



Client Alert

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Richard E. Gardner, III, Successfully Defends Nursing Home Before State Election Board

Richard E. Gardner, III, recently defended a nursing home that was brought before the State Election Board on allegations that two employees of the nursing home had improperly assisted a resident with absentee ballots. The Secretary of State's Office of Inspector General investigated the facility on a complaint filed by the daughter of a resident who suffers from dementia but who had expressed a desire to vote in the 2008 elections.

The complaint alleged that the resident's vote had been exploited because the resident, who suffers from dementia, lacked the mental clarity to vote. Nevertheless, the Georgia constitution provides that, in such situations, an individual only loses his or her right to vote when he or she has been *judicially determined* to be mentally incompetent. While the resident had a court-appointed guardian, no judge had determined the resident to be mentally incompetent. Accordingly, he had not lost his right to vote.

The investigator determined, however, that the nursing home may have violated a law that prohibits the provision of assistance with voting unless the voter being assisted is *physically disabled*. The investigator concluded that, while the resident may have had some cognitive deficits, he was not *physically* disabled when he received assistance with his absentee ballots. A violation of this particular statute can result in punishment of up to ten years imprisonment and up to a \$100,000 fine. At the hearing, a representative of the Office of Inspector General recommended that the State Election Board refer the case to the State Attorney General's office for further proceedings.

When the nursing home was given an opportunity to answer the allegations, we were able to show the Board that the resident was in fact physically disabled. The resident required daily assistance with a variety of activities of daily living, including eating, bathing, grooming, toileting, and other personal care services. Thus, we showed that there was no basis for the investigator's conclusion that the resident was not physically disabled. As a result of AGG's advocacy, the Board voted to drop the case against the nursing home.

What should other nursing homes take away from this experience? Nursing homes must balance the residents' rights requirement that they assist residents with participation in the electoral process with the Georgia Election Code's limitations on the provision of physical assistance to residents.

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