



REMOVING VOTING BARRIERS FOR CITIZENS WITH MENTAL DISABILITIES

Voting access is a problem all voters with disabilities face. Voters with mental disabilities, however, face a particularly insidious barrier to equal participation in the electoral process -- discriminatory rules and procedures applied only to them. These barriers take the form of state laws and election-day practices, the latter imposed by overzealous and ill-informed election workers, poll watchers, and service providers acting beyond the scope of election law. For example, urged on by poll watchers, election workers sometimes require voters with mental disabilities to prove they are well-informed about the election process, that they understand the issues raised in the election, and have good reasons for their choices. The rationale for these laws and practices is that voters with mental disabilities do not understand the process or issues well enough to cast legitimate votes and are particularly susceptible to manipulation. Of course, many voters without mental disabilities cast votes without being informed about the issues or process; these voters are free to exercise their franchise with little or no understanding of the issues or process.

What is a mental disability?

- **Mental Disabilities** affect cognitive and/or learning abilities and can affect understanding, communication, or behavior. The term mental disability is used generally to describe two different types of disabilities: cognitive disabilities and mental illness.
- **Cognitive or Intellectual Disabilities** are any disabilities that affect mental processes, such as genetic disorders (e.g., Down Syndrome), traumatic brain injuries (e.g., shaken baby syndrome), or neurological impairments (e.g., autism). Some, but not all, cognitive disabilities are also characterized by significant limitation in adaptive behavior.
- **Mental Illness or Psychiatric Disabilities** are health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and/or impaired functioning. Those with mental illnesses are usually of normal intelligence; however, mental illness can profoundly disrupt a person's thinking, feeling, moods, ability to relate to others, and capacity for coping with the demands of life. Mental illnesses include, but are not limited to, schizophrenia, bipolar disorder, obsessive-compulsive disorder, severe anxiety disorders, and borderline personality disorder.

What are some common barriers to voting for people with mental disabilities?

- **Voting Exclusions.** State laws or local policies or practices that bar citizens with mental disabilities from voting, regardless of their ability to make a choice, may violate Title II of the Americans with Disabilities Act (ADA).¹ For example, about 25 states have a blanket bar on voting by anyone under guardianship.² Advocates should look both at the language of statutory and constitutional exclusions and at how jurisdictions enforce that language in practice. Advocates have challenged some of these blanket prohibitions on voting for individuals with mental disabilities. For example, in 2001, a federal district court struck down constitutional and statutory provisions in Maine prohibiting voters under guardianship from voting, declaring the provisions to violate both the ADA and the Equal Protection Clause of the U.S. Constitution.³
- **Voting Challenges.** Even where the laws themselves do not deny voting rights, the actions of election officials, poll watchers, or others often deprive individuals with mental disabilities their right to vote. Before the 2004 election, the head of the Republican Party in Cuyahoga County, Ohio, announced that they were prepared to challenge anyone with a mental disability that came to the polling place without a guardian.⁴ Even though there was no legal merit to the threat -- most people with mental disabilities do not have guardians, and no law requires voters that do have guardians to have them present to exercise their franchise -- such challenges can have a chilling effect and poll workers often misapply election law to the disadvantage of voters with disabilities.
- **Voting Tests.** Nursing homes, hospitals, group homes, care providers, and poll workers, frequently bar people with mental disabilities from voting based on inappropriate criteria. For example, group home providers required 30 U.S. citizens with cognitive disabilities that were part of a community-based program in Arkansas to attend citizenship classes and pass the course's final exam in order to be allowed to register to vote.⁵ Anecdotes like these and calls by various professionals for instituting voting tests to residents in nursing facilities mean that advocates must be vigilant to make certain that modern-day literacy tests are not a reality for any voters.⁶
- **Denial of Effective Assistance.** Some voters with mental disabilities may need assistance reading a ballot or going through the voting process and are entitled to voting assistance from persons of their choice and to reasonable accommodations that make governmental programs accessible to them.⁷ Often, however, poll workers or others deny individuals

¹ Bazelon Center for Mental Health Law, *Legal Strategies to Expand the Voting Rights of Citizens with Disabilities* (August 14, 2001) available at <http://www.bazelon.org/issues/voting/legalstrategies.htm>.

² *State Laws Affecting the Voting Rights of People with Mental Disabilities* available at <http://www.napas.org/Voting/MD-StateVotingLaws%5BFinal%5D%5BNAPAS%5D.pdf>

³ *Doe v. Rowe*, 156 F.Supp.2d 35 (D. ME. 2001). A copy of the court's order is available at

http://www.med.uscourts.gov/opinions/Singal/2001/GZS_08092001_1-00cv206_DOE_v_ROWWE.pdf

⁴ Michael Moss, *Big G.O.P. Bid to Challenge Voters at Polls in Key State*, New York Times, Oct. 23, 2004 at Section A , Page 1 , Column 5.

⁵ *2003 Annual Report of Protection & Advocacy Systems*, at 38-39 (2004) available at <http://www.napas.org/I-6/2004Report.pdf>.

⁶ Jason H. Karlawish, MD, ET AL., *Addressing the Ethical Legal and Social Issues Raised by Voting by Persons with Dementia*, JAMA, Vol. 292, No. 11 at 1345-1350 (2004).

⁷ Voting Rights Act, 42 U.S.C. §§1973aa-6 ("Any voter who requires assistance to vote by reason of blindness, disability . . . may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent

the right to get assistance from a person of their choice and insist that an election worker must assist the voter. Because some mental disabilities affect a voter's ability to deal with a new or stressful environment, some voters may require assistance from someone with whom they are familiar for the assistance to be effective.

- **Inaccessible Language.** Many people with mental disabilities may have difficulty understanding complex language. The use of complex language and concepts can make the voting process inaccessible to these individuals. Voting literature and ballot language should use plain English and clear wording. Also, icons and pictures should accompany text whenever possible.

What are some solutions to these barriers?

- **Education.** Education and training of election officials are paramount in ensuring election access to voters with mental disabilities. Poll workers need to understand the rights of voters with mental disabilities and the limitations of excluding these individuals from the voting process. Election officials and state officials must also be encouraged to produce election materials and ballots with language that is accessible to people with mental disabilities and those with low literacy. Finally, it is also very important to make sure that voting rights education is provided to people with mental disabilities, as well as their families and service providers.
- **Legislative initiatives.** State legislative initiatives can reform statutes so that states do not exclude people with mental disabilities from voting merely because they have a disability.
- **Litigation.** Where legislative initiatives cannot be pursued, lawsuits can be brought to challenge overbroad state laws or local policies and practices that disenfranchise voters with mental disabilities.