

[Letterhead of Sender's Organization]

[date], 2016

[Addressee]

Dear **[addressee]**:

I write on behalf of **[Name of Organization]**. **[Description of organization.]** With the November federal elections approaching, we are working to ensure full protection of the voting rights of individuals with mental disabilities, including individuals in psychiatric hospitals, group homes, nursing homes, and other facilities.

We would like to work with you to ensure that people with mental disabilities in **[name of state]** are not unfairly prevented from voting this year. Below we briefly describe situations that have arisen during past elections that raise concerns about the voting rights of persons with mental disabilities, as well as federal laws protecting the right to vote. We hope you will join us in ensuring that no person with a mental disability is unfairly denied this fundamental right in this year's important election.

Examples of Problematic Situations

As you may be aware, people with mental disabilities across the country have been denied the right to vote in a number of ways:

- Election officials in one state 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 later held unconstitutional.
- Election officials in another state 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.
- Election officials in another state required a group of individuals with developmental disabilities who lived in a group home to pass an examination in order to be permitted to vote. This requirement was not imposed on other voters.
- A study of one city's 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. The law of the state does not contain any

voter-competence requirement.

- Before the November 2004 election, a nursing home in another state 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 a disability organization to conduct training on voting rights and assist residents who wished to register to vote.
- Before the November 2004 election, a nursing home resident in a different state 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.
- On Election Day in November 2004, a number of residents of a state psychiatric hospital in another state 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.

Overview of Relevant Federal Protections

The voting rights of people with mental disabilities are protected by the federal Constitution and other federal laws:

1) *The United States Constitution.*

- 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) are likely to violate the Equal Protection Clause and/or the Due Process Clause of the United States Constitution. In most cases, such broad qualifications would not pass constitutional muster because they would disenfranchise many people who have the capacity to vote.¹
- Removal of a person’s right to vote based on such factors as guardianship status or hospitalization may also violate due process if the person is not given notice

¹ See, e.g. *Doe v. Rowe*, 156 F. Supp.2d 35, 51-56 (Maine’s ban on voting by individuals under guardianship by reason of mental illness violated Equal Protection Clause); *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 under guardianship and “adjudged incapacitated” from voting).

that he or she may lose the right to vote and an opportunity to challenge that loss.²

2) *The Americans with Disabilities Act (ADA).*

- Public entities may not exclude qualified voters with disabilities from the voting process.
- 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 likely violate the ADA because they bar voting by people who have the capacity to vote and meet the essential requirements for voting.³
- Under Title II of the ADA, public entities must provide reasonable modifications to voting policies, practices and procedures.

3) *Section 504 of the Rehabilitation Act of 1973.*

- Section 504 of the Rehabilitation Act prohibits disability-based discrimination in any program or activity that receives federal financial assistance. Section 504, which contains standards that are substantially similar to those of the ADA, applies to entities that receive federal funding including state and local agencies that operate elections or enforce election laws, government-operated facilities providing services to people with disabilities, private service providers and federally operated facilities providing services to individuals with disabilities.

4) *Help America Vote Act of 2002 (HAVA).*

- HAVA set new standards in federal elections. These standards include ensuring that voting systems are accessible for all voters with disabilities.

² *Rowe*, 156 F.Supp.2d at 47-51 (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 the right to vote).

³ *Rowe*, 156 F.Supp.2d at 58-59. Apart from the ADA, 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 mental retardation did not make individuals ineligible to vote).

- 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.*

- Voting-qualification standards, such as competency tests, that single out individuals or classes of individuals for different treatment violate the VRA. In general, the VRA disapproves of qualification standards or “tests” for voting; any standard or test must be applied to the entire voting populations, and not just people with disabilities.

We hope that the information provided above is helpful to you as you prepare for the November federal elections. We ask to meet with you to discuss how [name of state] will ensure that people with mental disabilities will be able to vote in this election, so that they will not be inappropriately prevented from voting by election officials, poll workers, or the staff at facilities where they may reside. We hope to establish a constructive working relationship with you to help achieve this common goal.

Someone from **[name of organization]** will contact you shortly to schedule a meeting with you. In the meantime, please feel free to contact me at **[phone number]** or **[email address]** if you have any questions relating to this letter or if you would like to receive additional materials about the voting rights of persons with mental disabilities.

I look forward to your prompt response.

Sincerely,

[]
[Job Title]