VOTE.

It's your right.

A Guide to the Voting Rights of People with Mental Disabilities

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Autistic Self-Advocacy Network

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The guide is available for download via www.bazelon.org/issues/voting. Print copies are available from the Bazelon Center; inquiries to pubs@bazelon.org or (202) 467-5730 ext 1311.

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Introduction

Voting is a fundamental right in American society—the foundation of our democracy.[1] By expressing our views through voting, we can help ensure that our government develops and implements good policies and protects our civil rights. And votes count: In 2000, President George W. Bush won the presidential election by taking Florida with a margin of just 930 votes of the six million cast.

Voting is just as important to people with mental disabilities as it is to everyone else. People with mental disabilities have preferences among candidates and initiatives and want to express them – and have their votes count. Yet the voting rights of people with mental disabilities are widely misunderstood. As a result, they are often disenfranchised—by unwarranted or paternalistic concerns about their competence to vote, by inappropriate challenges to prevent them from voting, by refusals to provide or permit help with voting, or by help that disregards the voter's own choices.

This guide explains the rights of voters with mental disabilities. It begins by describing federal laws that affect how states regulate who votes. It then focuses on four areas of concern to voters with mental disabilities: (1) voter competence requirements imposed by state laws or by election officials or service providers, (2) state photo-ID laws, (3) voter challenges, and (4) providing help to voters with disabilities. Two one-page reference sheets are also included in this booklet: a summary of the voting rights of people with mental disabilities and a summary of the types of help that may and may not be provided to voters with disabilities. Charts listing each state's laws on voter competence requirements, absentee ballots, and voter challenges are attached.

Requirements for physical accessibility of voting systems, including polling places and voting equipment, are outside the scope of this booklet. However, you can find information and resources on the physical accessibility of voting systems on http://www.ada.gov/ada_voting/ada_voting_ta.htm. For more information or assistance with participating in the voting process, find the Protection & Advocacy (P&A) agency in your state through the National Disability Rights Network website, http://www.ndrn.org/en/ndrn-member-agencies.html.

[1] *See, e.g., Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (referring to "the political franchise of voting" as a "fundamental political right, because preservative of all rights").

Key Legal Principles

- ☒ A state need not require a voter to demonstrate competence, and some states don't.
- ☒ If a state chooses to impose a voter competence requirement, that requirement cannot be so broad that it takes away the right to vote of people who are capable of voting. For example, a state generally may not have laws that impose a blanket ban on voting by anyone under guardianship.[2]
- ☒ If a state chooses to impose a voter competence requirement, that requirement must be applied to *all* voters. It cannot single out a particular group of voters, such as people who are the subject of guardianship proceedings.[3]
- ☒ Under the law of almost all states, only a court can find that a person is not competent to vote. It would present serious constitutional concerns for election officials or anyone else to make such a determination without the procedural safeguards of a court proceeding.[4]
- ☒ Service providers, such as nursing homes, hospitals, assisted living facilities, and group homes, cannot bar residents from voting based on staff or administrators' beliefs that some or all residents are not competent to vote.[5]
- ☒ Questions about a voter's competence can form the basis for a voter challenge only under very limited circumstances, if at all. Most states' laws restrict the grounds on which a voter may be challenged, the people who may bring a challenge and the types of evidence that can form the basis for a challenge. Many states do not permit challenges based on whether a voter is thought to be competent.
- ☒ People with disabilities have the right to get help with voting, and to decide who will help them vote.[6]

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[2] These limitations are imposed by the United States Constitution, the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the Help America Vote Act, 42 U.S.C. § 15301 *et seq. See* notes 9-34 and accompanying text, and p. 16 (Voter Competence Requirements Can Be Challenged Under Federal Law).

[3] This limitation is imposed by the Voting Rights Act, 42 U.S.C. § 1971(a)(2)(A). *See* notes 35-39 and accompanying text, and p. 16 (Voter Competence Requirements Can Be Challenged Under Federal Law).

[4] *See* notes 15-19 and accompanying text concerning the Due Process Clause of the U.S. Constitution and pp. 14-15 (Only a Court Can Decide that Someone is Not Competent to Vote).

[5] See notes 53-54 and accompanying text, and pp. 14-15 (Only a Court Can Decide that Someone is Not Competent to Vote). In the limited circumstances where a hospital administrator may be able to restrict a resident's ability to leave the facility to vote, the facility may have to assist the person in casting an absentee ballot.

[6] *See* notes 80-88 and accompanying text, and pp. 21-23 (Voters Have the Right to Assistance; Election Officials

- ☒ A person with a disability can get help from a friend, family member, caregiver, residential service provider or almost anyone else of his or her choosing except an employer or union member. The person can also ask a poll worker for assistance with voting.[7]
- ☒ A person helping a voter with a disability should ask the voter what choice he or she wants to make, if any. It is the voter who makes the choice whether to vote and how to vote, not the person providing help.
- ☒ The person providing help should not mark a ballot to reflect any choice other than the choice expressed by the voter.
- ☒ The person providing help must respect the voter's privacy at all times during the voting process.[8]

The Legal Framework

The United States Constitution protects the fundamental right to vote, but it also gives states the authority to set voting qualifications for both federal and state elections.[9] States can decide who votes, how they vote, where they vote, and when they vote - within certain federal legal limits. For example, states cannot set voter qualification standards that conflict with the Constitution.[10] The Supreme Court has invalidated numerous discriminatory state voter qualifications as unconstitutional.[11]

States must also comply with federal statutes, which are passed by Congress and apply

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Must Provide Help; Service Providers Must Provide Help; Disability Services Offices Must Provide Help with Registration).

[7] *See id*.

[8] *See* notes 82-83 and accompanying text, and pp. 20-21 (A Helper Must Respect the Voter's Privacy).

[9] U.S. Const., art. I, § 2, cl. 1 ("the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature"); art. I, § 4, cl. 1 ("[t]he times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations . . . .").

[10] *See, e.g., Bullock v. Carter*, 405 U.S. 134-140-41 (1972) ("Although we have emphasized on numerous occasions the breadth of power enjoyed by the States in determining voter qualifications and the manner of elections this power must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment).

[11] *See, e.g., Dunn v. Blumstein*, 405 U.S. 330, 337 (1972) (durational residency requirement for Tennessee voters that deprived some individuals of the right to vote violated Fourteenth Amendment's Equal Protection Clause); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666-67 (1966) (poll tax violated Equal Protection Clause); *Carrington v. Rash*, 380 U.S. 89, 96 (1965) (bar on voting by members of the military who moved to Texas during the course of military service violated the Equal Protection Clause).

nationwide. Federal laws govern if they conflict with state laws. Federal laws including the Constitution also set the "floor" for legal protections. States may pass laws that give voters with disabilities more legal protections, but they cannot take away rights that have been established by federal laws.

What Federal Laws Apply?

1. United States Constitution

Equal Protection

The Equal Protection Clause of the Fourteenth Amendment provides that "no state shall…deny to any person within its jurisdiction the equal protection of the laws."[12] Laws and government practices that affect the right to vote must treat people in similar situations on an equal basis. People who have the capacity to vote and meet the age and residency requirements for voting cannot be treated differently from other such voters based on whether they have a mental disability, or whether they have a guardian who makes certain decisions for them.

A state may take away the right to vote only when it can show that doing so is a "narrowly tailored" way to achieve a compelling government interest.[13] If there is more than one reasonable way to achieve the government's interest, the way that is least burdensome on voters' rights must be chosen.

Voter qualifications that make broad categories of people ineligible to vote based on concerns about mental competence (for example, that bar voting by anyone under guardianship) likely violate the Equal Protection Clause. In most cases, such categorical qualification requirements would not be narrowly tailored to any government interest, because they would disenfranchise many people who have the capacity to vote.[14]

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[12] U.S. Const., amend. XIV.

[13] *See Dunn v. Blumstein*, 405 U.S. 330, 337 (1972) (if state law grants right to vote to some citizens and denies it to others, court "must determine whether the exclusions are necessary to promote a compelling state interest")(*quoting Kramer v. Union Free Sch. Dist.*, 375 U.S. 621, 627 (1969)). Although not every restriction on voting must be judged under this strict standard, restrictions that are severe or take away the right to vote altogether must meet this test. *Burdick v. Takushi*, 504 U.S. 428 (1992).

[14] *See, e.g., Doe v. Rowe*, 156 F. Supp.2d 35, 51-56 (D. Me. 2001) (Maine's ban on voting by individuals under guardianship by reason of mental illness violated Equal Protection Clause); *Minnesota Voters Alliance v. Ritchie*, 890 F. Supp. 2d 1106, 1116 (D. Minn. 2012), *aff'd*, 720 F.3d 1029 (8th Cir. 2013) ("if . . . the appointment of a full or unlimited guardian categorically denies an individual of the right to vote because he or she has been "adjudged incapacitated," absent a "specific adjudicated finding showing the ward knows the nature and effect of his or her vote," such an interpretation of the Minnesota Constitution and statutes would not withstand close constitutional scrutiny if challenged"); *Missouri Protection and Advocacy Servs., Inc. v. Carnahan*, 499 F.3d 803, 808-09 (8th Cir. 2007) (Missouri law would violate Equal Protection Clause if it categorically barred individuals "adjudged incapacitated" from voting).

Due Process

The Fourteenth Amendment states that, with respect to actions by state governments, "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law . . . ."[15] The Due Process Clause provides that before a state can deprive an individual of a fundamental right, it must adequately notify the individual of the reasons for the deprivation and give him or her the opportunity to be heard before the right is taken away.[16]

Removal of a person's right to vote based on such factors as mental disability, guardianship status, or hospitalization may violate due process if the person is not given notice that he or she may lose the right to vote and a chance to challenge that loss.[17]

In addition, the Due Process Clause provides similar protections to those provided by the Equal Protection Clause. The Due Process Clause "forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."[18] The right to vote is such a fundamental right.[19] Accordingly, government officials may not use competency standards to restrict individuals' right to vote, unless such standards are narrowly tailored to serve a compelling government interest.

2. *The Americans with Disabilities Act*[20]

The Americans with Disabilities Act (ADA) bars disability discrimination in the services, programs, and activities of state and local government entities, including facilities that provide services to individuals with disabilities and state and local election authorities.[21] As the U.S.

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[15] U.S. Const., amend. XIV.

[16] *See*, *e.g.*, *Lassiter v. Dep't of Social Servs.*, 452 U.S. 18, 24 (1981) (explaining that due process "expresses the requirements of 'fundamental fairness'").

[17] *Doe v. Rowe* 156 F. Supp. 2d 35, 47-51 (D. Me. 2001) (Maine's ban on voting by individuals under guardianship by reason of mental illness violated procedural Due Process because such individuals were not given notice and an opportunity to be heard before losing right to vote).

[18] *Reno v. Flores*, 507 U.S. 292, 302 (1993) (*emphasis in original).*

[19] *Id.*; s*ee also Reynolds v. Sims,* 377 U.S. 533, 562 (1964) (same); *Yick Wo*, 118 U.S. at 370.

[20] 42 U.S.C. § 12101 *et seq.*

[21] Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. "Public entities" include "any State or local government" and "any department, agency, special purpose district, or other instrumentality of a State or local government." *Id*. at § 12131(1).

Department of Justice states, "[t]he ADA's provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process."[22]

Public entities may not exclude qualified voters with disabilities from the voting process. The ADA prohibits public entities from excluding qualified people from voting based on disability if they meet the essential requirements for voting. Before a public entity may exclude a voter based on disability, it must conduct an individualized assessment of whether the person meets the essential requirements for voting.[23] For example, a state that wishes to require individuals to have the mental capacity to vote cannot take away the right to vote from all people under guardianship without assessing whether each such individual has the capacity to vote.[24] Moreover, such a state could not impose greater burdens on individuals with disabilities to register or vote than it imposes on others.[25]

Laws or practices that categorically bar people from voting based on guardianship status, residence in a hospital, nursing home, group home or developmental disabilities center, or similar factors would violate the ADA because they bar voting by people with disabilities who have the capacity to vote and meet the essential requirements for voting.[26]

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[22] U.S. Dep't of Justice, Civil Rights Division, Disability Rights Section, The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities (Sept. 2014), at 1, https://www.ada.gov/ada_voting/ada_voting_ta.pdf.

[23] The ADA and Section 504 of the Rehabilitation Act require an individualized assessment to determine if a person with a disability is qualified. *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287 (1987) (involving Section 504 of the Rehabilitation Act, which affords virtually identical rights to those under the ADA); *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 690 (2001). Additionally, the ADA bars public entities from using voting eligibility criteria that unnecessarily screen out people with disabilities from voting. *Doe v. Rowe*, 156 F. Supp.2d 35, 58 (D. Me. 2001); 28 C.F.R. § 35.130(b)(3) (barring public entities from using criteria or methods of administration that have the effect of subjecting people with disabilities to discrimination on the basis of disability); *id*. § 35.130(b)(8) (barring public entities from applying eligibility criteria that screen out or tend to screen out people with disabilities or any class of people with disabilities from fully and equally enjoying any service, program or activity unless such criteria can be shown to be necessary for the provision of the services).

[24] *Doe v. Rowe*, 156 F. Supp.2d 35, 58-59 (D. Me. 2001).

[25] 28 C.F.R. § 35.130(b)(ii),(vi) (barring public entities from affording a qualified individual with a disability an unequal opportunity to participate in a benefit or service, or otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service).

[26] "For example, an election official cannot refuse to provide an absentee ballot or voter registration form to a person with a disability because the official knows the voter resides in a nursing home." U.S. Dep't of Justice, Civil Rights Division, Disability Rights Section, The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities (September 2014), at 4, https://www.ada.gov/ada_voting/ada_voting_ta.pdf. State laws generally do not permit individuals to be excluded from voting based simply on residence in a facility for people with disabilities. *See, e.g., In the Matter of Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 750 A.2d 790 (N.J. Super. App. Div. 2000) (ballots could not be challenged based simply on voters' residence in a state psychiatric hospital); *Carroll v. Cobb*, 354 A.2d 355 (N.J. Super. App. Div. 1976) (individuals could not be barred from registering to vote based on residence in state institution for people with mental retardation); *Boyd v. Board of Registrars of Voters of Belchertown*, 334 N.E.2d 629 (Mass. 1975) (residence in state institution for individuals with

The ADA also requires public entities to make reasonable modifications to policies, practices and procedures that are necessary for people with disabilities to have an equal opportunity to participate in government programs, such as registering to vote and casting a ballot.[27] For example, a state hospital may have to modify its practices in order to assist residents in obtaining and submitting absentee ballots. Alternatively, the hospital might choose to transport residents or allow them to go to their polling place.

Public facilities that prevent qualified people with disabilities from registering or voting based on inappropriate grounds, such as the staff's view that the person lacks the capacity to vote, likely violate the ADA. Similarly, public facilities that bar voter education or registration activities from their facilities on the ground that residents are too disabled to vote, or that prevent residents from attending voter education sessions, likely violate the ADA.

Privately operated service providers must not discriminate against people with disabilities with respect to voting. Title III of the ADA prohibits disability discrimination by privately operated places of public accommodation, such as privately operated nursing homes, group homes or homeless shelters. 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7).[28] These facilities are subject to the same requirements as publicly operated facilities.

3. Section 504 of the Rehabilitation Act[29]

Section 504 of the Rehabilitation Act (Section 504) applies to entities that receive federal funding. It prohibits disability-based discrimination in programs or activities that receive federal financial assistance.[30] It also applies to federal executive branch agencies, such as the Department of Veterans' Affairs.[31] Section 504 generally provides the same rights and remedies as the ADA.[32]

Entities that may be covered by Section 504 include state and local agencies that operate elections or enforce election laws (and that receive federal financial assistance for doing so), government-operated facilities providing services to people with disabilities, private service

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mental retardation did not make individuals ineligible to vote).

[27] 42 U.S.C. § 12131(2), 12132; 28 C.F.R. § 35.130(b)(7).

[28] 42 U.S.C. §§ 12181(7), 12182. Title III of the ADA bars these entities from discriminating based on disability in the full and equal enjoyment of their goods, services, facilities, privileges, advantages or accommodations. *Id*. at § 12182(a); 28 C.F.R. § 36.201(a). The ADA also requires these entities to make reasonable modifications in their policies and practices to enable people with disabilities to have equal opportunities. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

[29] 29 U.S.C. § 794.

[30] *Id.* at § 794(a).

[31] *Id.*

[32] *Barnes v. Gorman*, 536 U.S. 181, 184-85 (2002).

providers that receive Medicaid reimbursement for services they provide, and federally operated facilities providing services to individuals with disabilities.

4. Help America Vote Act (HAVA)[33]

The Help America Vote Act of 2002 (HAVA) set new standards for voting systems in federal elections. Perhaps best known is the requirement that a voter may cast a provisional ballot if the voter's eligibility to vote is questioned. But the HAVA standards also include strong protections ensuring that voting systems are accessible for all voters with disabilities. For example, HAVA requires every precinct to have at least one voting machine or system that is accessible to voters with disabilities. HAVA also requires that each voter be able to vote secretly and independently. HAVA authorizes state and local governments to apply for federal grants to improve voting accessibility and to train elections officials and poll workers to assist voters with disabilities. HAVA also requires states receiving grants to set up a process for resolving accessibility complaints.

HAVA's accessibility mandate is broad: Voting systems "shall be accessible for individuals with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."[34] Voting system accessibility under HAVA therefore includes ensuring that people with mental disabilities who have the capacity to vote are not denied equal access to registration and voting.

Overbroad voter competency standards imposed by state law would likely run afoul of HAVA, as would denials of the right to vote based on competency determinations made by individuals (such as election officials, long-term care providers, or poll workers) who are not qualified to make such determinations.

5. Voting Rights Act[35]

The Voting Rights Act (VRA) governs federal election procedures. It provides that no person "acting under color of law" shall, "in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote."[36] This means that any test for determining

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[33] 42 U.S.C. § 15301 *et seq.*

[34] *Id.* at § 15481(a)(3)(A). HAVA defines "voting systems" to include voting equipment as well as "the practices and associated documentation used (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors and defects; (D) to determine specific system changes to be made to a system after the initial qualification of the system; and (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots)." *Id*. at § 15481(b).

[35] 42 U.S.C. § 1973 *et seq.*

[36] 42 U.S.C. § 1971(a)(2)(A).

whether someone is qualified to vote must be applied to all voters equally.

Voting qualification standards, such as competency tests, that single out individuals or classes of individuals for different treatment violate the VRA. The VRA explicitly prohibits states from using "literacy tests" as a voting qualification unless they are given to all voters, are conducted wholly in writing, and are in compliance with other requirements.[37] The Act defines literacy tests to include "any test of the ability to read, write, understand or interpret any matter."[38] A voter competency test is a type of literacy test, and these provisions of the VRA prohibit states from requiring voters with disabilities to pass a competency test that is not required of all voters.

In addition, Section 208 of the VRA guarantees the right of people with disabilities to have voting assistance from a person of their choosing so long as that person is not the voter's employer, an agent of the employer, or an officer or agent of the voter's union.[39]

6. *National Voter Registration Act*[40]

The National Voter Registration Act (NVRA), also known as the "Motor Voter" law, permits, but does not require, states to enact laws authorizing removal of voters from the registration rolls based on "mental incapacity."[41]

Another provision of the NVRA, however, states that "[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965."[42] As discussed above, the Voting Rights Act requires that any voting standards that states establish be applied equally to all voters. Thus, both the VRA and the NVRA bar states from using voting standards that treat individuals with mental disabilities differently from other voters.

Voter Competence Requirements

Despite these federal law protections, people with mental disabilities sometimes lose the right to vote because of state voter competence laws, or because election officials or service providers improperly impose their own voter competence

[37] *Id*. at § 1971(a)(2)(C).

[38] *Id.* at § 1971(a)(3)(B).

[39] *Id*. at § 1973aa.

[40] 42 U.S.C. § 1973gg *et seq.*

[41] *Id.* at § 1973gg-6(a)(3)(B).

[42] *Id*. § 1973gg-6(b)(1).

requirements.[43] This section describes the ways in which people have lost the right to vote due to these laws and practices. It also describes what voters' rights are and what steps voters may take to preserve or restore their rights.

State Voting Laws

Many states require that voters have a certain level of competence in order to vote. These requirements, in state statutes or state constitutions, sometimes deprive people with mental disabilities of the right to vote:[44]

☒ Ten states have laws that bar voting by individuals who are "under guardianship."[45] These laws require a court determination of incompetence or incapacity before removing a person's right to vote. Typically, however, such determinations involve competencies other than voting competence.

A judicial finding of incompetence or incapacity generally means that a person cannot make certain decisions, and/or is unable to meet basic needs for food, clothing and shelter due to a disability. For example, many individuals are placed under guardianship because they were unable to care for themselves during a psychiatric crisis. Yet they may have a good understanding of how elections work and of the issues at stake in federal, state, and local elections. Guardianship hearings rarely include inquiries into a person's understanding of voting issues.

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[43] These actions of election officials, poll workers, and service providers occur even in states with no voter competence requirement. *See, e.g.*, infra at 14 (study of Philadelphia nursing homes showed that many staff denied residents right to vote based on competence concerns despite the absence of a voter competence requirement in Pennsylvania law). The Election Assistance Commission's 2014 survey of states identified individuals who were even officially removed from voter registration rolls based on mental incompetence in several states that have no voter competence requirement. Election Assistance Commission, The 2014 Election Administration and Voting Survey Comprehensive Report, at 110, http://www.eac.gov/assets/1/Page/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

[44] For additional information, see the attached chart of "State Laws Affecting the Voting Rights of People with Mental Disabilities."

[45] A judicial finding of "mental incapacity" or "mental incompetence" generally means that a person is in need of guardianship. Jurisdictions with this type of exclusion are Alabama, Louisiana, Massachusetts, Minnesota, Missouri, South Carolina, South Dakota, Tennessee, Utah, and Virginia. *See also* 16 LPRA § 4065 (in Puerto Rico, "[a]ny person who is declared mentally incompetent by a Court of Law shall be a voter in Puerto Rico"). In Massachusetts, and Virginia, state attorney general and secretary of state opinions have interpreted these laws more narrowly. Minnesota's constitution prohibits persons "under guardianship" from voting, but this provision has been read narrowly by courts to avoid an unconstitutional restriction on voting, in line with Minnesota's statute stating that persons under guardianship are presumed to retain the right to vote unless otherwise ordered by a court. *See Minn. Voters Alliance v. Ritchie*, 890 F. Supp. 2d 1106, 1117 (D. Minn. 2012), *aff'd*, 720 F.3d 1029 (8th Cir. 2013); *In re Guardianship of Erickson*, Case No. 27-GC-PR-09-57, 2012 Minn. Dist. Lexis 193 (Prob. Ct. Hennepin County 2012). Missouri's laws have also been interpreted narrowly to avoid an unconstitutional restriction on voting. *Missouri Protection and Advocacy Servs., Inc. v. Carnahan*, 499 F.3d 803, 808-09 (8th Cir. 2007) (Missouri law would violate Equal Protection Clause if it categorically barred individuals "adjudged incapacitated" from voting). *But see In re Posey*, 299 S.W.3d 6, 24-25 (Mo. Ct. App. 2009) (holding that neither state constitution nor statute provides any exception to "absolute" prohibition on voting by people under guardianship).

- ☒ 25 states have laws that bar voting *only* if a court has determined that an individual specifically lacks the capacity to vote.[46]
- ☒ Four states have laws that bar voting by individuals who are "non compos mentis." This term has been interpreted differently from state to state.[47]
- ☒ Seven states have laws that use outmoded and stigmatizing terms such as "idiots," "insane persons," and "of unsound mind" to describe who is barred from voting based on competence concerns.[48] Such laws are rarely enforced because they are virtually impossible to understand and apply.
- ☒ Eleven states —Colorado, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, New Hampshire, North Carolina, Pennsylvania and Vermont—have no disability-related restrictions on the right to vote in their state constitutions or election laws.[49]

Election Officials

Election officials sometimes impose their own voter competence requirements and prevent individuals with mental disabilities from voting. They have refused to allow individuals who have guardians or who live in institutions to register and vote or to obtain

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[46] These states are Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Kentucky, Maryland, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Texas, Washington, West Virginia, Wisconsin, and Wyoming. *See also* D.C. Code § 21-2004 (incapacitated person retains all legal rights except those expressly limited or curtailed in the order of appointment of a guardian, or in any subsequent order of the court).

[47] Nebraska law defines "non compos mentis" to mean "mentally incompetent." Neb. Rev. Stat. § 32-312. Hawaii law does not define the term, but provides that a person may be disenfranchised on competence grounds only if determined to lack the capacity to vote. Haw. Rev. Stat. § 11-23(a). Rhode Island does not define the term, but in 2008 the state's election board overturned local election officials' decision to remove two hospitalized men from the voter rolls based on earlier rulings that each was not guilty by reason of insanity. The state board concluded that such a finding was not sufficient to render the men "non compos mentis" for purposes of voting. David Scharfenberg, *Election Board Won't Take Away Men's Vote*, Providence Journal, May 29, 2008, http://www.projo.com/news/content/INSANE_ VOTERS_05-29-08_3HAA708_v17.349e81a.html.

Mississippi law provides that "[t]he term "unsound mind," when used in any statute in reference to persons, shall include persons with an intellectual disability, persons with mental illness, and persons non compos mentis." Miss. Code Ann. § 1-3-57. Although "person with mental illness" and "person with an intellectual disability" are both defined under Mississippi law, no definition is provided for non compos mentis. *See* Miss. Code Ann. § 41-21-61.

[48] These states are Alaska, Arizona, Kentucky, Minnesota, Mississippi, Montana, and Ohio. In all of these states except Mississippi and Montana, more specific statutory provisions concerning voter competence effectively trump the "idiots" and "insane" language.

[49] Nine of these—Colorado, Idaho, Illinois, Indiana, Kansas, New Hampshire, North Carolina, Pennsylvania and Vermont—have laws that contain no voter-competence requirement. Another state, Michigan, has a constitutional provision authorizing the legislature to impose certain voter competence requirements, but its legislature has not done so. Maine's constitution and statutes bar voting by individuals under guardianship due to mental illness, but the Secretary of State's office has instructed election officials to disregard this requirement following a federal court ruling declaring it unlawful. Memorandum from Julie L. Flynn, Deputy Secretary of State, to All Municipal Clerks and Registrars (Sept. 4, 2001) (citing *Doe v. Rowe*, 156 F. Supp.2d 35 (D. Me. 2001).

absentee ballots. Or they have required institutional residents to take examinations not required of others before being permitted to vote. Such practices have been invalidated by the courts as unconstitutional.[50] Indeed, many states now have laws specifying that individuals do not lose their right to vote because of their residence in an institution.[51]

Example: Election officials in New Jersey segregated the ballots submitted by residents of a state psychiatric hospital and refused to count the ballots unless residents could prove that they were competent to vote. This practice was held unconstitutional.[52]

Example: Election officials in Virginia refused to provide absentee ballots for people with mental illnesses living in a state psychiatric hospital, based on state officials' interpretation of state law as authorizing absentee ballots for individuals in facilities only if they have physical disabilities.[53]

Even poll workers, temporarily employed by the agency responsible for administering election proceedings, sometimes improperly turn away individuals with mental disabilities at the polls based on their own judgments that these individuals should not be permitted to vote.

Service Providers

Some providers of residential or other services for people with disabilities have inappropriately kept individuals with mental disabilities from registering, voting, or receiving voting assistance. Staff of hospitals, institutions for people with developmental disabilities, nursing homes, group homes, shelters, and other settings sometimes decide on their own that residents should not be allowed to vote. Workers at such facilities typically exert significant control over residents' lives, and their decisions have prevented many residents from exercising their right to vote.

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[50] *See, e.g., Carroll v. Cobb*, 354 A.2d 355 (N.J. Super. App. Div. 1976); *Boyd v. Board of Registrars of Voters of Belchertown*, 334 N.E.2d 629 (Mass. 1975).

[51] For example, patients in treatment facilities in Louisiana cannot be deprived of the right to vote solely because of his or her status as a patient in a treatment facility. Specifically, "[n]o patient in a treatment facility shall be presumed incompetent, nor shall such person be held incompetent except as determined by a court of competent jurisdiction. The determination of incompetence shall be separate from the judicial determination of whether the person is a proper subject for involuntary commitment." La. Stat. Ann. § 28:171. Massachusetts also specifies that "no person shall be deprived of the right to . . . vote in local, state, or federal elections solely by reason of his or her admission or commitment to a facility." 104 Mass. Code Regs. 27.13. Missouri's constitution, however, provides that individuals "involuntarily confined in a mental institution" are ineligible to vote. Mo. Const. art. 8 § 2.

[52] *In the Matter of Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 750 A.2d 790 (N.J. Super. App. Div. 2000) (ballots of state hospital residents cannot be segregated or challenged without a particularized showing of incompetence).

[53] *Harvey v. Kaine*, No. 3:06-cv-00653-HEH (E.D. Va. Oct. 2, 2006). Two state hospital residents filed suit against state and county officials to challenge the interpretation of state law as violative of the United States Constitution, the ADA, and Section 504. Shortly after the suit was filed, the state changed its interpretation to authorize absentee ballots for individuals in facilities with mental disabilities. *See* Greg A. Lohr, *Mental Patients Sue State, Allege Denial of Voting Rights*, Style Weekly, Oct. 25, 2006, http://www.styleweekly/article.asp?idarticle=13257.

Example: A 2008 study of Philadelphia nursing homes revealed that many residents were denied the right to vote based on staff decisions that they were not competent to vote. Staff at a significant number of nursing homes required residents with cognitive impairments to answer questions to demonstrate their understanding of the election process, including names of candidates or current officeholders and questions about voting procedures.[54] Pennsylvania law does not contain any voter-competence requirement.

Example: Before the November 2004 election, a Department of Veterans' Affairs (VA) nursing home in California refused to permit volunteers to come to the home to provide voter education and registration assistance. Staff told registration workers that the residents were "too demented to vote." After a threatened lawsuit, the facility allowed the protection and advocacy agency for individuals with disabilities to provide training on voting rights and assist residents who wished to register to vote.[55]

Example: Before the November 2004 election, an Ohio nursing home resident was barred by staff from registering to vote because his disability made him unable to create a signature and he used an "X" instead of a signature.

Example: The Virginia Voting Alliance sent letters to nearly 2000 nursing homes warning that voter registration groups may be inappropriately assisting with voter registration for seniors who may be mentally compromised or judged incompetent. In reaction to such letters, some nursing homes blocked the voter registration groups and/or attempted to coordinate voter registration in-house with the use of outside groups.

The Voting Rights of People with Mental Disabilities

1. *Only a Court Can Decide that Someone is Not Competent to Vote*

An election official, poll worker, or service provider cannot make decisions about whether a person is competent to vote. In virtually every state with a voter competency requirement, a court must make the determination that a person does not meet the requirement.[56] Even state laws disenfranchising "idiots" and "insane" people have

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[54] Jason H. T. Karlawish et al., *Identifying the Barriers and Challenges to Voting by Residents in Nursing Homes and Assisted Living Settings*, J. Aging & Soc. Pol'y, vol. 20 issue 1, at 65, 72 (2008).

[55] In 2008, VA adopted a policy of barring all voter registration drives at VA facilities, but has since narrowed that policy to permit state and local government officials and non-partisan groups to conduct voter registration efforts at VA facilities.

[56] Most state laws explicitly require this determination to be made by a court or state that a person must be "adjudicated" or "adjudged" incapacitated, indicating that a court or other tribunal must decide ("No person shall have the right of suffrage [w]ho has been adjudicated by a court of competent jurisdiction to lack the capacity to

been read to require a court finding of incompetence.[57]

Indeed, regardless of what state law says, basic principles of federal due process require that a person's right to vote cannot be taken away without the opportunity to be heard in court.[58] The decision that a person lacks the competence to vote cannot be made by a long-term care facility, hospital or other service provider, or by a guardian or family member. Nor can it be made by a poll worker or election official.

When voter competence decisions are made outside of a courtroom, they are not only being made by people who are unauthorized to make them, but they are typically based on factors that have little to do with what state law requires. In fact, many people have been denied the right to vote *even in states that do not have any voter competence requirement* because service providers or others simply assumed, as in the above examples, that they could legally prevent people with mental disabilities from voting.

If a person is told by a poll worker that he or she is not competent to vote, the person should ask to vote using a provisional ballot before leaving the polling place. The provisional ballot will be counted later if the person is determined to be eligible to vote.

2. *A Voter with a Mental Disability Can Retain the Right to Vote or Have it Restored Under State Law*

While advocates may want to consider challenging certain state voter competence requirements as inconsistent with federal law (see page 12), many individuals may simply wish to use avenues available under state laws to try to keep from losing their right to vote, or to have it restored. This section describes what persons with disabilities and their advocates may do—usually in the context of guardianship proceedings—to accomplish these goals.

In many states, a person is at risk of losing the right to vote when a guardianship is imposed. This is true in most states that have some type of voter competence requirement. In states where the right to vote is automatically lost when a person is under guardianship, the

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understand the act of voting" (N.J. Stat. Ann. § 19:4-1)). While some state laws simply exclude "mentally incompetent" voters, competence determinations must generally be made by probate courts in the context of guardianship proceedings ("At least once each month, each probate judge in [Ohio] shall file with the board of elections the names and residence addresses of all persons over eighteen years of age who have been adjudicated incompetent for the purpose of voting . . . . [and] the board of elections shall promptly cancel the registration of each elector named in the report" (Ohio Rev. Code Ann. § 3503.18)).

[57] *In the Matter of Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 750 A.2d at 794-95 (N.J. Super. App. Div. 2000) (requiring county board of elections to demonstrate a particularized showing before a court that voters were incompetent before ballots could be disqualified).

[58] *See, e.g., Doe v. Rowe*, 156 F. Supp.2d 35, 47-49 (D. Me. 2001). Government entities must provide due process before taking away a person's right to vote. Private entities such as long-term care facilities perform a core government function when they determine whether individuals are competent to vote, and thus should also be subject to due process requirements. *See* Nina A. Kohn, *Preserving Voting Rights in Long-Term Care Institutions: Facilitating Voting While Maintaining Election Integrity*, 38 McGeorge Law Review 1065, 1081 (2007).

ward may lose the right to vote even though the subject of voting was never raised in the guardianship proceeding. Often neither the person under guardianship nor the person seeking guardianship is aware that the right to vote is at stake in a guardianship hearing.[59]

Even in states that remove the right to vote from anyone under guardianship, some courts allow people to keep the right to vote, or have it restored, if they can show they are able to vote.[60]

3. *Voter Competence Requirements Can Be Challenged Under Federal Law*

Someone who has lost the right to vote based on a state voter competence requirement may be able to challenge the requirement on the ground that it violates federal law. Laws that bar people who are "mentally incompetent" or under guardianship from voting generally violate the Constitution and the Americans with Disabilities Act if they are used to take away a person's right to vote based on disability even if the person has the capacity to vote.

Fewer people lose their voting rights in states with laws that remove a person's right to vote only after a court determines that he or she is not competent to vote. Even these laws, however, typically require certain people—usually those who are the subject of guardianship proceedings—to meet standards that are not imposed on other voters.

Probate courts in these states sometimes ask individuals who are the subject of guardianship proceedings to demonstrate an understanding of elections and politics that goes far beyond what is expected of the general public before they are permitted to vote. For example, individuals are sometimes asked to provide the names of various federal, state, or local office holders, to explain the voting process, and to explain their political views. Individuals who do not answer these questions to the satisfaction of the questioner are not permitted to vote.

Such inquiries hold people with mental disabilities to a higher standard than other voters. They also function as a type of unlawful literacy test for people with mental disabilities. The Voting Rights Act requires courts to apply the same standard to everyone.

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[59] There is some risk that raising these issues in the probate court proceedings may foreclose a person from later making certain arguments if he or she should wish to challenge the state law. For example, a person's request that the probate judge determine his competence to vote may be viewed as a concession that the state law allows individuals under guardianship to retain their voting rights.

[60] *See, e.g., Missouri Protection and Advocacy Servs., Inc. v. Carnahan*, 499 F.3d 803 (8th Cir. 2007) (interpreting Missouri law to permit individuals under full guardianship to retain their right to vote in some circumstances despite statutory and constitutional language making individuals under full guardianship ineligible to vote). *But see Estate of Posey v. Bergin*, 299 S.W.3d 6 (Mo. Ct. App. 2009): (interpreting same Missouri law to impose a "clear and unambiguous" bar on voting by individuals under guardianship, with no possibility of restoring the right to vote by presenting evidence of capacity to vote). Materials, including model motions that people with mental disabilities and their advocates can use to ask that the right to vote be restored, are available at http://www.bazelon.org/Where-We-Stand/Self-Determination/Voting/Voting-Policy-Documents.aspx.

Advocating to Change the Voter Competence Standard in Your State

We urge advocates and policymakers to promote the replacement of restrictive voter competence standards with tailored standards that treat voters with disabilities fairly and equally.

Voters with Mental Disabilities Should Not Be Held to a Higher Standard

Voter qualifications typically include, in addition to U.S. citizenship, residence in the state where the person is voting, being age 18 or over and, in some states, not serving a prison sentence or having been convicted of a felony within a certain timeframe.[61] No state subjects voters without disabilities to any type of standard to measure voting capacity. We do not expect voters without disabilities to demonstrate the rationale for their votes or their understanding of how the voting process works.

What Standard Should Be Used to Determine Voting Competence?

Whether any state needs a voter competence requirement is highly questionable. There is no indication that election systems in any of the states without voter competence requirements have been compromised by the votes of people with mental disabilities.

To the extent that states choose to have a voter competence requirement, all their laws and practices must hold all individuals to the same standard.[62]

Given that the essence of voting is expressing a choice, one appropriate standard for voting competence is whether a person can communicate, with or without accommodations, a choice whether to cast a vote. The American Bar Association's House of Delegates has adopted a similar standard: whether a person can communicate, with or without accommodations, "a specific desire to participate in the voting process."[63] Four states have

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[61] A list of state and local election office websites can be found on https://www.usa.gov/election-office.

[62] One commentator has urged states to eliminate overbroad voting restrictions but adopt an individual voter competence test to determine whether registrants or voters understand the nature and effect of voting. *See* Jason H. T. Karlawish et al., *Addressing the Ethical, Legal and Social Issues Raised by Voting by Persons with Dementia*, 11 J. Amer. Medical Ass'n 1345, 1348 (2004). Unless such a test is given to *all* who wish to register or vote, however, it would result in the application of a different standard to individuals who are singled out for this type of testing. A test that is not given to everyone would function much the way literacy tests were used, and would violate the Voting Rights Act.

[63] American Bar Association, Commission on Law and Aging *et al.*, Report to the House of Delegates (Aug. 13, 2007), at http://www.abanet.org/aging/ docs/Voting_Rec_FINAL_approved.doc. The ABA standard also requires that no prohibition on voting take place unless it is ordered by a court of "competent jurisdiction," that has afforded the individual "appropriate due process protections," and that the court's order is based on "clear and convincing evidence." *Id.* Another possible standard was recommended by the American Bar Association's Commission on the Mentally Disabled (now the Commission on Disability Rights): the ability to provide the information needed to register to vote. *See* Bruce D. Sales, et al., Disabled Persons and the Law: State Legislative Issues, at 111 (1982) ("Any person who is able to provide the information, whether orally or in

adopted this standard or a variant of it.[64]

Voter ID Laws

A number of states have begun to require voters to present a driver's license or other government-issued photo ID in order to vote. These requirements may place both financial and practical burdens on voters. Even where laws require provision of a free photo ID to indigent individuals, fees are often required to obtain the documentation needed to obtain the ID, such as a birth certificate. Voters with mental or physical disabilities who do not already have a photo ID may face particular challenges in obtaining one.

As of July 2016, seventeen states ask voters to show photo- identification.[65] In eight of these states, voters lacking a photo ID can vote if they submit an affidavit or provide additional forms of identification,[66] and three states provide exceptions to the photo ID

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writing, through an interpreter or interpretive device or otherwise, which is reasonably required of all persons seeking to register to vote, shall be considered a qualified voter.").

[64] Maryland provides that an individual under guardianship for mental disability is not competent to vote if "a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process." Md. Code Ann. Elec. Law § LAW § 3-102. In Nevada, "[a] person is not ineligible to vote on the ground that the person has been adjudicated mentally incompetent unless a court of competent jurisdiction specifically finds by clear and convincing evidence that the person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process and includes the finding in a court order." Nev. Rev. Stat. Ann. § 293.5415. New Mexico provides that individuals who lack the mental capacity to vote are "limited only to those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference." N.M. Const. Art. VII, § 1. California requires that for an individual under conservatorship, "the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process" Cal. Elec. Code § 2208.

California adopted this standard following the filing of a federal administrative complaint against the Superior Court of Los Angeles in July 2014 alleging that its judges utilize literacy tests to determine if an adult under conservatorship is qualified to vote. *See* Disability and Abuse Project of Spectrum Institute as next friend of limited conservatees under the jurisdiction of the Los Angeles Superior Court v. Los Angeles Superior Court (Jul. 10, 2014) (administrative complaint filed with U.S. Dep't of Justice, Civil Rights Division alleging violations of 42 U.S.C. 1973aa (Literacy Tests), 42 U.S.C. 1972aa-6 (Disability Accommodations, 42 U.S.C. 12132 (Modifications of Policy), and 29 U.S.C. 794(a) (Section 504 Discrimination)), http://disability-abuse.com/doj/complaint.pdf. In August 2016, that complaint was amended to include claims that the state failed to provide timely notice to individuals who had lost their voting rights due to the change in the law that they could seek to have those rights restored.

[65] These states are Alabama, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, North Dakota, Rhode Island, South Dakota, Tennessee, Virginia, Texas and Wisconsin. National Conference of State Legislatures, Voter Identification Requirements: Voter ID Laws (updated July 21, 2016), http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Laws%20in%20Effect.

[66] These states are Alabama, Florida, Hawaii, Idaho, Louisiana, Michigan, Rhode Island, and South Dakota. *Id.*

requirement for voters who are indigent (Indiana, Georgia, and-Tennessee) or "have a reasonable impediment" to obtaining a photo ID (South Carolina). In nine states, voters without a photo ID can only vote a provisional ballot and must take additional steps after Election Day, such as returning to an election office within a specified time and presenting a photo ID, or the provisional ballot will not be counted.[67] Arkansas and Pennsylvania enacted laws requiring voters to show a photo ID which were struck down by state courts, and other recent successful challenges to voter ID laws in federal court are expected to result in full or partial amendments to the ID requirements in North Carolina, Texas, Wisconsin, Kansas and North Dakota.[68]

The constitutionality of voter ID laws has been successfully challenged where the law in question presents substantial burdens on individuals' right to vote. Such laws may also violate state constitutions that are more protective than the U.S. Constitution. Finally, they may violate the Americans with Disabilities Act if they screen out voters with disabilities and are not necessary, or if a state fails to make reasonable modifications necessary to ensure that voter ID laws do not deprive people with disabilities of equal voting opportunities.[69]

Voter Challenges Based on Mental Competence

Competence challenges to voters with mental disabilities have sometimes been cynically used to affect election results.

Example: Shortly before the November 2004 election, *The New York Times* reported that political party officials in Ohio were training thousands of recruits to challenge voters suspected of being ineligible to vote. Among other things, the recruits were "taught how to challenge mentally disabled voters who are assisted by anyone other than their legal guardians."[70]

Most states' laws provide for challenges to a person's eligibility to vote.[71] State law governs who may bring a challenge and what types of evidence must be presented to support a

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[67] These states are Georgia, Indiana, Kansas, Mississippi, North Dakota, Tennessee, Virginia, Texas, and Wisconsin. *Id.*

[68] *See, e.g., North Carolina State Conference of the NAACP v McCrory*, Nos. 16-1468, 16-1469, 16-1474, 16-1529, 2016 WL 4053033 (4th Cir. July 29, 2016); *Veasey v Abbott*, No. 14-41127, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc), *Frank v. Walker*, 819 F.3d 384 (7th Cir. 2016); *see also* Camila Domonoske, *As November Approaches, Courts Deal Series Of Blows To Voter ID Laws*, http://www.npr.org/sections/thetwo-way/2016/08/02/488392765/as-november-approaches-courts-deal-series-of-blows-to-voter-id-laws.

[69] 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. §§ 35.130(b)(7), (b)(8).

[70] Michael Moss, *Big G.O.P. Bid to Challenge Voters in Key State*, New York Times, Oct. 23, 2004, at A1, A12.

[71] Oklahoma's election code appears to be the only one that does not provide for any type of voter challenge. Okla. Stat. Ann. tit. 26, art. 7.

challenge.[72]

Is Competence a Permitted Ground for Challenging a Voter?

In many states, lack of competence is not a permissible basis for a voter challenge, even if the state has a voter competence requirement.[73] If the state does not have a voter competence requirement, then a person may not be disqualified on the basis of competence.

In some states, competence may form the basis for challenges brought *before* the election, but not for challenges *at* the polling place. Polling-place challenges are sometimes limited to factors that are more easily determined, such as whether the voter is the person he or she claims to be or is voting at the correct precinct.[74]

Even when challenges based on competence are allowed, either same day or beforehand, many people wrongly believe that individuals with mental disabilities may be challenged based simply on the fact that they have a disability, that they have a guardian, that their guardian is not present when they vote, or other inappropriate grounds.

Who May Challenge a Voter?

Voter challenge laws also typically restrict who may bring a challenge. Although many states allow other registered voters to challenge a voter, in some states only certain election officials or appointed "official" challengers are permitted to bring a challenge.[75]

What Type of Evidence is Required for a Challenge?

Voter challenge laws usually require the challenger to present certain types of evidence and follow specific procedures. Some states, for example, require a challenger to demonstrate personal knowledge and/or a reason to believe that the challenged voter does not meet the

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[72] For a chart summarizing each state's requirements as to the permissible grounds for challenges, the individuals who may bring a challenge, and the evidence and procedures required, seehttp://www.bazelon.org/LinkClick.aspx?fileticket=cPAQ9Co3ahk%3d&tabid=543.

[73] *See, e.g.*, Cal. Elec. Code § 14240 (challenges permitted on grounds that (1) the voter is not the person whose name appears on the index, (2) the voter is not a resident of the precinct, (3) the voter is not a U.S. citizen, (4) the voter has already voted that day, or (5) the voter is presently on parole for the conviction of a felony); Ohio Rev. Code § 3505.20 (challenges at polling place permitted only on grounds that person is not a citizen, has not resided in state for 30 days, is not a resident of the precinct where the person offers to vote, or is not of legal voting age).

[74] *See, e.g.*, Haw. Rev. Stat. §§ 11-25(a) (challenges prior to election day permitted "for any cause not previously decided by the board of registration or the supreme court in respect to the same person"), 11-25(b) (challenges on election day permitted only on the grounds that the voter is not the person he or she claims to be or that the voter is not entitled to vote in that precinct).

[75] *See, e.g.*, Cal. Elec. Code § 14240 ("On the day of the election no person, other than a member of the precinct board or other official responsible for the conduct of the election, shall challenge or question any voter concerning the voter's qualifications to vote."); 15 Del. Code § 4934 (only the polling place challenger appointed by each political party may bring a challenge).

requirements to vote.[76] Demanding standards of proof may be required.[77] Accordingly, a voter challenge based on competence may require specific proof and personal knowledge that the person challenged does not meet voter qualifications related to competence.

A person whose vote is challenged cannot be prevented from casting a "provisional" ballot. Regardless of the procedures that state law may require for voter challenges, HAVA entitles a person whose eligibility to vote is in doubt to cast a provisional ballot if the person believes he or she is registered and eligible to vote in the appropriate jurisdiction.[78] The provisional ballot will then be counted if it is later determined that the person is eligible to vote. A voter who is challenged at the polling place should always ask for a provisional ballot if told that he or she is not eligible to vote.

Voters Have the Right to Assistance

People who need help in voting because of a disability have the right to help from a person of their choice.[79] This can be a family member, a friend, a caregiver, a poll worker, or almost anyone else. The only people who are not allowed to help are the person's employer or an agent of the employer, or, if the voter belongs to a union, an officer or agent of the union.[80]

A helper must respect the voter's choices and may not substitute his or her own choices for the voter's. Nor can the helper make assumptions about how the person wants to vote. If the helper cannot reliably determine the voter's intent, he or she cannot cast a vote for that person.

More broadly, people with mental disabilities are entitled to receive support with

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[76] *See, e.g.*, Minn. Stat. § 204C.12 (challenger must complete form stating under oath the basis for the challenge and that the challenge is based on challenger's personal knowledge); Tx. Elec. Code § 16.092 (challenger must file sworn statement of the specific qualification for registration that the challenged voter has not met based on the personal knowledge of the challenger); Rev. Code Wash. § 29A.08.810(3) (challenger must file signed affidavit swearing that the challenged voter does not meet particular qualifications or does not reside at the address given on his or her voter registration record, based on challenger's personal knowledge and belief after challenger has exercised due diligence to personally verify the evidence presented; challenge cannot be based on unsupported allegations); Alaska Stat. §15.15.210 (challenger must have good reason to suspect that questioned person is not qualified to vote); Conn. Gen. Stat. § 9.232(c) (challenger must know, suspect or reasonably believe person is not qualified to vote).

[77] *See, e.g.*, Ariz. Rev. Stat. § 16-121.01 (challenger must show clear and convincing evidence that challenged voter does not meet certain requirements); Rev. Code Wash. § 20A.08.840(4) (same).

[78] 42 U.S.C. § 15482.

[79] 42 U.S.C. § 1973aa-6.

[80] *Id.*

decision-making, including but not limited to support in casting a vote, which maximizes individual control and choice. This means that where a person needs support or protection, less-restrictive alternatives to guardianship should be offered wherever possible.[81]

A Helper Must Respect the Voter's Privacy

A person who is helping a person with a mental disability to vote must respect the person's privacy at all times during the voting process.[82] After the person has completed a ballot, the helper should offer to make sure that the ballot accurately reflects the voter's choices, offer to correct any mistakes, and check the ballot for additional choices that may have been missed.[83]

Election Officials Must Provide Help

A voter may ask election officials for help. Election officials must ensure that their voting systems are readily accessible to people with mental disabilities.[84] They must make reasonable modifications to rules and policies needed to help people with mental disabilities register or vote.[85] For example, having a poll worker or other election official explain ballot instructions or content in simpler language at the request of a voter with a disability would be a reasonable modification. Election officials may also need to provide assistance by visiting voters with disabilities in nursing homes and other care settings in order to help them apply for, complete, and submit absentee ballots, if residents choose to vote by absentee ballot.

Service Providers Must Provide Help

A voter may wish to get help from a service provider. Nursing homes, hospitals, group homes, board-and-care homes, day treatment centers, and other facilities providing care and

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[81] For information about supported decision-making for people with disabilities, see National Resource Center for Supported Decision-Making, *Right to Vote* (last visited Aug. 16, 2016), http://www.supporteddecisionmaking.org/tags/right-vote.

[82] 42 U.S.C. § 15481(a)(3)(A) (each voting system in a federal election must be accessible to individuals with disabilities in a manner that provides the same opportunities for privacy and independence as other voters have).

[83] *Id*. (each voting system in a federal election must permit a voter to verify his or her votes (privately and independently) before the ballot is cast, and to change or correct any errors).

[84] 42 U.S.C. § 12132; 28 C.F.R. § 35.150(a) (ADA); 29 U.S.C. § 794(a) (Section 504); 42 U.S.C. §15481(a)(3)(A) (HAVA requirement that voting systems in federal elections be "accessible for individuals with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.").

[85] 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7); 29 U.S.C. § 794(a).

services to individuals with disabilities must also make reasonable modifications to their policies and practices to ensure that residents who need help with the voting process receive it.[86] These modifications usually include helping residents to register, to get to the polling place, or to apply for and complete an absentee ballot if the resident chooses to vote by absentee ballot.

Example: On Election Day in November 2004, a number of residents of a state psychiatric hospital in New York were prevented from voting because their privileges to leave the facility had been taken away as a result of failure to comply with hospital rules. Hospital staff did not attempt to obtain absentee ballots to enable the residents to vote. The matter was resolved after a resident contacted advocates for assistance and the hospital ultimately agreed to take the residents to the polling place to enable them to vote.

In order to promote compliance with the law, states should require nursing homes and other facilities serving individuals with disabilities and older adults to:

- provide information to residents about how to register to vote in the facility's jurisdiction and how to change their address for voting purposes if necessary;
- ask all residents whether they want to register and offer help to those who want to do so;
- encourage residents to exercise their right to vote and permit voter education to occur on site; and
- offer assistance to residents in applying for and submitting absentee ballots sufficiently in advance of the deadlines.

Disability Services Offices Must Provide Help

The NVRA, or "Motor Voter" law, requires states to designate as voter registration agencies: (1) all offices that are primarily engaged in providing disability services and that receive state funds, and (2) all offices that provide public assistance.[87] These agencies must make available to their clients voter registration forms and assistance in completing them, and must accept completed applications and transmit them to state officials.[88] Such agencies include vocational rehabilitation offices, offices of mental or behavioral health, offices of developmental or intellectual disabilities, offices on aging, offices that process Medicaid applications, and other disability services offices.

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[86] 42 U.S.C. § 12182(b)(2)(A)(ii), 28 C.F.R. § 36.302(a) (privately operated facilities), 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7) (publicly operated facilities); 29 U.S.C. § 794(a) (facilities receiving federal financial assistance).

[87] 42 U.S.C. § 1973gg-5(a)(2).

[88] *Id.* at § 1973gg-5(a)(4)(A).

How to Address Concerns about Voter Fraud

Some have suggested a need for voter competence testing to address the possibility of voter fraud when someone helps a person with a disability to vote.[89] However, such concerns should not be addressed by raising barriers to the voting rights of people with disabilities. The solutions to concerns about voter fraud, to the extent warranted, should focus on those perpetrating the fraud.

Concerns about voter fraud in this context fall into three main categories:

(1) Concerns about caregivers or others substituting their *own* judgment and decision-making when they help a person with a disability vote, rather than following the expressed wishes of the person with a disability. Often people do not realize that this is improper even if the person's prior voting history and views appear to shed light on how the person might wish to vote.[90] Votes must be based on choices actually communicated by the person whose vote is being cast.

(2) Concerns about coercing a person with a disability to vote a certain way. These concerns have been raised in particular about individuals with disabilities residing in institutional settings, such as nursing homes, where staff often exert significant control over residents' lives.[91] Concerns have also been raised about whether candidates or political party representatives have engaged in voter intimidation or undue influence when visiting residents of nursing homes to offer assistance with registration or voting.[92] Of course, the experience of being subjected to voting pressures is not unique to people with disabilities.[93]

(3) Concerns about wholesale fraud where nursing home administrators or others obtain large numbers of residents' absentee ballots and falsify them. Occasional instances of this type of fraud have prompted calls for changing voting procedures in nursing homes

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[89] *See, e.g.*, Karlawish et al., *supra* note 62, at 1348 (recommending that people assisting cognitively impaired individuals in applying for absentee ballot or in traveling to polling place use a screening tool to decide whether the person is competent to vote; if there is doubt about competence to vote, "it is probably appropriate to regard the impaired person as incompetent to vote, at least until a more authoritative determination is available"); Jessica A. Fay, *Elderly Voters Go Postal: Ensuring Ballot Integrity for Older Voters*, 13 Elder L. J. 453, 481 (2005) (responding to voter fraud concerns by recommending that, among other things, nursing homes should conduct competency tests to ensure that residents are competent to vote).

[90] *See, e.g.*, Karlawish et al., *supra* note 62, at 1347 (noting example of spousal caregiver who voted straight Democratic ticket for her husband, who had Alzheimer's disease, because he had always voted straight Democratic ticket in the past).

[91] *See, e.g., id*. at 1349.

[92] *See, e.g.*, Daniel P. Tokaji and Ruth Colker, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 McGeorge L. Rev. 1015, 1026 (2007).

[93] *See, e.g., id*. (noting voting pressures sometimes experienced by spouses and by young adults still dependent on their parents).

and similar institutional settings.[94] These concerns have been raised primarily with respect to the use of absentee ballots, as it is more difficult to detect fraudulent actions that occur outside of the polling place.

All of the concerns described above can and should be addressed through more appropriate means than imposing discriminatory burdens on individuals with mental disabilities. Policymakers, election officials and others can respond by:

- educating helpers about what types of assistance are and are not permitted;
- using criminal prosecution to address unscrupulous voter fraud practices;
- establishing state law procedures requiring election officials and residential service providers for people with disabilities to assist residents of long-term care facilities and other care settings with registration and voting.

Some election officials have successfully addressed concerns about undue influence of voters with cognitive impairments without the need for capacity testing or removing individuals from voter rolls.[95] A number of states have procedures in place designed to promote voting by residents of long-term care facilities, although many of those procedures are voluntary or have other limitations.[96]

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[94] *See, e.g.*, Joan L. O'Sullivan, *Voting and Nursing Home Residents: A Survey of Practices and Policies*, 4 J. Health Care L. & Pol'y 325 (2001) (describing allegations of nursing home-based voter fraud in Maryland and Illinois); Fay, *supra* note 89, at 326-327, 332-334.

[95] *See, e.g.*, Deborah Markowitz, *Voting and Cognitive Impairments: An Election Administrator's Perspective*, 38 McGeorge L. Rev. 871, 874-77 (2007). In this article, Markowitz, then Vermont's Secretary of State, describes how her office handled a variety of different situations in which concerns were raised about undue influence on voters with cognitive impairments. Vermont does not have any voter competence requirement.

[96] Amy Smith and Charles P. Sabatino, *Voting by Residents of Nursing Homes and Assisted Living Facilities: State Law Accommodations*, BIFOCAL, vol. 26, no. 1, at 1 (Fall 2004), http://www.abanet.org/aging/publications/ bifocal/261.pdf (describing state procedures for assisting voters in nursing homes and other long term care facilities).

Resources

You can learn more about voting laws and practices in your state by contacting the protection and advocacy agency for people with disabilities. Contact information for these agencies can be found at http://www.ndrn.org.

The local branch of the American Civil Liberties Union may also be able to provide information and assistance. Contact information for local ACLU branches can be found at http://www. aclu.org/affiliates/index.html.

Additional resources include:

- the National Disability Rights Network, http://www.ndrn.org,
- the Bazelon Center for Mental Health Law, http://www.bazelon.org,
- the Advancement Project, http://www.advancementproject.org,
- the League of Women Voters, http://www.lwv.org, and
- the Secretary of State's office and local election board in your area.

State Laws Affecting the Voting Rights of People with Mental Disabilities*

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
ALABAMA	No person who is mentally incompetent shall be qualified to vote, unless the disability has been removed. ALA. CONST. art. 8, § 177(b). Persons disqualified under the Constitution are not entitled to vote. ALA. CODE § 17-3-30.	In a limited guardianship, the partially incapacitated person retains all legal rights which the court has not seen fit to delegate to the limited guardian. Comment to ALA. CODE § 26-2A-105.	Consumers of mental health services have the same general rights as other citizens of Alabama, including the right to vote and participate in the political process. ALA. CODE § 22-56-4(a)(5).	Persons with developmental disabilities and traumatic brain injury have the right to vote and participate in the political process, subject to applicable laws. ALA. CODE § 38-9C-4(7). Persons with developmental disabilities and traumatic brain injury are presumed competent until a court determines otherwise. ALA. CODE § 38-9C-4(5).
ALASKA	No person may vote who has been judicially determined to be of "unsound mind" unless the disability has been removed. ALASKA CONST. art. 5, § 2. The judicial determination of unsoundness of mind necessary to disqualify a mentally impaired individual from voting must be specifically raised in a guardianship hearing or raised in a separate proceeding. Alaska Att'y Gen. Op. (Inf.) No. 123 (Aug. 28, 1992).	Guardian may not prohibit a ward from registering or voting. ALASKA STAT. § 13.26.150(e)(6). An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court. ALASKA STAT. § 13.26.090.	Persons undergoing mental health evaluation or treatment may not be denied the right to vote. Undergoing court-ordered mental health treatment is not a determination of legal incapacity. ALASKA STAT. § 47.30.835(a)(b).	
ARIZONA	No person who is adjudicated an incapacitated person shall be qualified to vote. ARIZ. CONST. art. 7, § 2(C). The County Recorder shall cancel a voter's registration if they are adjudicated an incapacitated person under ARIZ. REV. STAT. § 14-5101. ARIZ. REV. STAT. § 16-165.	Voter registration cancelled if a person under guardianship is committed as an "insane person" in a court proceeding. ARIZ. REV. STAT. § 16-165(C). Incapacitated person defined as any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or	Persons undergoing court-ordered mental health evaluation or treatment are not determined to be legally incompetent. Persons undergoing	

* This table is based on the table published by Kay Schriner, Lisa Ochs, & Todd Shields, Democratic Dilemmas: Notes on the ADA & Voting Rights of People with Cognitive and Emotional Impairments, 21 BERKLEY J. EMP. & LAB. L. 437 (2000). The table was updated by the National Disability Rights Network (NDRN) in June 2004, and by the Bazelon Center for Mental Health Law and the law firm of Schulte Roth & Zabel in 2016.

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	Not qualified to register to vote if adjudicated an incapacitated person. ARIZ. REV. STAT. § 16-101(A)(6).	disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions regarding his person. In cases of limited guardianship only, a person is not deemed an incapacitated person for purposes of voting if the person files a petition, has a hearing and the judge determines by clear and convincing evidence that the person retains sufficient understanding to exercise the right to vote. ARIZ. REV. STAT. § 14-5101(1).	mental health evaluation or treatment may not be denied the right to vote. ARIZ. REV. STAT. § 36-506(A).	
ARKANSAS	Registration to vote cancelled if a person is adjudged mentally incompetent by a court of competent jurisdiction. ARK. CONST. AMEND. 51, § 11(a)(6).	If guardian appointed prior to Oct. 1, 2001, guardian must obtain express court approval to prohibit voting. ARK. CODE ANN. § 28-65-302(a)(1)(E). No guardian appointed on or after Oct. 1, 2001 shall authorize an incapacitated person to vote without filing a petition and receiving express court approval. ARK. CODE ANN. §28-65-302(a)(2)(E). An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted by order to the guardian by the court. ARK. CODE ANN. § 28-65-106.	No person shall be deemed incompetent to vote solely by reason of that person's admission to a mental health services system. ARK. CODE ANN. § 20-47-220(b).	
CALIFORNIA	The Legislature shall provide for the disqualification of electors while mentally incompetent CAL. CONST. art. 2, § 4. A person shall be deemed mentally incompetent, and therefore disqualified from voting, if (i) the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process and (ii) a conservator is appointed or the person has pled or been found not guilty by reason of insanity. CAL. ELEC. CODE § 2208(a). If the proceeding under the Welfare and Institutions Code is heard by a jury, the jury shall unanimously	Person under conservatorship is disqualified from voting if court finds by clear and convincing evidence that he or she cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process; must review their capability of communicating, with or without reasonable accommodations, a desire to vote in the voting process during the yearly or biennial review of conservatorship. CAL. PROB. CODE § 1910; CAL. ELEC. CODE § 2208 and § 2209(a).	Conservatorship report shall include recommendation for or against the disqualification of the person from voting. CAL. WEL. & INST. CODE § 5357(c).	

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	find that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process before the person shall be disqualified from voting. CAL. ELEC. CODE § 2208(b). Conservatee's capability of communicating, with or without reasonable accommodations, a desire to vote in the voting process shall be reviewed yearly or biennially. CAL. ELEC. CODE § 2209(a).			
COLORADO	No constitutional disqualification provision. Right to vote is not lost because of confinement in a state institution for persons with mental illness. COLO. REV. STAT. § 1-2-103(5).		People receiving evaluation, care, or treatment for mental illness shall be given the opportunity to exercise his right to register and to vote in primary and general elections. The agency or facility providing evaluation, care, or treatment shall assist such persons, upon their request, to obtain voter registration forms and mail ballots and to comply with any other prerequisite for voting. COLO. REV. STAT. § 27-65-120.	Each person with intellectual and developmental disabilities receiving services who is eligible to vote under the law has the right to vote and all service agencies should assist those receiving services with registration, obtaining mail ballots, complying with other requirements that are prerequisite to voting, and voting. COLO. REV. STAT. § 25.5-10-225.
CONNECTICUT	No constitutional disqualification provision. No mentally incompetent person shall be admitted as an elector. CONN. GEN. STAT. § 9-12(a).	The guardian or conservator of an individual may file a petition in probate court to determine such individual's competency to vote in a primary, referendum or election. CONN. GEN. STAT. § 45a-703.	Persons under hospitalization or treatment for psychiatric disabilities may vote unless such patient has been declared specifically incapable of voting and appointed a conservator. CONN. GEN. STAT. § 17a-541.	
DELAWARE	No person adjudged mentally incompetent... or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector. DEL. CONST.			

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	art. 5, § 2. No person adjudged mentally incompetent… shall be a qualified voter. For purposes of this chapter, the term "adjudged mentally incompetent" refers to a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment. 15 DEL. CODE ANN. § 1701.			
DISTRICT OF COLUMBIA	Not a qualified elector if legally incompetent as adjudged by a court of law. D.C. CODE §1-1001.02(E).	A finding that a person is incapacitated is not considered a finding of legal incompetence. Such person retains all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding, or subsequent order of the court. D.C. CODE § 21-2004.	A person admitted or committed for treatment pursuant to this chapter may not, by reason of the admission or treatment, be denied the right to vote unless the person has been adjudicated incompetent and has not been restored to legal capacity. D.C. CODE § 21-564(a).	The board of elections shall take reasonable steps to facilitate voting by blind persons and persons with physical and developmental disabilities qualified to vote and to authorize such persons to cast a ballot with the assistance of a person of their own choosing. D.C. CODE § 1-1001.05.
FLORIDA	Not qualified to vote if adjudicated, in this or any other state, to be mentally incompetent, until the disability has been removed. FLA. CONST. art. 6, § 4(a). A resident of a residential facility who has reached his eighteenth birthday and is otherwise qualified to vote is eligible to vote, provided such person has not been adjudicated mentally incompetent. Att'y Gen. Op. No. 074-15 (Jan. 9, 1974). Not entitled to vote if adjudicated mentally incapacitated with regard to voting in this or any other state and right not restored. FLA. STAT. § 97.041(2)(a).	Right to vote can be removed if a person is determined to be incapacitated, but right may not be delegated to a guardian. FLA. STAT. § 744.3215(2)(b). Persons must be evaluated for voting disqualification at guardianship proceedings. FLA. STAT. § 744.331(3)(g)(2).	Any patient who is eligible to vote has the right to vote and the department shall establish rules to enable patients to obtain voter registration forms, applications for vote-by-mail ballots, and vote-by-mail ballots. FLA. STAT. § 394.459(7). [To take effect 7/1/16]	No otherwise qualified person shall, by reason of having a developmental disability, be denied the right to vote in public elections. FLA. STAT. § 393.13(3)(j).
GEORGIA	A person adjudicated mentally incompetent cannot register, remain registered, or vote unless the disability has been removed. GA. CONST. art. 2, § 1, ¶ III(b);	The appointment of a guardian is not a determination regarding the right of the ward to vote. GA. CODE ANN. § 29-4-20(b).	Patients may vote if otherwise eligible under state law. The superintendent	Clients may vote if otherwise eligible. The superintenden

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	GA. CODE ANN. § 21-2-216(b). A person must be adjudicated mentally incompetent before the right to vote is removed. Ga. Att'y Gen. Op. No. 95-27 (1995).		or regional state hospital administrator of each facility shall permit and reasonably assist patients (1) to obtain voter registration forms, applications for absentee ballots, and absentee ballots; (2) to comply with other requirements which are prerequisite for voting; and (3) to vote by absentee ballot if necessary. GA. CODE ANN. § 37-3-144.	t or regional state hospital administrator of each facility shall permit and reasonably assist clients: (1) to obtain voter registration forms, applications for absentee ballots, and absentee ballots; (2) to comply with other requirements which are prerequisite for voting; and (3) to vote by absentee ballot if necessary. GA. CODE ANN. § 37-4-104.
HAWAII	No person who is "non compos mentis" shall be qualified to vote. HAW. CONST. art. 2, § 2. Whenever the clerk receives from the department of health or any informing agency, information of... adjudication as an incapacitated person under the provisions of chapter 560... the clerk shall thereupon make such investigation as may be necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person is... incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting... the clerk shall remove the name of the person from the register. HAW. REV. STAT. § 11-23(a).	Definition of mental incapacity as referenced in electoral statutes: "Incapacitated person" means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance. HAW. REV. STAT. § 560:5-102.	Admission to psychiatric facility itself does not modify or vary the right to vote. HAW. REV. STAT. § 334-61.	
IDAHO	No disqualification statute.		Mental health facility cannot deny right to vote unless right limited by prior court order. This	Developmentally disabled persons have the right to vote unless limited by

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
			right shall not be denied by the director of the facility under any circumstances. IDAHO CODE § 66-346(a)(6) & (c).	prior court order. IDAHO CODE § 66-412(3)(j).
ILLINOIS	No disqualification statute. Every patient of any hospital or mental institution in this State shall be deemed a resident of the town, city, village or election district or precinct in which he resided next prior to becoming a patient of such hospital or mental institution. However, the term "hospital" does not include skilled nursing facilities. 10 ILL. COMP. STAT. 5/3-4. Any person who is a resident of certain certified and licensed facilities or "community-integrated living arrangements" for 30 days or longer, and who is a U.S. citizen and has resided in this State and election district 30 days preceding any election shall be entitled to vote in the election district in which any such home or community-integrated living arrangement in which he is located, provided that he shall declare upon oath that it was his bona fide intention at the time he entered said home or community-integrated living arrangement to become a resident thereof. 10 ILL. COMP. STAT. 5/3-3. “Community-integrated living arrangement” means a living arrangement certified by a community mental health or developmental services agency under [the] Act where 8 or fewer recipients with mental illness or recipients with a developmental disability who reside under the supervision of the agency. 210 ILL. COMP. STAT. 135/3(d).			
INDIANA	No disqualification provision or statute.			
IOWA	A person adjudged mentally incompetent to vote or a person convicted of any infamous crime shall not be entitled to the privilege of an elector. IOWA CONST. art. 2, § 5. A person who is incompetent to	When a guardian is appointed for a person based upon mental incapacity of the proposed ward because the proposed ward is a person with an "intellectual disability", the court shall make a separate determination as to the ward's competency to vote. The		

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	vote is disqualified from registering and voting. Certification by the clerk of the district court that has found the person no longer incompetent shall qualify such person to vote again if otherwise eligible. IOWA CODE ANN. § 48A.6(2). "Person who is incompetent to vote" means a person with an intellectual disability who has been found to lack the mental capacity to vote in a proceeding to appoint a guardian. IOWA CODE ANN. § 48A.2(3).	court shall find a ward incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote. IOWA CODE ANN. § 633.556. A person under an order appointing a guardian which order found the person incompetent to vote may include a request for reinstatement of voting rights as part of the termination procedure or in a separate determination. IOWA CODE ANN. § 633.679. The vote of a legal incompetent shall be cast by the guardian, or other legal representative along with a written sworn statement. IOWA CODE ANN. § 468.513.		
KANSAS	No disqualification statute.			Any voter unable to mark such person's ballot by reason of a disability (physical or mental impairment that substantially limits one or more of the major life activities of such individual) may request assistance in voting. KAN. STAT. ANN. § 25-2909.
KENTUCKY	"Idiots" and "insane" persons shall not have the right to vote. KY. CONST. § 145(3). Anyone disqualified under the Constitution may not vote. KY. REV. STAT. ANN. § 116.025(1). Individuals declared incompetent solely for the purpose of appointing a committee to manage their welfare checks would not be disqualified from voting and are prima facie qualified to vote. Ky. Att'y Gen. Op. No. 73-700 (1973). Person declared incompetent but not declared "insane" would be	If a court finds that a person is in need of a guardianship or conservatorship, the court must specifically determine whether the person retains the right to vote. KY. REV STAT. ANN. § 387.580(3)(c). Ward shall only be deprived of right to vote if the court separately and specifically makes a finding on the record. KY. REV. STAT. ANN. § 387.590(10)		

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	entitled to register to vote if otherwise qualified. Ky. Att'y Gen. Op. No. 76-549 (1976).			
LOUISIANA	Right to vote may be suspended while interdicted and judicially declared mentally incompetent. LA. CONST. art. 1, § 10(A). An individual who has been fully interdicted after being judicially declared to be mentally incompetent may not vote. An individual who is only partially interdicted is allowed to vote unless there has been a specific suspension of the right to vote. LA. STAT. ANN. § 18:102(A)(2).		Patients in treatment facilities shall not be deprived of the right to vote because of status as a patient in a treatment facility. The determination of incompetence shall be separate from the judicial determination of whether the person is a proper subject for involuntary commitment. LA. STAT. ANN. § 28:171(A) & (B).	Department of Health and Hospitals shall establish rules and regulations to ensure that persons with intellectual or cognitive disabilities who have not been interdicted or partially interdicted with a specific suspension of the right to vote are permitted to vote. LA. STAT. ANN. § 18:102.1(B). Voters who provide a statement setting forth the necessity and reasons for assistance on election day and a copy of current documentation showing eligibility for benefits from the office for citizens with developmental disabilities are entitled to receive assistance in voting on election day, provided that a voter shall not receive assistance in voting unless he is unable to read, or is unable to

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
				vote without assistance because of a physical disability, including being visually impaired. LA. STAT. ANN. § 18:564(A) & (D). Any qualified voter who submits a copy of current documentation showing eligibility for benefits from the office for citizens with developmental disabilities may vote absentee by mail. LA. STAT. ANN. § 18:1303(I).
MAINE	Persons under guardianship for reason of mental illness shall not be electors. ME. CONST. art. 2, § 1. Held unconstitutional by Doe v. Rowe, 156 F. Supp.2d 35 (D. Me. 2001): Found that procedures in probate courts did not give adequate due process to Plaintiffs (were not told they would be disenfranchised as a result of the guardianship process). Also found that the provision did not pass strict scrutiny because there was not factually valid correlation between the ends and the means—therefore art. 2, §1 violates the Equal Protection Clause. Individuals under guardianship may vote. Department of the Secretary of State Bureau of Corporations, Elections and Commissions, citing Doe v. Rowe (http://www.maine.gov/sos/cec/elec/voter-info/right.html).		Patients in psychiatric hospitals or residential care facilities have the right to vote unless the chief administrative officer determines a need to restrict due to medical welfare, patient is adjudicated incompetent and finding not reversed, or other statute or rule restricts the right, but not solely on admission to a psychiatric hospital or residential care facility. ME. REV. STAT. ANN. tit. 34-B, § 3803(1)(A-C).	Persons with an intellectual disability or autism may not be denied the right to vote. ME. REV. STAT. ANN. tit. 34-B, § 5605(5).
MARYLAND	State may regulate or prohibit the right to vote of a person under care or guardianship for mental		A person may not lose the right to vote solely	A person may not lose the right to vote

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	disability. MD. CONST. art 1, § 4. Individual not qualified to be a registered voter if under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process. MD. CODE ANN. ELEC. LAW § 3-102(b)(2).		because of residency in a facility or a Veterans' Administration hospital for a mental disorder. MD. CODE ANN. HEALTH-GEN. § 10-704.	because he or she has or is receiving services for a developmental disability. MD. CODE ANN. HEALTH-GEN. § 7-1004.
MASSACHUSETTS	Every citizen...excepting persons under guardianship... shall have a right to vote in such election. MASS. CONST. art. 3. Sec of State opinion interpreting above provision to require a specific finding of incompetence to vote before disenfranchising someone. Sec. of the Cmmw. of Mass., Elections Div., See Persons Subject to Guardianships That Do Not Specifically Forbid Voting Are Eligible Voters, 41 Pub. Rec. 5 (Jan. 1991). Every citizen...not being a person under guardianship...may have his name entered on the list of voters in such city or town, and may vote therein in any such election. MASS. ANN. LAWS ch. 51, § 1.		No person shall be deprived of the right to vote solely on the basis of admission or commitment to a mental health facility. 104 CODE MASS. REG. 27.13; Boyd v. Board of Registrars of Voters, 334 N.E.2d 629 (Mass. 1975).	
MICHIGAN	Legislature may exclude persons based on mental incompetence. MICH. CONST. art. 2, § 2. No disqualification electoral statute.			
MINNESOTA	Persons under guardianship, "insane," or not mentally competent are not entitled or permitted to vote. MINN. CONST. art. 7, § 1. Read narrowly to avoid unconstitutional burden on right to vote by *Minnesota Voters Alliance v. Ritchie*, 890 F. Supp.2d 1106, 1117 (D. Minn. 2012), *aff'd*, 720 F.3d 1029 (8th Cir. 2013). Not eligible to vote if under guardianship in which the court order revokes the right to vote or adjudicated legally incompetent. MINN. STAT. § 201.014(2)(b) & (c).	Unless otherwise ordered by the court, the ward under guardianship retains the right to vote. MINN. STAT. § 524.5-313(c)(8). Each year, within 30 days after the anniversary date of an appointment, a guardian shall send or deliver to the ward a notice ... of the status of the ward's right to vote. MINN. STAT. § 524.5-310(g).	Persons may not be deprived of the right to vote because of commitment or treatment. Commitment or treatment of any patient is not a judicial determination of legal incompetency. MINN. STAT. § 253B.23(2)(a).	Appointment of the commissioner as conservator shall not constitute a judicial finding that the developmentally disabled person is legally incompetent except for the restrictions which the conservatorship places on the conservatee. The appointment of

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
				a conservator shall not deprive the conservatee of the right to vote. MINN. STAT. § 252A.12.
MISSISSIPPI	"Idiots" and "insane" persons are not qualified electors. MISS. CONST. art. 12, § 241. Persons adjudicated to be "non compos mentis" shall not be entitled or permitted to vote. MISS. CODE ANN. § 23-15-11.		Admission or commitment to a treatment facility is not an adjudication of legal incompetency and does not deprive the right to vote. MISS. CODE ANN. § 41-21-101.	Admission or commitment to a treatment facility is not an adjudication of legal incompetency and does not deprive the right to vote. MISS. CODE ANN. § 41-21-101.
MISSOURI	No person under guardianship of estate or person because of mental incapacity, where said guardian was appointed by a court of competent jurisdiction, nor person involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction can vote. MO. CONST. art. VIII, § 2. No person adjudicated incapacitated is entitled to vote. MO. REV. STAT. § 115.133(2). Person who had been committed to mental hospital many years earlier but did not have a guardian was not disqualified under the constitutional provision. New v. Corrough, 370 S.W.2d 323 (Mo. 1963).			
MONTANA	Not a qualified elector if of "unsound mind," as determined by a court. MONT. CONST. art 4, § 2. No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law. MONT. CODE ANN. § 13-1-111(3).			
NEBRASKA	Not qualified to vote if "non compos mentis," unless restored to civil rights. NE. CONST. art. 6, § 2. No person is qualified to vote if "non compos mentis," unless restored to civil rights. NEB. REV. STAT. § 32-313(1). "Non compos mentis" defined as "mentally			

STATE	State Constitution / Electoral Statutes: Persons Disqualified	Guardianship / Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities / Mental Retardation Statutes
	incompetent" in voter registration materials. NEB. REV. STAT. § 32-312. ("Mentally incompetent" is not synonymous with being under guardianship; the latter is imposed in Nebraska based on "mental incapacity").			
NEVADA	No person who has been adjudicated incompetent, unless restored to legal capacity, shall be entitled to the privilege of elector. NV. CONST. art. 2, § 1. The county clerk shall cancel the voter registration if the county clerk is provided a certified copy of a court order stating that the court specifically finds by clear and convincing evidence that the person registered lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process. NV. REV. STAT. ANN § 293.540(2).		No person admitted to a public or private mental health facility or to a program of community-based or outpatient services pursuant to this chapter shall, by reason of such admission, be denied the right to vote, unless specifically adjudicated incompetent (and not restored to legal capacity). NV. REV. STAT. ANN. § 433A.460. The medical director of a division mental health facility shall evaluate each consumer of services of that facility who has been adjudicated as a person with mental incompetence no less than once every six months to determine if there is sufficient cause to believe that such consumer remains unable to vote. NV. REV. STAT. ANN. § 433A.480(1).	
NEW HAMPSHIRE	No Constitutional disqualification provision. No disqualification electoral statute.		No person shall be deemed incompetent to vote or to exercise any other civil right	No person shall be deemed incompetent to vote solely by reason of his or her

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			solely by reason of that person's admission to the mental health services system. N.H. REV. STAT. ANN. § 135-C:56(II).	developmental disability or of his or her participation in the service delivery system, nor shall department rules restrict such rights. N.H. REV. STAT. ANN. § 171-A:14(I).
NEW JERSEY	On Nov. 6, 2007, NJ voters approved constitutional amendment. New language states: No person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage. Previous language stated: No person shall have the right of suffrage who is an "idiot" or "insane" person. N.J. CONST. art 2, § 1, ¶ 6. No person shall have the right of suffrage who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting. N.J. STAT. ANN. § 19:4-1(1).		Subject to any other provisions of law and the Constitution of New Jersey and the United States, no patient shall be deprived of the right to vote solely by reason of receiving treatment nor shall the treatment modify or vary any legal or civil right of any patient, including, but not limited to, the right to register for and to vote at elections. N.J. STAT. ANN. § 30:4-24.2(a). Cannot be presumed incompetent because has been examined or treated for mental illness. §30:4-24.2(c) Persons receiving in-patient assessment or treatment may register and vote subject to laws and Constitution, nor shall the treatment modify or vary any legal or	No admission or residency at a facility or receipt any service for persons with developmental disabilities shall deprive persons of their right to register and vote. N.J. STAT. ANN. § 30:6D-4(a). Determination of eligibility for MR services does not create presumption of incompetency; cannot revoke right to vote based solely on placement at residential facility. Carroll v. Cobb, 354 A.2d 355 (N.J. Super. Ct. 1976).

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			civil right of any patient, including, but not limited to, the right to register for and to vote at elections. N.J. STAT. ANN. § 30:4-27.11c(a).	
NEW MEXICO	Individuals who are unable to mark a ballot and concurrently also unable to communicate their voting preference cannot vote. N.M. CONST. art. 7, § 1. As used in the Election Code, "qualified elector" means any resident of the state who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States. N.M. STAT. ANN. § 1-1-4. For purposes of cancellation of registration, the legal insanity of a voter shall be ascertained by comparison of registration records with the certification of legal insanity filed by the court with the county clerk. N.M. STAT. ANN. § 1-4-26(A). When in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico, it shall file a certification of such fact with the county clerk of the county wherein the individual is registered. N.M. STAT. ANN. § 1-4-26(B). [NOTE: This statutory provision references a former state constitutional provision barring voting by "idiots" and "insane people." That provision was removed by a constitutional amendment providing that individuals are not competent to vote if they cannot mark a ballot and cannot communicate their voting preference. On Sept. 14, 2016, the New Mexico Supreme Court made that amendment effective.] Individuals with mental retardation "who can understand the nature of their actions should be allowed to register and vote." 1974 Op. An,	An incapacitated person for whom a guardian has been appointed retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court. N.M. STAT. ANN. § 45-5-301.1. The same reservation of rights is specified for limited guardianships. N.M. STAT. ANN. § 45-5-312(A).		

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	Gen. No. 74 35.			
NEW YORK	Right of suffrage and registration of voters laws shall be established by law. N.Y. CONST. ART. 2, § 5. No person who has been adjudged incompetent has the right to vote, unless later adjudged competent. N.Y. ELEC. LAW § 5-106(6).		Receipt of services for mental disability shall not deprive persons of the right to register and vote if otherwise qualified, or otherwise modify or vary such right. N.Y. MENT. HYG. LAW § 33.01.	Receipt of services for mental disability shall not deprive persons of the right to register and vote if otherwise qualified, or otherwise modify or vary such right. N.Y. MENT. HYG. LAW § 33.01. The commissioner shall include in rules and regulations promulgated for community residence a statement of the rights of persons living in such residences which shall include, but not be limited to...the right to vote' and the right to participate in activities that educate persons with developmental disabilities in their civic responsibilities. N.Y. MENT. HYG. LAW § 41.41.
NORTH CAROLINA	No Constitutional disqualification provision. However, the Constitution does provide that every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. N.C. Const. art VI, § 4 No disqualification election statute.		Persons who are adult clients at a facility have the right to register and vote unless that right has been precluded by an unrevoked adjudication of incompetency. N.C. GEN. STAT. § 122C-58.	Persons who are adult clients at a facility have the right to register and vote unless that right has been precluded by an unrevoked adjudication of incompetency. N.C. GEN.

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				STAT. § 122C-58.
NORTH DAKOTA	No person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. N.D. CONST. art. 2, § 2.	Except upon specific findings of the court, no ward may be deprived of the right to vote. N.D. CENT. CODE § 30.1-28- 04(3).	Unless specifically restricted in writing every 14 days by a patient's treating physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist, all patients in treatment facilities retain their "civil rights." N.D. CENT. CODE §§ 25-03.1-40(11)-25.03.1-41.	Developmentally disabled persons may not be presumed to be incompetent and may not be deprived of the right to vote solely because of admission to or residency at an institution or facility, or solely because of receipt of services. N.D. CENT. CODE § 25-01.2-03(1).
OHIO	No "idiot" or "insane person" shall be entitled to the privileges of an elector. OHIO CONST. art 5, § 6. Voter registration is cancelled if the person is adjudicated incompetent for the purpose of voting, OHIO REV. CODE ANN. § 3503.18(B).		Persons admitted to a hospital or otherwise taken into custody, voluntarily or involuntarily, may vote unless adjudicated incompetent, or unless the Revised Code specifically denies the right to vote. OHIO REV. CODE ANN. § 5122.301.	Persons with mental retardation or developmental disabilities have the right to participate in the political process. OHIO REV. CODE ANN. § 5123.62(W).
OKLAHOMA	Legislature may prescribe exceptions for qualification. OKLA. CONST. art. 3, § 1. Ineligible to vote if adjudicated an incapacitated person under Guardianship and Conservatorship Act, unless adjudicated no longer incapacitated; or adjudicated partially incapacitated person and right to vote restricted. OKLA. STAT. TIT. 26, § 4-101(2). The registration of any registered voter may be cancelled upon judicial determination of mental incapacitation under Title 30 of the Oklahoma Statutes. OKLA. STAT. ANN. TIT. 26 § 4-120.	Court shall make a specific determination of the voting capacity of a person under guardianship. OKLA. STAT. ANN. TIT. 30 § 3-113(B)(1).		
OREGON	A person "suffering from a mental		Every person	While receiving

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	handicap" is entitled to the full rights of an elector, if otherwise qualified, unless the person has been adjudicated incompetent to vote as provided by law. OR. CONST. art. 2, § 3. No disqualification statute.		with mental illness committed to the Oregon Health Authority shall have the right to vote unless the person has been adjudicated incompetent and has not been restored to legal capacity. OR. Rev. STAT. § 426.385(1)(o). While receiving mental health services or developmental disability services, every person shall have the right to be encouraged and assisted in exercising all legal rights. The rights described in this section are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including the right to vote. OR. Rev. STAT. § 430.210(2).	mental health services or developmental disability services, every person shall have the right to be encouraged and assisted in exercising all legal rights. The rights described in this section are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including the right to vote. OR. Rev. STAT. § 430.210(2).
PENNSYLVANIA	No Constitutional disqualification provision. Subject to state law, anyone who is over twenty one, has been a citizen of the United States for at least one month, and has resided in the state and election district for the specified time may vote. PA. CONST. Art. 7, § 1. No disqualification election statute. A person who resides at an institution for the mentally ill or the mentally retarded can choose to vote either in the district in which the institution is located or where they were registered to vote or resided before they were institutionalized. PENN. CONSOL.			

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	STAT. ANN. TIT. 25 § 1302(a)(4). A mentally retarded or mentally ill person cannot be disenfranchised solely because he or she is undergoing treatment for a mental disability or is known to reside in an institution for the treatment of the mentally disabled. 1973 Op.Atty.Gen. Pa. No. 48. A person who resides at institution for the mentally ill or mentally retarded in the state cannot lawfully be denied the right to register as a qualified elector in the voting district in which the institution is located. 1973 Op.Atty.Gen. No. 48.			
PUERTO RICO	Every person over 18 can vote if he or she fulfills the other conditions determined by law. No person shall be deprived of the right to vote because he does not know how to read or write or does not own property. PR Const. Art. 6, § 4. Any citizen who has not been declared mentally incompetent by a Court of Law shall be a voter in Puerto Rico. 16 LPRA §4063. Any person who is declared mentally incompetent by a Court of Law shall not be entitled to exercise his/her right to vote, even if he/she is a qualified voter. 16 LPRA § 4065. The Courts Administrator shall send to the Commission, on a monthly basis during an election year and on a quarterly basis during years in which elections are not held, a list of those persons who have been legally declared as mentally incompetent. 16 LPRA § 4081.		Any adult who receives mental health services shall continue to enjoy his/her rights, benefits and privileges pursuant to the Constitution of the United States of America and the Constitution of Puerto Rico, as well as state and federal laws, while receiving evaluation or treatment and rehabilitation, and during the process of admission, transfer or release in any providing institution. 24 LPRA § 6154a	
RHODE ISLAND	No person who has been adjudicated "non compos mentis" shall be allowed to vote. R.I. CONST. art. 2, § 1. Qualified voter defined as someone who is not otherwise disqualified by law. R.I. GEN. LAWS § 17-1-2(13).		Patients admitted to a facility shall not be deprived of the right to vote and participate in political activity solely by reason of such admission. R.I. GEN. LAWS § 40.1-5-5(f)(10).	Community residence resident will not be deprived of right to vote solely by reason of admission. Each resident has right to vote and

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				participate in political activity, including reasonable assistance when desired in registration and voting. RI. GEN. LAWS § 40.1-24.5-5.
SOUTH CAROLINA	General Assembly shall establish disqualifications for voting by reason of mental incompetence and may provide for the removal of such disqualifications. S.C. CONST. art. 2, § 7. A person is disqualified from registering or voting if mentally incompetent as adjudicated by a court of competent jurisdiction. S.C. CODE ANN. § 7-5- 120(B)(1).		Unless a patient has been adjudicated incompetent, no patient may be denied the right to be a qualified elector if otherwise qualified. The county board of voter registration in counties with department facilities reasonably shall assist patients who express a desire to vote to: (a) obtain voter registration forms, applications for absentee ballots, and absentee ballots; (b) comply with other requirements which are prerequisite for voting; (c) vote by absentee ballot if necessary. S.C. CODE. ANN. § 44-22-80(7).	Clients of department facilities with intellectual disabilities have the right to be a qualified elector if otherwise qualified. The county board of voter registration in counties with department facilities reasonably shall assist clients who express a desire to vote to: (a) obtain voter registration forms, applications for absentee ballots, and absentee ballots; (b) comply with other requirements which are prerequisite for voting; (c) vote by absentee ballot if necessary. S.C. CODE ANN. § 44-26-90(7).
SOUTH DAKOTA	Not entitled to vote if disqualified by law for mental incompetence. S.D. CONST. art. 7, § 2. Names of persons declared mentally incompetent shall be removed from the voter rolls each month. S.D. CODIFIED LAWS §	The appointment of a guardian or conservator of a protected person does not constitute a general finding of legal incompetence unless the court so orders, and the protected person shall otherwise retain all rights which have not been granted to the guardian or conservator. S.D. CODIFIED LAWS	Notwithstanding any other provision of law, no person may be deemed incompetent to register and vote solely by reason	No person is incompetent to register and vote solely by reason of a diagnosis of a developmental disability, or by

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	12-4-18.	§ 29A-5-118. [**Note**: Effective until July 1, 2016; beginning July 1, 2016, this section has been amended to read as follows: The appointment of a guardian or conservator of a protected person does not constitute a general finding of legal incompetence unless the court so orders, and the protected person shall otherwise retain all rights which have not been granted to the guardian or conservator, with the exception of the ability to create an agency and confer authority on another person to do any act that the protected person might do, pursuant to Section 59-2-1.]	of his detention, admission, or commitment under this title. S.D. CODIFIED LAWS § 27A-12-1.2.	reason of a commitment by a county review board. S.D. CODIFIED LAWS § 27B-7-44 (replaced old language in 2000 under SL 2000, ch 131, § 76).
TENNESSEE	No Constitutional disqualification provision. No disqualification election statute.	May remove the right to vote if placed under a conservatorship. Petition for appointment of a conservator should include the rights that will be removed. Tenn. Code Ann. § 34-3-104(8).	No person with mental illness, serious emotional disturbance, or developmental disability hospitalized or admitted, whether voluntarily or involuntarily, or ordered to participate in non-residential treatment or service under this title shall, solely by reason of such hospitalization, admission, or order be denied the right to vote, unless (1) the service recipient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity; or (2) the denial is authorized by state or federal statute. TENN. CODE ANN. § 33-3- 102(a).	No person with mental illness, serious emotional disturbance, or developmental disability hospitalized or admitted, whether voluntarily or involuntarily, or ordered to participate in non-residential treatment or service under this title shall, solely by reason of such hospitalization, admission, or order be denied the right to vote, unless (1) the service recipient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity; or (2) the denial is authorized by state or federal statute. TENN. CODE ANN. § 33-3-102(a).

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TEXAS	Persons determined mentally incompetent by a court shall not be allowed to vote, subject to such exceptions as the Legislature may make. TEX. CONST. art. 6, § 1. A person who has been determined totally mentally incapacitated or partially mentally incapacitated without the right to vote by a final judgment of a court exercising probate jurisdiction is not a qualified voter. TEX. ELEC. CODE ANN. Tit. 2, § 11.002(a)(3). To be eligible to register as a voter, must not have been determined totally mentally incapacitated or partially mentally incapacitated without the right to vote by a final judgment of a court exercising probate jurisdiction. TEX. ELEC. CODE ANN. Tit. 2, § 13.001(a)(3).		Patients have the right to register and vote unless specific law limits rights under a special procedure. TEX. HEALTH & SAFETY CODE ANN. Tit. 7, § 576.001(b)(1).	Persons with an intellectual disability have the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state. TEX. HEALTH & SAFETY CODE ANN. Tit. 7, § 592.011. Persons with an intellectual disability have the right to a presumption of competency. TEX HEALTH & SAFETY CODE ANN. Tit. 7, § 592.021.
UTAH	A person who is mentally incompetent may not be permitted to vote, unless right to vote restored as provided by statute. UTAH CONST. art. 4, § 6. No disqualification election statute.		Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to: exercise...the right to...vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity. UTAH CODE ANN. § 62A-15-641(1)(c). When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be	Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to: exercise...the right to...vote, unless the patient has been adjudicated to be Incompetent and has not been restored to legal capacity. UTAH CODE ANN. § 62A-15-641(1)(c).

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			entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days. UTAH CODE ANN. § 62A-15-641 (2).	
VERMONT	To be entitled to the privilege of voting, persons must be of "a quiet and peaceable behavior." VT. CONST. ch. II, § 42. No disqualifying election statute. Any person over 18 who is a citizen of the United States and a resident of the state of Vermont and has taken the voter's oath may vote. VT. STAT. ANN. TIT. 17 § 2121	A person under guardianship retains the same legal and civil rights guaranteed to all Vermont residents under the Vermont and United States Constitutions and all the laws and regulations of Vermont and the United States. VT. STAT. ANN. TIT. 14 § 3068a	Subject to the general rules and regulations of the hospital and except to the extent that the head of the hospital determines that it is necessary for the medical welfare or needs of the patient or the hospital to impose restrictions, every patient has the right to vote on his own initiative, unless he has been adjudicated incompetent and has not been restored to legal capacity. VT. STAT. ANN. TIT. 18 § 7705(a)(3)	
VIRGINIA	As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished. VA. CONST. art. 2, § 1. No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law. VA. CODE ANN. §24.2-101. Election laws referring to "mentally incompetent" and "incapacitated" as standards for disqualifying person from voting are not in conflict. Op. Att'y Gen. of Va, 01-102, Dec. 10, 2001.			

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WASHINGTON	All persons while they are judicially declared mentally incompetent are excluded from the elective franchise. WA. CONST. art. 6, § 3. Upon receiving official notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote, under chapter 11.88 RCW, if the person is a registered voter in the county, the county auditor shall cancel the person's voter registration. WASH. REV. CODE ANN. § 29A.08.515.	Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor. RCWA 11.88.010 (5).	No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, under this chapter or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW. WASH. REV. CODE ANN. §71.05.360(1)(b).	The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law. WASH. REV. CODE ANN. §71A.10.030(1). The secretary's determination under RCW 71A.16.040 that a person is eligible for services under this title shall not deprive the person of any civil rights or privileges. The secretary's determination alone shall not constitute cause to declare the person to be legally incompetent. WASH. REV. CODE ANN. §71A.10.030(2).
WEST VIRGINIA	No person who has been declared mentally incompetent by a court of competent jurisdiction shall be permitted to vote while such disability continues. W. VA. CONST. art. 4, § 1. No person who has been declared mentally incompetent by a court of competent jurisdiction shall be permitted to vote while such disability continues, unless otherwise specifically provided by federal or state code. W. VA. CODE § 3-1-3. Any person who has been declared		No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but	No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary any civil

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	mentally incompetent by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that disability continues. W. VA. CODE § 3-2-2(b). If adjudicated incompetent, a person is automatically denied the right to vote. No specific decision regarding capacity for voting is required. 58 Op. Atty. Gen. W. Va. 220, Mar. 28, 1980.		not limited to, the right to register and vote, but a person who has been adjudged incompetent pursuant to article eleven (§§ 27-11-1 et seq.)[Note: Art. 11 repealed] of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity. W. VA. CODE §27- 5-9(a). W. VA. CODE § 27-5-9(a) does not conflict with the constitutional provision in art. 4, § 1. 58 Op. Atty. Gen. W. Va. 220, Mar. 28, 1980.	right of the person, including, but not limited to, the right to register and vote, but a person who has been adjudged incompetent pursuant to article eleven (§§ 27-11-1 et seq.)[Note: Art. 11 repealed] of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity. W. VA. CODE § 27- 5-9(a).
WISCONSIN	Laws may be enacted excluding from the right of suffrage persons adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside. WIS. CONST. art. 3, §2(4)(b). Any person who is incapable of understanding the objective of the elective process or who is under guardianship may not vote, unless the court has determined that the person is competent to exercise the right to vote. WIS. STAT. § 6.03(1)(a). No person may be denied the right to register to vote or the	The court may, as part of a proceeding under WIS. STAT. ANN. § 54.44 in which an individual is found incompetent and a guardian is appointed, declare that the individual has incapacity to exercise the right to register to vote or to vote in an election, if the court finds that the individual is incapable of understanding the objective of the elective process. Also, in accordance with section 6.03(3), any elector of a municipality may petition the circuit court for a determination that an individual residing in the municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the	A person is not deemed incompetent to vote solely based on admission to a facility under the developmental disabilities and mental health chapter. WIS. STAT. ANN. § 51.59(1).	A person is not deemed incompetent to vote solely based on admission to a facility under the developmental disabilities and mental health chapter. WIS. STAT. ANN. § 51.59(1).

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	right to vote by reason that the person is alleged to be incapable of understanding the objective of the elective process unless the person has been adjudicated incompetent in this state. If a determination of incompetency of the person has already been made, or if a determination of limited incompetency has been made that does not include a specific finding that the subject is competent to exercise the right to vote, and a guardian has been appointed as a result of any such determination, then no determination of incapacity of understanding the objective of the elective process is required unless the guardianship is terminated or modified under section 54.64. WIS. STAT. § 6.03(3).	procedures specified in this paragraph. If a petition is filed under this subd. 1. g., the finding of the court shall be limited to a determination as to voting eligibility. WIS. STAT. ANN. § 54.25(2)(c)(1)(g).		
WYOMING	All persons adjudicated to be mentally incompetent, unless restored to civil rights, are excluded from the elective franchise. WYO. CONST. art. 6 § 6. No person is a qualified elector who is a currently adjudicated mentally incompetent person and his civil or voting rights have not been restored. WYO. STAT. ANN. § 22-1-102(a)(xxvi).			

People with Mental Disabilities Have the Right to Vote

Most people want to vote, including voters with mental disabilities. If you are a voter with a mental disability, you should know your rights. Knowing your rights will help make sure you can vote. Take this piece of paper with you when you go to vote so you will know what your rights are. You can also show this to others if you run into any problems. This paper tells lawyers and poll workers where to find the laws that protect your right to vote!

You do have the right to vote!

- If you are a person with a mental disability and understand what it means to vote, federal law protects your right to vote.
  - The laws that protect that right: The Constitution and the Americans with Disabilities Act, 42 U.S.C. § 12132; *Doe v. Rowe*, 156 F.Supp.2d 35 (D. Me. 2001).

You have the right to get help from a person you choose.

- If you can't read or need help voting because of your disability, you can have someone help you vote.
- You can bring a friend, family member or someone else you trust to help you.
- You can ask the poll worker to help you if you didn't bring anyone with you.
  - The law that gives you that right: The Voting Rights Act, 42 U.S.C. §§1973aa-6; The Americans with Disabilities Act, 42 U.S.C. § 12132

If you have a problem, you can get help by calling 1-866-OUR-VOTE

- Lawyers are available to give voters with disabilities and other voters advice and help with voting problems, so call 1-866-OUR-VOTE (1-866- 687-8683).

The law says everyone gets to cast a ballot, so don't leave without voting!

- Even if someone says you cannot vote, the law says the poll worker must allow you to vote a special ballot called a Provisional Ballot.
- Later, an election worker will decide whether you are allowed to vote in the election. If you are, your vote will be counted.
  - The law that gives you that right: The Help America Vote Act, 42 U.S.C. § 15482

For more information about the rights of voters with disabilities visit www.ndrn.org.

Providing Help to Voters with Disabilities: What You Should Know

Voting is a fundamental right!

Voters with disabilities have the right to assistance in voting.

Voters with mental or physical disabilities are entitled to receive any assistance they need to cast their ballots.

Who may assist a voter?

Federal law gives voters with disabilities the right to decide whether to get help in casting a ballot and who will provide it.

- ❒ Voters can choose a poll worker, friend, family member, caregiver, assisted living provider, facility staff person or almost anyone else.
- ❒ The only people who may not assist a voter are the voter's employer or an agent of that employer, or a union officer or agent of the voter's union.

What can helpers do to help a person vote?

- ❒ First, an assistance provider—helper—should ask the voter what choice he or she wants to make. The helper must never make assumptions about how a person wants to vote!
- ❒ The helper must respect the voter's privacy at all times during voting.
- ❒ The helper should understand the instructions on how to cast a ballot and be prepared to explain them to the voter, and/or demonstrate the voting process.
- ❒ The helper should be prepared to read or explain all ballot choices or questions in a language the voter understands.
- ❒ The helper may mark a ballot for a voter with a disability only if the voter has directed him or her to do so.
- ❒ After the ballot has been completed, the helper should make sure that it accurately reflects the voter's choices. The helper should offer to correct any mistakes and to check the ballot for any election contests or questions that may have been missed.

What actions would not be appropriate in helping?

- × Making decisions for the voter—for example, marking or changing a ballot to reflect a choice other than a choice expressed by the voter.
- × Communicating with the voter in a way that makes the voter feel forced to make certain choices.
- × Pressuring the voter to vote for a particular candidate or in a certain way.
- × Withholding information or giving false information to a voter.
- × Pressuring the voter to cast a vote on every measure or candidate. Everyone has the right to choose whether or not to vote on each contest.
- × Revealing to others how the voter voted. Respect the voter's right to privacy!

What can you do if you have problems?

Call Election Protection at 1-866-OUR-VOTE (1-866-687-8683).