If any elector requests assistance

in voting, the oath prescribed in s. 101.051 shall be completed and the elector may receive the assistance of two members of the supervised voting team or some other person of the elector's choice to assist the elector in casting the elector's ballot.

(6) Before providing assistance, the supervised voting team shall disclose to the elector that the ballot may be retained to vote at a later time and that the elector has the right to seek assistance in voting from some other person of the elector's choice without the presence of the supervised voting team.

(7) If any elector declines to vote a ballot or is unable to vote a ballot, the supervised voting team shall mark the ballot "refused to vote" or "unable to vote."

(8) After the ballots have been voted or marked in accordance with the provisions of this section, the supervised voting team shall deliver the ballots to the supervisor of elections, who shall retain them pursuant to s. 101.67.

History.—s. 6, ch. 96-57; s. 5, ch. 2006-197; s. 19, ch. 2016-37; s. 21, ch. 2022-73.

Voting Will Be Easier in a Key State for the Presidential Race

In Arizona, where elections are getting closer, a federal appeals court undid strict limits on ballot collection and votes cast at the wrong precinct.

Signs outside a polling place in Phoenix in 2018.Credit...Ilana Panich-Linsman for The New York Times

By Michael Wines
Jan. 28, 2020

WASHINGTON — If a voter accidentally casts a ballot in the wrong precinct, should it be counted? Should early voters be able to give their sealed ballots to someone else to drop in the mail or deliver to a polling place?

In Arizona, the answer to both questions has been a resounding "no" — until this week.

On Monday, a federal appeals court ruled that those restrictions, in a state with some of the nation's more stringent voting rules, should no longer stand. The result? In Arizona, which is seen as a battleground in the presidential race this fall, many voters will find their ballots considerably easier to cast and less likely to be excluded from election-night tallies.

In the past, Arizona voters who cast ballots in the wrong precinct had their votes thrown out. And since 2016, the state has outlawed a popular voting aid — letting campaign workers and other outsiders collect voters' early ballots for delivery to polling places.

Democrats and voting rights advocates had argued that the rules made voting too hard, especially for minorities. But the Republican-controlled State Legislature, which had put the strict rules in place, said they kept elections free of fraud.

Arizona's attorney general, Mark Brnovich, a Republican, says the state will appeal this week's decision to the Supreme Court, seeking to overturn the 7-to-4 finding from a full panel of the United States Court of Appeals for the Ninth Circuit.

But any appeal would almost certainly be delayed until the court's next term, keeping ballot collection and out-of-precinct voting legal during this spring's primaries and the closely watched November general election.

Why did the court overturn the laws?

The judges said both laws violated the 1965 Voting Rights Act because they had a lopsided impact on Latino, Native American and African-American voters, which the act was designed to shield from discrimination. In 2016, for example, those groups were roughly twice as likely to cast out-of-precinct ballots as were white voters.

In the new ruling, the judges called the 2016 ban on ballot collectors a deliberate attempt to discourage voting by minority voters, who used ballot-collection services far more than white voters and tended to vote for Democrats.

Ballot collectors, usually party workers or members of civic groups, are common in many states. They help shut-ins, people without regular mail service and other voters with difficulties get their ballots to the polls — and they help ensure that candidates' supporters actually vote, instead of forgetting to cast ballots or being diverted by other tasks.

The Arizona ban still allowed family and household members to deliver a voter's early ballot, but made it a felony for campaign workers and others to do the same thing. Few Republican campaigns used ballot collectors because their supporters did not need them. But testimony showed that many minority voters had a more difficult time mailing their ballots. One example: Registered voters who were white were more than four times as likely to have home mail pickup and delivery as Navajos and other Native Americans.

Ballot collectors were central to a voter-fraud scheme in North Carolina. Isn't that a reason to ban them?

Arizona's Republican-controlled Legislature said the ban was needed to control fraud. But the court said "there is no evidence of any fraud in the long history of third-party ballot collection in Arizona." In any case, the judges wrote, existing Arizona law outlaws ballot-tampering like that in North Carolina, making a ban unnecessary.

The court said Republicans had a different reason for barring ballot collectors: They were important to the Democratic Party's get-out-the-vote strategy. In fact, the federal Justice Department had criticized an earlier version of the law in 2011, saying an elections official had admitted that it was "targeted at voting practices in predominantly Hispanic areas."

Will any of this affect election outcomes?

That's hard to say. Ballot collectors undoubtedly delivered tens of thousands of ballots in big elections before 2016, but it is impossible to know how many people decided not to vote after they were outlawed.

There are more precise tallies of people who voted outside their precincts in Arizona — 38,335 from 2008 to 2016, the bulk of them in general elections. Because more and more Arizonans are casting early votes by mail instead of at polling places, the number is dropping: In 2016, just 3,970 voters cast out-of-precinct ballots, among 2.6 million total votes. That year, President Trump won Arizona by more than 90,000 votes.

The out-of-precinct ballots may seem small, but elections are becoming increasingly close in Arizona, where booming population growth and changing demographics have eroded Republicans' onetime dominance of statewide races.

Voting Rights Battles

119 R.I. 384
Supreme Court of Rhode Island.
Thomas A. McCORMICK
v.
Rhode Island STATE BOARD OF ELECTIONS et al.
No. 77-114-M.P. Oct. 20, 1977.
OPINION

***385** JOSLIN, Justice.
Thomas A. McCormick was a candidate in the primary election held in the city of Providence on March 29, 1977, for the selection of the Democratic Party's candidate for the office of councilman for the city's Tenth Ward. At the close of the polls on that day, the voting machine count showed McCormick leading all other candidates and ahead of his closest competitor, Lloyd

Griffin, by 90 votes. That lead, however, disappeared when, over McCormick's objections, the State Board of Elections validated, and the Board of Canvassers of the City of Providence **counted, 123 ballots cast by absentee and shut-in voters**. Griffin received 111 of those votes, McCormick 6, and the other candidates 6; thus, the official count showed Griffin leading McCormick by 15 votes.1 Thereupon, McCormick initiated certiorari proceedings in this court challenging the right of electors to vote by absentee or shut-in ballot at a primary election. We ordered the writ to issue. McCormick v. Rhode Island State Bd. of Elections, Order No. 77-114 M.P., 374 A.2d 113 (R.I., filed Apr. 21, 1977).

Oral argument in the case was heard in this court on April 22, 1977. On April 27, 1977, we issued an order, Justice Doris dissenting, quashing the Board of Canvassers' certification of Griffin as the Democratic candidate for councilman on the ground that "there is no constitutional or statutory basis for allowing absentee and shut-in voters to cast their votes in a primary election." McCormick v. Rhode Island State Bd. of Elections, Order No. 77-114 M.P., 374 A.2d 114 (R.I., filed Apr. 27, 1977).

***386** Thereupon, Griffin, in a motion labeled "Motion to Reargue," applied for leave to argue that the election for Tenth Ward councilman scheduled to be held on May 3, 1977 should be postponed and a new primary held to determine the nominee of the Democratic Party for that office. That issue had not been raised when the case was argued on April 22, 1977 and therefore did not qualify as a basis for a motion for reargument. Wholey v. Columbian Nat'l Life Ins. Co., 69 R.I. 254, 273, 33 A.2d 192, 192 (1943). Nevertheless, the issues were grave and the public interest was involved; consequently, we agreed to hear argument on "the limited question of whether the Democratic primary already held shall be voided and a new Democratic primary held."

McCormick v. Rhode Island State Bd. of Elections, Order No. 77-114 M.P., 374 A.2d 116 (R.I., filed Apr. 29, 1977). Following that hearing,2 an order was entered, Justices Paolino and Doris dissenting, denying Griffin's motion. McCormick v. Rhode Island State Bd. of Elections, Order No. 77-114 M.P., 374 A.2d 116 (R.I., filed May 2, 1977).

The initial question is, of course, whether absentees and shut-ins may vote at primary elections. It is not seriously contended that they have a constitutional right to do so,3 and our concern is therefore limited to whether the Legislature has authorized them to do so. The governing statute, **1063 G.L.1956 (1969 Reenactment) s 17-20-1, enumerates with specificity the elections at which shut-in and absentee *387 voting is permitted.4 That listing of elections, however, notwithstanding its comprehensiveness, simply does not include primary election. The only reasonable inference to which that omission is susceptible is that the legislation does not provide for absentee and shut-in voting at party primaries. Since the statute is clear and unambiguous and expresses a definite and sensible meaning, there is no room for construction, and we do not read between the lines in an attempt to find a hidden signification; rather, we apply the statute in accordance with its plain meaning. See, e. g., Pucci v. Algiere, 106 R.I. 411, 421, 261 A.2d 1, 7 (1970); Bowen v. Simmons, 97 R.I. 283, 285, 197 A.2d 275, 277 (1964); Brown & Sharpe Mfg. Co. v. Dean, 89 R.I. 108, 116-17, 151 A.2d 354, 358 (1959); Vezina v. Bodreau, 86 R.I. 87, 91, 133 A.2d 753, 755 (1957).

But even were we to consider s 17-20-1 ambiguous, as Griffin urges, we would still construe it the same way because its legislative history compels that construction. That history commences with Roberts v. Board of Elections, 85 R.I. 203, 129 A.2d 330 (1957), in which the governorship of this state turned on the court's invalidation of several thousand civilian absentee and shut-in ballots that had been cast on a day other than that

fixed by the constitution as election *388 day.5 In response to the public demand for clarification of our election laws that followed on the heels of that decision, the Legislature, in Resolution H. 1036, Substitute A (as amended), Jan.Sess. (1957), directed the appointment of a commission6 and charged it with the power and duty of "studying, revising and codifying all of the **1064 election laws of the state of Rhode Island." In the discharge of that responsibility, the members of the commission pooled their collective years of experience and their special knowledge of this state's election practices; sought the aid and advice of the State Board of Elections, of every board of canvassers in the state and of a number of individuals with special knowledge of election administration; and had the benefit of the objective judgment and advice of the commission's consultant, *389 Dr. William Miller, Professor of Law at New York University and a nationally recognized expert on election laws and practices. Report of the Election Laws Study Commission iv (1957).

On November 15, 1957, the commission submitted to the governor and the General Assembly a report of its deliberations, findings and recommendations. Chapter 6 of that report, entitled "Voters-Absentee, War and Shut-in," states:

"Under present law (Section 17-20-1) the provisions for absentee and shut-in ballots apply to all general, special, off year and municipal elections, including propositions appearing on the state, city or town ballot, but these provisions do not appear to cover school elections, primary elections or financial town meetings. * * * The Commission has found that the application of absentee voting to special elections, party primary elections, and special referenda elections on public propositions is ineffectual and leads to an excessive cost for the rare use that is made of it." Id. at 27 (emphasis added).

The report recommended that absentee, shut-in and war ballot voting be extended to general elections, elections to fill federal offices and regular municipal elections, but it did not recommend that such voting be allowed at primary elections. Id. These recommendations were embodied in draft legislation which the commission submitted to the Legislature and which was enacted into law in substantially the same form as submitted. Public Laws 1958, ch. 18, s 1. Although that legislation made many changes in the election laws, s 17-20-1, as then enacted and as it now reads, substantially tracks the prior legislation, which the commission in its report had said did not appear to permit absentees or shut-ins to vote at primary elections. Obviously, had the Legislature intended to permit voting in absentia at primary elections, it would have taken cognizance of the commission's ***390** conclusion that existing law did not appear to permit such voting, and it would have amended s 17-20-1 so as to permit it. The Legislature's failure to act in this respect convinces us beyond question that it shared the commission's view that absentee and shut-in voting at primary elections was not permitted under existing law and should not be authorized by the newly enacted legislation.

Moreover, the view that the statute does not permit absentees and shut-ins to vote at primary elections was not the commission's alone. It apparently was shared by successive secretaries of state who from 1932, when absentee and shut-in voting was first authorized, until quite recently made no provisions for absentee and shut-in voting at primaries. True, the practice was changed a few years ago, but the change occurred when the then secretary of state, without the support of an amendment to the statute, a judicial decision, or an opinion from the attorney general, decided sua sponte and without any announced rationale therefor that the time had arrived when electors should be allowed to cast absentee and shut-in ballots at party primaries. That sua sponte decision, when considered in light of the longstanding

administrative practice that preceded it, carries no weight on the question of legislative intent.

We consider now the "Motion for Reargument." By that motion Griffin, who until then had been on the defensive, arguing only in opposition to McCormick's contention that voting in absentia was not permitted at primaries, took the offensive. He argued that the voiding of the absentee and shut-in ballots necessitated the postponement of the election scheduled for May 3, 1977 and the holding of a new primary so that those who he claimed had been "disenfranchised" **1065 and "denied their voice in government" by our April 27 order might be allowed to vote at the polls.

Although Griffin's standing to urge the "disenfranchisement" of others as a basis for relief in his own favor is certainly *391 open to question,7 we do not focus on that issue. Instead, our concern is whether there is a reasonable probability that, but for the assurances that they could vote in absentia, those whose absentee and shut-in ballots were invalidated would have voted at the polls in sufficient numbers to enable Griffin to overcome McCormick's machine-count lead of 90 votes. See Starr, Federal Judicial Invalidation as a Remedy for Irregularities in State Elections, 49 N.Y.U.L.Rev. 1092, 1124-26 (1974); Developments in the Law Elections, 88 Harv.L.Rev. 1111, 1334-36 (1975); cf. D'Amico v. Mullen, 116 R.I. 14, 21, 351 A.2d 101, 105 (1976). To overcome that lead would have required that at least 91 of the 123 "disenfranchised" appear at the polls. Any lesser number could not possibly have affected the outcome.

The burden of proof on this issue rested upon Griffin, the party seeking to impeach the result of the earlier election. In re De Martini v. Power, 27 N.Y.2d 149, 151, 314 N.Y.S.2d 609, 610, 262 N.E.2d 857, 858 (1970). Yet he presented nothing to us, by way of affidavit or otherwise, to suggest that even a single one of the "disenfranchised" would have appeared at the polls on primary day to cast his vote. Nor is there anything in the records

certified to us pursuant to our writ that would support that conclusion. We obviously cannot infer from a silent record that the requisite number of the "disenfranchised" would have voted at the polls had they known that they could not vote in absentia. Thus, in this case, unlike the case presented in the United States *392 District Court for the District of Rhode Island, the burden of establishing that the outcome would have been different was not met.8 We are therefore convinced that no sound basis was presented in this court for deferring the scheduled election and holding a new Democratic primary.

For the foregoing reasons, the petition for certiorari is granted; the certification of Lloyd Griffin as the Democratic Party's candidate for councilman in the Tenth Ward is quashed; Lloyd Griffin's motion for reargument is denied; and, pursuant to our decision in this matter heretofore filed on April 27, 1977, the records certified to this court are ordered returned to the respondent board with our decision endorsed thereon.

DORIS, Justice, with whom PAOLINO, Justice, joins, dissenting.

The initial question to be decided is whether or not absentee or shut-in ballots may be cast at party primaries. My reading of the governing statute in this case, G.L.1956 (1969 Reenactment) s 17-20-1, which provides for elections at which absentee and shut-in voting is permitted, leads **1066 me to the conclusion that voting by qualified absentee and shut-in electors is permitted in primary elections. Furthermore, the importance of this case appears to warrant the granting of the respondent Griffin's "motion for Reargument" and the entry of an order ordering a new primary to allow those qualified electors whose votes have been invalidated by the majority opinion to cast their ballots at the polls for the candidate of their choice. For these *393 reasons I respectfully dissent.

The situations in which absentee and shut-in ballots may be cast are defined in G.L.1956 (1969 Reenactment) s 17-20-1. The statute allows absentee and shut-in electors, who are otherwise qualified, to vote in all elections for federal, state and municipal officials. It is conceded that the office for which respondent Griffin is a candidate is an office enumerated in s 17-20-1. The question to be decided is whether s 17-20-1 provides for absentee or shut-in voting in party primaries for such offices enumerated therein or provides for such voting only in elections. I believe that s 17-20-1 should be read in conjunction with s 17-1-2(a) which defines the term "election" for the purpose of Title 17 to mean the filling of any public office and shall include any state, town or city office and "any political party primary election for the nomination of any candidate for public office."

As I read these statutes, therefore, they permit and authorize absentee and shut-in voting in primary elections for municipal officials. The absentee and shut-in ballots for all five candidates in the disputed primary ought to be tabulated, and based on that tabulation, respondent Griffin should be declared the party nominee for the office of councilman.

The majority finding of no ambiguity in s 17-20-1 in regard to absentee and shut-in voting in primary elections fails to acknowledge the significance of s 17-1-2(a) which specifically includes party primaries in the term "election." In reading s 17-20-1 in conjunction with s 17-1-2(a) the statute appears to me to be sensibly interpreted in more than one manner and is therefore ambiguous. Surely one cannot argue that it is not sensible to allow absentee and shut-in voting at party primaries to nominate candidates to be voted upon for public office. Because the meaning of s 17-1-2(a) is clear, at least to me, it is presumed to be the one which the Legislature intended to convey. Davis v. Lussier, 86 R.I. 304, 308, 134 A.2d 124, 126 (1957).

The majority places great emphasis on the legislative history of s 17-20-1 in concluding that absentee and shut-in ***394** voting is

not permitted in primary elections. They rely on the assumption that the Legislature subsequent to our opinion in Roberts v. Board of Elections, 85 R.I. 203, 129 A.2d 330 (1957), adhered to each recommendation and interpretation made by the O'Connell Commission so-called, which the Legislature did not specifically reject. I believe that the reliance on the report of the commission is not well-placed.

The significance of the commission's final report does not seem to me to be entitled to the weight given to it by the majority. That report stated in relevant part that present election laws "do not appear to cover * * * party primary elections * * *." The majority places great emphasis on the fact that the Legislature failed to amend this portion of the statute and therefore must have agreed with the analysis presented by the commission. There is, however, in my opinion, an equally plausible conclusion that the Legislature did not agree with the commission's view, which apparently was not based on legal precedent but rather on the commission's own reading of the statute and its knowledge of past practice, and consequently decided that amendment of the statute was not required in order to allow voting at party primaries by absentees and shut-ins. In any event, even assuming arguendo that the Legislature by its silence adopted the commission's view 20 years ago, it now appears that the Legislature by its silence reversed itself seven years ago and accepted the interpretation by the Secretary of State. Even if this assumption were as **1067 sound as the majority believes, the recent prompt action of the Legislature following this court's order on April 27, 1977, quashing the certification of Griffin as the Democratic candidate for councilman in enacting a statute expressly permitting absentee and shut-in voting in primary elections casts some doubt on the intent of the Legislature as presumed by the majority.

I note here that the Secretary of State has for the past several years made available absentee and shut-in ballots for *395 use in

party primary elections without any attempt by the Legislature to prohibit this practice. The acquiescence of the Legislature in the interpretation of the statute by the Secretary of State seems to me to be some evidence of a legislative belief in the correctness of that interpretation. The compliance of the voters with the procedures set up by election officials for the past several years clearly entitles them to expect that their actions are lawful and that their votes cast in accordance with stated procedures will be counted for the candidate of their choice. The passage of time, approximately seven years, during which absentee and shut-in voting at party primaries was given official sanction, has given these voters the right to expect that they would be allowed to participate in party primaries and that such right should not be withdrawn lightly.

The decision in Roberts v. Board of Elections, 85 R.I. 203, 129 A.2d 330 (1957), upon which the majority builds its argument, involved the invalidation of ballots due to the voters' failure to follow proper procedures; here, the voters had in good faith fulfilled all the requirements which were clearly directed by state election officials. Under the circumstances, a denial to these voters to participate in the party primary in my opinion is closely akin to disenfranchisement.

Subsequent to this court's order in this case, Griffin sought to have the scheduled election deferred and a new primary scheduled in order to allow those absentee and shut-in voters whose votes had been disallowed by this court's order, to cast their vote for the candidate of their choice. This request has also been denied, forcing several such voters to file a petition in the United States District Court for the District of Rhode Island to obtain the relief sought here by Griffin. I am of the opinion that this court should have deferred the election and ordered the scheduling of a new party primary.

In considering Griffin's argument for reargument on the issue of holding a new primary, the majority focuses on ***396** Griffin's

failure to offer proof that those absentee or shut-in voters who were deprived of casting their ballots would have appeared in person at the polls in sufficient numbers to have given him a victory. However, such proof should not be the sole decisive element in a situation where disenfranchisement appears to have occurred. In D'Amico v. Mullen, 116 R.I. 14, 351 A.2d 101 (1976), which the majority cites in support of the necessity for the proof, there was no question of any actual denial of the voting privilege; it was rather a problem of too few voting machines at the polling places, which frustrated some voters in the exercise, but did not deprive them, of their franchise. While I agree that Griffin cannot complain of the deprivation of the voting right of others, yet Griffin himself is being denied a right here, namely the fundamental principle in a democracy that the candidate receiving the plurality of the votes cast be declared the victor. The refusal by the majority to either uphold the certification of Griffin or to grant his motion for reargument is to deny the absentee and shut-in voters their right to have their ballots given equal weight with other voters in the primary election.

In any event, the majority opinion dealt only with Griffin's failure to show the reasonable probability that except for the instructions that they could vote in absentia, those whose absentee and shut-in ballots were invalidated would have voted at the polls in sufficient number to enable Griffin to overcome McCormick's machine count lead. Voters who cast absentee and shut-in ballots in the primary on March 29, 1977, **1068 did so with ballots provided by state election officials in reliance on public pronouncements which assured voters that their votes would be counted in the same manner as the votes of those who were able to get to the polls. This had been established practice for the past several years and was, in my view as stated earlier, mandated by law. The subsequent decision by this court nullifying the votes cast by these electors has deprived them of the

fundamental *397 right to which they are entitled as citizens, despite their reasonable belief that their votes were lawful.
In my view, the equities in this case require a new primary to allow these absentee and shut-in voters to cast their ballots at the polls. Without doubt many of those who cast absentee and shut-in ballots on March 29 could have reached the polls on that day either by rearranging their affairs so that they would be in the state on primary day or by obtaining assistance to reach the polls. They did neither because the state election officials assured them that they could go about their business on primary day and still be able to have their vote tabulated.
While I certainly agree that elections ought not be upset by the judiciary absent a compelling reason to do so, I feel this situation to be a most compelling one in which to call for a new primary. The ground rules by which all the participants, candidates and electors, operated in the March 29 primary were changed only after the fact. As a result, one hundred twenty-three electors, ten percent of all those who cast ballots in the primary, have been told that their votes will not count; and the candidate holding a plurality of the votes cast at the close of the primary has been denied the nomination of his party. Because these events strike at the very premises by which elections are conducted in our democratic society, I can find no more compelling time to call for a new primary and restore in the people the knowledge that it is they who have the final word on who is to represent them in government.
For these reasons, I believe the court ought to have denied the petition for certiorari, or in the alternative, granted Griffin's motion for re-argument, stayed the final election, and ordered a new primary to be scheduled.