VOTE

IT'S YOUR RIGHT

A GUIDE TO THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

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Introduction

Voting is a fundamental right in American society—the foundation of our democracy. By expressing our views through voting, we can help ensure that our government develops and implements good policies and protects our civil rights. And every vote counts. Indeed, sometimes elections are decided by the smallest of margins. For example, 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. Sometimes state or local elections are won or lost by just a handful of votes.

Voting is as important to people with mental disabilities as it is to everyone else. People with mental disabilities should be able to express their preferences among candidates and on issues – 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—including people with mental health disabilities, autistic people, and people with intellectual disabilities. It is designed for use by people with disabilities, advocates, and lawyers. Following is an overview of what is in the guide:

Section I of the guide explains how people with mental disabilities sometimes lose the right to vote.

Section II of the guide is focused on advocacy strategies, including strategies for keeping or restoring the right to vote and for securing voter assistance. It also provides information to help people understand their rights under voter identification laws and voter challenge laws.

Section III of the guide is designed primarily for lawyers and describes the federal and state laws that apply to voting rights of people with disabilities and the claims that may be brought under those laws.

Section IV identifies additional resources on these topics.

Section V provides a state-by state chart of state voter competence laws.

Section VI contains one-page summaries of rights concerning voter assistance for people with disabilities and concerning voter competence requirements.

Linked here are each state's requirements for absentee ballots and voter challenges.

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, https://www.ndrn.org/en/ndrn- member-agencies.html.

I. How Do People with Mental Disabilities Sometimes Lose the Right to Vote?

There are several types of state law requirements or practices that may result in people with mental disabilities—including people with intellectual disabilities, autism, or mental health disabilities—losing their right to vote. A summary of these is below. Each of these is discussed in this guide.

Voter Competence Requirements: Some people may have the right to vote taken away by a court based on a voter competence requirement imposed by state law. Typically this happens when a person is placed under guardianship. In other cases, service providers, poll workers, or others deny people the opportunity to vote based on their own assumptions that the person doesn't have the capacity to vote.

Restrictions on Voter Assistance: Some people may be unable to vote because they cannot get the help they need to vote. While federal laws give people with disabilities the right to assistance with voting, an increasing number of states have passed laws restricting how people can help others to vote.

Voter Identification Requirements: Some people may be unable to vote because they don't have the right type of identification in a state that requires voters to show a photo ID or other form of identification to register or vote.

Voter Challenges: Some people may lose the right to vote because someone challenges their ability to vote.

II. Ensuring that People with Mental Disabilities Can Vote: What You Can Do

There are many steps that may be taken to prevent people with mental disabilities from losing the right to vote or to help them get their voting rights back. For example, people can take action in probate court to avoid losing their voting rights when a guardianship is imposed or, if those rights have already been lost, seek to have the probate court restore them. They can also advocate to change state laws that unduly restrict the right to vote based on disability. And people can sue to challenge state laws or practices that cause them to experience disability-based discrimination in voting.

Legal claims that may be brought to challenge some of the laws and practices described above are discussed in Section III. But many issues can be addressed without resorting to bringing claims in court. This section discusses steps that people with disabilities can take to protect their rights short of bringing legal claims.

Advocating to Keep or Restore the Right to Vote for People Who May Lose it Due to Voter Competence Requirements

People with mental disabilities sometimes lose the right to vote because of state voter competence laws. A majority of states have these laws. They require that people have "mental capacity" or "mental competence" in order to vote. This is typically tied to a person's guardianship status. Guardianship is a process in which a court appoints a person or organization to make certain decisions for another person when it finds that the person lacks the mental capacity to ensure their own health and safety.

Some states' voter competence requirements bar people from voting simply because they are under guardianship, even though guardianship has nothing to do with someone's capacity to understand what it means to vote. Other states bar people from voting if they lack the *specific capacity to vote*—but even in these states, it is generally only people under guardianship who are required to show they have the capacity to vote.

Sometimes people have been denied the right to vote because election officials, poll workers, or service providers improperly make their own decisions that a person is not competent to vote, even in states that do not have a voter competence requirement.

A state-by-state chart of voter competence requirements is included at Section V. You can find specific details about your state's requirements there. Below is an overview of the various types of state voter competence laws, followed by descriptions of how election officials and service providers have sometimes denied people with disabilities the right to vote, regardless of state law, based on their own views that people were not competent to vote.[1]

State Voter Competence Laws

- 14 states have laws that bar voting by individuals who are "under guardianship" or adjudicated "mentally incompetent" or "mentally incapacitated."[2] All of these terms generally mean the same thing.[3] 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. In some of these 14 states, attorney general opinions have interpreted the law more narrowly and permitted voting by individuals under guardianship who have the capacity to vote.

  A judicial finding of incompetence or incapacity generally means that a person cannot make certain decisions necessary to meet their basic needs for food, clothing and shelter due to a disability. For many people, guardianship is imposed based on a course of events at a particular time and remains unchanged after that. 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.

- 21 states and the District of Columbia have laws that bar people under guardianship from voting where a court has determined that an individual specifically lacks the capacity to vote.[4]

- Four states have laws that bar voting by individuals who are "non compos mentis." This term has been interpreted differently from state to state.[5]

- 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.[6] Such laws are rarely enforced because they are virtually impossible to understand and apply.

- Ten states —Colorado, Idaho, Illinois, Indiana, Kansas, 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.[7]

Election Officials Have Sometimes Used Their Own Competence Requirements

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 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.[8] Indeed, many states now have laws specifying that individuals do not lose their right to vote because of their residence in an institution.[9]

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.[10]

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.[11]

Poll workers, temporarily employed by the agency responsible for administering election proceedings, also 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 Have Sometimes Used Their Own Competence Requirements

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.

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.[12]Pennsylvania law does not contain any voter-competence requirement.

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.

Advocating for Your Voting Rights in Guardianship Proceedings

If someone is trying to become your guardian, you should know what having a guardian will mean for your voting rights. You can find this information in the state-by-state chart in Section V.

If your state has a voter competence requirement, it is generally important to address voting in the guardianship proceeding if you want to try to keep your right to vote. In some situations, a person may lose the right to vote *even though the subject of voting was never raised in the guardianship proceeding.*

Even when state law says that no one under guardianship or adjudicated "mentally incompetent" can vote, some courts interpret these laws more narrowly and allow people to keep the right to vote, or have it restored, if they show they are able to vote.[13]

If your state bars voting by some or all people under guardianship, you can ask the judge in the guardianship proceeding to keep your right to vote. Be prepared to show the judge that you are able to vote. Explain your ability to understand what it means to vote and how the voting process works. If possible, have a treating professional confirm this.

If you have already lost the right to vote when you were placed under guardianship, you can always ask the judge to restore it. Even if a court found that you did not have the capacity to vote before, you can provide proof that you have the capacity to vote now.

A detailed toolkit designed to help people with disabilities keep or restore their right to vote in guardianship proceedings is available at https://www.bazelon.org/wp-content/uploads/2022/04/Toolkit-for-Enfranchisement-in-Guardianship-2022-02-08.pdf. This toolkit, issued by the Bazelon Center and National Disability Rights Network, contains suggestions for showing that a person has the capacity to vote as well as sample motions and affidavits that can be presented to a probate court.

If you are seeking to keep your right to vote during a guardianship proceeding or to have it restored, you can try contacting your state protection and advocacy agency for help. A list of state protection and advocacy agencies is at https://www.ndrn.org/about/ndrn-member-agencies/.

Advocating to Change the Voter Competence Standard in Your State

Advocates can work with state legislators and seek to change state laws to eliminate restrictive voter competence standards. Below are some principles that are important for this type of advocacy.

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.[14]

No state subjects voters without disabilities to any type of standard to measure voting capacity. We do not expect people without disabilities to demonstrate the rationale for their votes or their understanding of how the voting process works. Yet many states require people with disabilities to make this type of showing in order to vote, simply because they are under guardianship.

A test to determine voting capacity that is not given to all voters, but only to one group of voters, would function much the way literacy tests were used. As described in Section III, this type of scheme would violate the ADA as well as the Voting Rights Act. Justice Department guidance notes that: "a state may not subject groups of people with disabilities—including individuals who are under guardianship—to a higher standard than that imposed on other voters for demonstrating the capacity to vote."[15]

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, their laws and practices must hold all individuals to the same standard. 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."[16] Five states have adopted this standard or a variant of it.[17]

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.[18] 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.[19] 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.[20]** 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.[21] Of course, the experience of being subjected to voting pressures is not unique to people with disabilities.[22]

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 and similar institutional settings.[23]** 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.[24] 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.[25]

Advocating for the Right to Voter Assistance

People who need help in voting because of a disability have the right to help from a person of their choice.[26] 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.[27]

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 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.[28]

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.[29] 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.[30]

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.[31] They must make reasonable modifications to rules and policies needed to help people with mental disabilities register or vote.[32] 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 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.[33] 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, 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.[34] 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.[35] 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.

A Recent Rise in State Restrictions on Voter Assistance

In recent years, a number of states have passed new laws restricting voter assistance, often

with criminal penalties for violating those restrictions. Those restrictions may make it difficult for people with disabilities to get the help they need to vote—help that they are typically entitled to under federal law. While the federal Voting Rights Act entitles disabled voters to assistance from anyone they choose other than their employer or union, many of the voter assistance restrictions that states have enacted in recent years further limit who can assist voters.

For example, Mississippi banned anyone outside of a voter's immediate family or household from helping to return an absentee ballot.[36] Alabama barred nearly everyone from helping a person with an absentee ballot application, making it a felony punishable by up to 20 years in prison.[37] Ohio made it a felony to help any voter return an absentee ballot unless the helper was a relative or a mail carrier.[38] Texas made it a crime to compensate or receive compensation for helping people vote by mail.[39] Missouri barred individuals from helping more than one disabled voter in each election, unless the person providing assistance is a poll worker or the voter's immediate family member.[40]

If you need assistance with any aspect of voting, it is a good idea to check what your state law says about voter assistance. You can find your state's election website at https://www.usa.gov/state-election-office. Information about legal challenges to state restrictions on voter assistance can be found in Section III of this guide.

If you think that your state may not allow the kind of help you need to vote, you can contact your state protection and advocacy agency. A list of state protection and advocacy agencies is at https://www.ndrn.org/about/ndrn-member-agencies/.

Voter Identification Laws: What You Should Know

Many states now 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 people who cannot afford to pay, 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 September 2026, 36 states ask voters to show photo identification or another form of identification.[41] In 14 of these states, voters without the required 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.[42] In the other 22 states, voters without the required ID can vote if they submit an affidavit or provide additional form of identification or, in some of these states, can vote a provisional ballot to have their eligibility determined without taking any additional action after Election Day.[43]

Some states provide exceptions to their identification requirements—for example, for voters who are indigent (Indiana and Tennessee) or who "have a reasonable impediment" to obtaining a photo ID (Nebraska, North Carolina, and South Carolina).[44]

You can find out what your state requires on the National Conference of State Legislatures' website. The website has a table with specific details of each state's law concerning voter identification. *See Table 2: State-by-State Details of In-Effect Voter Identification Requirements*, at https://www.ncsl.org/elections-and-campaigns/voter-id#table-2.

Section III contains information about legal challenges to voter identification requirements.

Voter Challenges Based on Mental Competence: What You Should Know

Most states' laws allow challenges to a person's eligibility to vote.[45] State law governs who may bring a challenge and what types of evidence must be presented to support a challenge.[46] Some states allow challenges to a person's ability to vote on the basis that the person lacks the mental capacity to vote.

Challenges to people's ability to vote based on an asserted lack of mental capacity are not very common, but have occasionally been brought.

> **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."[47]

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.[48] 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.[49]

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. Those beliefs are false.

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.[50]

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 requirements to vote.[51] Demanding standards of proof may be required.[52] 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.

What to do if your vote is challenged?

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.[53] The provisional ballot will then be counted if it is later determined that the person is eligible to vote.

If you are challenged at the polling place and told you are not eligible to vote based on mental competence or another reason, you should ask to vote a provisional ballot. You can follow up with your state protection and advocacy agency for further help. A list of state protection and advocacy agencies is at https://www.ndrn.org/about/ndrn-member-agencies/.

III. Legal Advocacy: What is 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.[54] 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.[55] The Supreme Court has invalidated numerous discriminatory state voter qualifications as unconstitutional.[56]

States must also comply with federal statutes, which are passed by Congress and apply 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."[57] 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.[58] 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.[59]

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 . . . ."[60] 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.[61]

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.[62]

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."[63] The right to vote is such a fundamental right.[64] 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[65]

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.[66] As the U.S. 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."[67]

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.[68] 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. For example, a state that wishes to use a voter competence requirement cannot take away the right to vote without assessing whether each person has the capacity to vote.[69]

The ADA also bars states from imposing greater burdens on individuals with disabilities to register or vote than it imposes on others.[70] Accordingly, if a state requires voters to demonstrate that they have the mental capacity to vote, it may not apply that requirement *only* to a group of people with disabilities, such as people under guardianship.[71] Instead, it must apply that requirement to all voters.

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.[72]

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.[73] 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.

Similarly, states that have enacted restrictions on who is permitted to assist voters in completing

or returning a ballot may have to make reasonable modifications to those restrictions to ensure that people with disabilities who need assistance have an equal opportunity to vote.[74]

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).[75] These facilities are subject to the same requirements as publicly operated facilities.

3. Section 504 of the Rehabilitation Act[76]

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.[77] It also applies to federal executive branch agencies, such as the Department of Veterans' Affairs.[78] Section 504 generally provides the same rights and remedies as the ADA.[79]

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 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)[80]

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."[81] 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 and Civil Rights Act [82]

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."[83] This means that any test for determining 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 Civil Rights Act of 1964. The Civil Rights Act 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.[84] The Act defines literacy tests to include "any test of the ability to read, write, understand or interpret any matter."[85] A voter competency test is a type of literacy test, and these provisions of the Civil Rights Act 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.[86] One federal appeals court has read Section 208 narrowly to allow states to impose additional restrictions on who can assist voters—that case involved Texas's law banning voter assistance by anyone who is compensated.[87] Another appeals court concluded that Section 208 may not be privately enforced.[88]

6. National Voter Registration Act[89]

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."[90]

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."[91] 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.

Legal Principles Concerning Voter Competence Standards

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.[92] Even state laws disenfranchising "idiots" and "insane" people have been read to require a court finding of incompetence.[93]

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.[94] 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.

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, the Americans with Disabilities Act, and Section 504[95] 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 may 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. Accordingly they may violate the Americans with Disabilities Act and Section 504.[96]

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.[97]

Legal Principles Concerning Voter Assistance

As described above, the Voting Rights Act affords a very clear right for voters with disabilities and those unable to read or write to receive assistance from anyone other than the person's employer or union.[98] Assistance to vote is defined broadly to include "all action necessary to

make a vote effective," including registration and other activities.[99] This also includes assistance with returning an absentee ballot.[100] The ADA and Section 504 also apply, requiring reasonable modifications to ensure equal opportunity for people with disabilities to participate in state and local voting systems, including with respect to registration and voting.[101] Because the assistance obligation in Section 208 is so clear and does not depend on an analysis of whether the assistance is reasonable, courts have tended to decide voter assistance claims brought under Section 208 while finding it unnecessary to reach parallel claims under the ADA and Section 504.[102]

While most courts have found that the plain language of Section 208 preempts state laws restricting voter assistance that go beyond the restrictions in Section 208, the Fifth Circuit concluded that it does not preempt certain other types of state restrictions on voter assistance.[103] Further, while most courts have found Section 208 privately enforceable, the Eighth Circuit has found that it contains no private right of action.[104]

The Nursing Home Reform Act[105] and its implementing rules governing long-term care facilities also protect the rights of facility residents and require facilities to ensure that residents who need support in voting receive that support. These federal rules governing Medicaid and Medicare certified facilities provide that:

- Exercise of Rights. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.[106]

- The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.[107]

- The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights as required under this subpart.[108]

IV. 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 https://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 https://www.aclu.org/affiliates/index.html.

Additional resources include:

- National Disability Rights Network, https://www.ndrn.org/voting/
- Bazelon Center for Mental Health Law, https://www.bazelon.org/our-work/voting/
- Autistic Self Advocacy Network, https://autisticadvocacy.org/policy/toolkits/voting/
- American Association of People with Disabilities Rev Up campaign, https://www.aapd.com/about-rev-up/
- ACLU Disability Rights Program, https://www.aclu.org/issues/disability-rights
- Advancement Project, https://www.advancementproject.org
- League of Women Voters, https://www.lwv.org
- The Arc of the United States, https://thearc.org/policy-advocacy/grassroots/vote/
- National Consumer Voice for Quality Long-Term Care, https://theconsumervoice.org/voting-rights/
- Election Assistance Commission's voting page for people with disabilities, https://vote.gov/guide-to-voting/disability
- Secretary of State's office and local election board in your area

Endnotes

1 These actions of election officials, poll workers, and service providers occur even in states with no voter competence requirement. *See, e.g., infra at 9* (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). Surveys by the Election Assistance Commission have sometimes listed numbers of individuals officially removed from voter registration rolls based on mental incompetence in states that have no voter competence requirement. *See, e.g.*, Election Assistance Commission, *Election Administration and Voting Survey 2024 Comprehensive Report*, at 187, https://www.eac.gov/sites/default/files/2025-07/2024_EAVS_Report_508.pdf (identifying voters removed based on mental incapacity in Kansas).

2 Jurisdictions with this type of exclusion are Alabama, Arizona, Georgia, Hawaii, Louisiana, Massachusetts, Minnesota, Missouri, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and West 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).

3 A finding of "mental incompetence" or "mental incapacity" generally means that a court will place the person under guardianship.

4 These states are Alaska, Arkansas, California, Connecticut, Delaware, Florida, Iowa, Kentucky, Maryland, Maine, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Texas, Virginia, Washington, Wisconsin, and Wyoming. Maine's constitution and statutes barred voting by individuals under guardianship due to mental illness, but the Secretary of State's office instructed election officials to disregard this requireme 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). A newer statutory provision requires guardianship orders to include whether a person retains the right to vote and, if not, include findings that support removing that right, which must include a finding that the person cannot communicate, with or without support, a specific desire to participate in the voting process. ME. REV. STAT. ANN. § 5-310(1)(a).

Importantly, five of these states define the "capacity to vote" to mean simply that the person can communicate, with or without accommodations, a desire to participate in the voting process. See endnote 16 and accompanying text.

5 These states are Nebraska, Hawaii, Rhode Island, and Mississippi. Nebraska law defines "non compos mentis" to mean "mentally incompetent." Neb. Rev. Stat. § 32-312. The other states do not define the term, but Hawaii law provides that the elections clerk may treat an adjudication

of incapacity as "prima facie evidence" that a person should be disqualified from voting. Rhode Island's election board in 2008 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.

6 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.

7 Nine of these—Colorado, Idaho, Illinois, Indiana, Kansas, New Hampshire, North Carolina, Pennsylvania and Vermont—have laws that contain no voter-competence requirement although New Hampshire requires certain people voting by absentee ballot to swear an oath that they have not been adjudicated mentally incompetent or, if so, that their voting rights have been reinstated. N.H. Rev. Stat. § 657:8. Another state, Michigan, has a constitutional provision authorizing the legislature to impose certain voter competence requirements, but its legislature has not done so.

8 *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).

9 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.

10 *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)

11 *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.

12 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).

13 *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).

14 A list of state and local election websites can be found on https://www.usa.gov/election-office. State voter qualifications can typically be identified through these websites.

15 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* (updated April 18, 2024), https://www.ada.gov/resources/protecting-voter-rights/.

16 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 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.").

17 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. Maine requires guardianship orders to include whether a person retains the right to vote and, if not, to include findings that support removing that right, which must include a finding that the person cannot communicate, with or without support, a specific desire to participate in the voting process. ME. REV. STAT. ANN. § 5-310(1)(a).

18 *See, e.g.*, 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) (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).

19 *See, e.g.*, Karlawish et al., *supra* note 18, 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).

20 *See, e.g., id.* at 1349.

21 *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).

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

23 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 18, at 326-327, 332-334.

24 *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.

25 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).

26 42 U.S.C. § 1973aa-6.

27 *Id.*

28 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.

29 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).

30 *Id.*

31 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).

32 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7); 29 U.S.C. § 794(a).

33 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), 45 C.F.R. § 84.68(b)(7) (facilities receiving federal financial assistance).

34 42 U.S.C. § 1973gg-5(a)(2).

35 *Id.* at § 1973gg-5(a)(4)(A).

36 Ashley Lopez, *Disability advocates are asking a court to halt a Mississippi law on ballot assistance*, NPR (Jun. 22, 2023), https://www.npr.org/2023/06/22/1183529006/mississippi-ballot-harvesting-disability-lawsuit.

37 Alander Rocha, *Alabama House approves bill criminalizing some absentee ballot assis-*

tance, Alabama Reflector (Mar. 8, 2004),

38 League of Women Voters, *League of Women Voters of Ohio v. Larose (HB 458 challenge)*, https://www.lwv.org/legal-center/league-women-voters-ohio-v-larose-hb-458-challenge (last updated Sept. 17, 2024).

39 Kendall Verhovek & Jasleen Singh, Brennan Center for Justice, *The Right to Assistance is Under Attack* (Feb. 13, 2024), https://www.brennancenter.org/our-work/analysis-opinion/right-voter-assistance-under-attack.

40 Hansi Lo Wang, *Supreme Court allows a ruling that ends a tool to protect minority voters in 7 states*, NPR (updated Jun. 22, 2026), https://www.npr.org/2026/06/22/nx-s1-5863532/supreme-court-voting-rights-act-pri
vate-right-arkansas.

41 National Conference of State Legislatures, *Voter Identification Requirements: Voter ID Laws* (updated Sept. 3, 2026), http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Laws%20in%20Effect.

42 The states with this type of strict photo ID requirement are Arkansas, Georgia, Indiana, Kansas, Mississippi, New Hampshire, North Carolina, Tennessee, and Wisconsin. *Id.* The states with this type of strict requirement mandating either a photo ID or another form of identification are Arizona, Iowa, North Dakota, and Wyoming. *Id.*

43 The states with this type of photo ID requirement are Alabama, Florida, Idaho, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, Rhode Island, South Carolina, South Dakota, Texas, and West Virginia. *Id.* The states with this type of requirement for photo ID or other forms of ID are Alaska, Colorado, Connecticut, Delaware, Oklahoma, Utah, Virginia, and Washington. *Id.*

44 *Id.*

45 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.

46 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, see http://www.bazelon.org/LinkClick.aspx?fileticket=cPAQ9Co3ahk%3d&tabid=543.

47 Michael Moss, *Big G.O.P. Bid to Challenge Voters in Key State*, New York Times, Oct. 23, 2004, at A1, A12, https://www.nytimes.com/2004/10/23/politics/campaign/big-gop-bid-to-challenge-voters-at-polls-in-key-state.html.

48 *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).

49 *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).

50 *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).

51 *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).

52 *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).

53 42 U.S.C. § 15482.

54 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 . . . .").

55 *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).

56 *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).

57 U.S. Const., amend. XIV.

58 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).

59 *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).

60 U.S. Const., amend. XIV.

61 *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'").

62 *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).

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

64 *Id.; see also Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (same); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

65 42 U.S.C. § 12101 et seq.

66 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).

67 *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities, supra* note 15.

68 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); 42 U.S.C. §§ 12132, 1213; 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).

69 *Doe v. Rowe*, 156 F. Supp.2d 35, 58-59 (D. Me. 2001); see also 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 (updated April 18, 2024), https://www.ada.gov/resources/protecting-voter-rights/ ("The ADA also prohibits a state from categorically disqualifying individuals who have intellectual or mental health disabilities from registering to vote or from voting because of their disability or guardianship status.").

70 42 U.S.C. §§ 12132, 12134; 28 C.F.R. § 35.130(b)(ii), (vii) (barring public entities from affording a qualified individual with a disability an unequal opportunity to participate in a benefit or service, or 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).

71 42 U.S.C. §§ 12132, 12134; 28 C.F.R. § 35.130(b)(ii), (vii); 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* (Apr. 18, 2024), https://www.ada.gov/resources/protecting-voter-rights/ ("Further, a state may not subject groups of people with disabilities—including individuals who are under guardianship—to a higher standard than that imposed on other voters for demonstrating the capacity to vote.").

72 "For example, an election official cannot refuse to provide an absentee ballot or voter registration form to a person with a disability because 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 (Apr. 18, 2024), https://www.ada.gov/resources/protecting-voter-rights/. Further, 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).

73 42 U.S.C. §§ 12131(2), 12132, 12134; 28 C.F.R. § 35.130(b)(7).

74 Some courts that have considered these claims have opted to rule only on claims under Section 208 of the Voting Rights Act, which provides that voters can receive assistance from any person of their choice other than their employer or union. 42 U.S.C. § 1973gg et seq. *See, e.g., Wisconsin v. Carey, League of Women Voters of Ohio v. Larose*.

75 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).

76 29 U.S.C. § 794.

77 *Id.* at § 794(a).

78 *Id.*

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

80 42 U.S.C. § 15301 et seq.

81 *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).

82 52 U.S.C. §§ 10301 et seq. (Voting Rights Act), 10101 et seq. (Civil Rights Act).

83 *Id.* § 10101(a)(2)(A).

84 *Id.* § 10101(a)(2)(C).

85 *Id.* § 10101(a)(3)(B).

86 *Id.* § 10805.

87 *La Union del Pueblo Entero v. Abbott*, 151 F.4th 273, 282-83 (5th Cir. 2026) (Section 208 does not preempt Texas law prohibiting assistors who are compensated, including staff of organizations that provide help to voters).

88 *Arkansas United v. Thurston*, 146 F.4th 673 (8th Cir. 2025), *cert. denied*, 608 U.S. __ (2026).

89 42 U.S.C. § 1973gg et seq.

90 Id. § 1973aa.

91 *Id.* § 1973gg-6(b)(1).

92 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 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)).

93 *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).

94 *See* Nina A. Kohn, Preserving Voting Rights in Long-Term Care Institutions: Facilitating Voting While Maintaining Election Integrity, 38 MCGEORGE L. REV. 1065, 1081 (2007).

95 *See* pages 20-23.

96 *See* pages *Id.*

97 *See* pages 24-25.

98 52 U.S.C. § 10805.

99 *Id.* § 10310(c)(1).

100 See, e.g., *League of Women Voters of Ohio v. Larose*, 741 F. Supp.3d 694, 711 (N.D. Ohio 2024), *Carey v. Wisconsin Elections Comm'n*, 624 F. Supp.3d 1020, 1032 (W.D. Wis. 2002), *Disability Rights North Carolina v. North Carolina State Bd. of Elections*, 602 F. Supp.3d 872, 877 (E.D.N.C. 2022).

101 *See* pages 21-23.

102 *See*, e.g., *League of Women Voters of Ohio v. Larose*, 741 F. Supp.3d at 711-18 (finding Section 208 preempted state law restricting voter assistance with absentee ballot return and declining to reach claim under ADA and Section 504), *Carey v. Wisconsin Elections Comm'n*, 624 F. Supp.3d at 1032-1034 (same).

103 *La Union del Pueblo Entero v. Abbott*, 151 F.4th at 282-83.

104 *Arkansas United v. Thurston*, 146 F.4th 673 (8th Cir. 2025), *cert. denied*, 608 U.S. __ (2026).

105 42 U.S.C. §§ 1396r, 1395i-3.

106 42 C.F.R. §483.10(b).

107 *Id.* §483.10(b)(1).

108 *Id.* § 483.10(b)(2).

109 New Voting Restrictions in America, BRENNAN CTR. FOR JUSTICE (last updated Nov. 18, 2019), https://www.brennancenter.org/media/5232/download/New%20Voting%20Restrictions.pdf?inline=1.

110 *North Carolina State Conf. of the NAACP v. Hirsch*, 834 F. Supp.3d 566, 612-52 (M.D.N.C. 2026) (state's photo ID requirement does not discriminate based on race in violation of the Fourteenth or Fifteenth Amendments or Section 2 of the Voting Rights Act); *Holmes v. Moore*, 384 N.C. 426, 428 (2023) (upholding state's photo ID provision under North Carolina constitution).

111 *La Union del Pueblo Entero v. Abbott*, No. 25-50246, U.S. App. LEXIS 24371, at *4, *6 (5th Cir. Aug. 12, 2026) (reversing district court's holding that Texas' requirement that voters include identification number or Social Security number with mail-in ballot violated the ADA and Section 504 and concluding that plaintiffs lacked standing because they could not show they would experience problems in the future); *Missouri State Conf. of the NAACP v. State*, 730 S.W.3d 550, 566 (Mo. 2026) (dismissing claims that state's photo ID requirement unconstitutionally burdened the right to vote and violated state constitution's equal protection clause for lack of standing).

112 *See Crawford v. Marion Cnty*. Election Bd., 553 U.S. 181, 198 (2008) (discussing "substantial burden" standard); *North Carolina State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (finding that North Carolina's photo ID requirement was unduly burdensome).

113 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 page 27 (Voter Competence Requirements Can Be Challenged Under Federal Law).

114 This limitation is imposed by the Voting Rights Act, 42 U.S.C. § 1971(a)(2)(A). *See* notes 25-26 and accompanying text, and page 27 (Voter Competence Requirements Can Be Challenged Under Federal Law).

115 *See* notes 59-63 and accompanying text concerning the Due Process Clause of the U.S.

Constitution and page 26 (Only a Court Can Decide that Someone is Not Competent to Vote).

116 *See* notes 91-93 and accompanying text, and page 26 (Only a Court Can Decide that Someone is Not Competent to Vote). However, a hospital administrator may be able to restrict a resident's ability to leave the facility to vote in certain limited circumstances. In those circumstances, however, the facility may have to assist the person in casting an absentee ballot.

Legal Principles Concerning Voter ID

A number of state laws requiring voters to show a photo ID have been struck down by courts (including, for example, laws in Texas, Arkansas, and Pennsylvania) and some of those states, such as Texas and Arkansas, subsequently enacted less stringent voter identification laws.[109] However, courts recently upheld a photo ID law in North Carolina[110] and rejected disability-based challenges to laws in Texas and Missouri on standing grounds.[111]

The constitutionality of voter ID laws has been successfully challenged where the law in question presents substantial burdens on individuals' right to vote.[112] 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.

Summary of 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.[113]
- 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.[114]
- 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.[115]
- 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.[116]

V. State Laws Affecting the Voting Rights of People with Mental Disabilities

Alabama	
State Constitution / Electoral Statutes: Persons Disqualified	No person who is mentally incompetent shall be qualified to vote, unless the disability has been removed. Persons disqualified under the Constitution are not entitled to vote. ALA. CONST. art. 8, § 177(b); ALA. CODE § 17-3-30.
Guardianship / Conservatorship Statutes	In a limited guardianship, the partially incapacitated person retains all legal rights that the court has not delegated to the limited guardian. Comment to ALA. CODE § 26-2A-105.
Mental Health Statutes	Consumers of mental health services have the same general rights as other Alabama citizens, including the right to vote and participate in the political process, and are presumed competent until a court determines otherwise. ALA. CODE § 22-56-4(a)(4), (5).
Developmental Disabilities Statutes	Persons with developmental disabilities and traumatic brain injury have the right to vote and participate in the political process, subject to applicable laws, and are presumed competent until a court determines otherwise. ALA. CODE § 38-9C-4(5), (7).
Alaska	
State Constitution / Electoral Statutes: Persons Disqualified	No person may vote who has been judicially determined to be of "unsound mind" unless the disability has been removed. The Alaska Attorney General stated that the judicial determination necessary to disqualify a mentally impaired individual from voting must be specifically raised in a guardianship hearing or separate proceeding. ALASKA CONST. art. 5, § 2; Alaska Att'y Gen. Op. (Inf.) No. 123 (Aug. 28, 1992).
Guardianship / Conservatorship Statutes	A guardian may not prohibit a ward from registering or voting. An incapacitated person for whom a guardian has been appointed is not presumed incompetent and retains all legal and civil rights except those expressly limited by court order or specifically granted to the guardian. ALASKA STAT. §§ 13.26.316, 13.26.201.

Mental Health Statutes	Persons undergoing mental-health evaluation or treatment may not be denied the right to vote. Court-ordered mental-health treatment is not a determination of legal incapacity. ALASKA STAT. § 47.30.835(a), (b).
Developmental Disabilities Statutes	
Arizona	
State Constitution / Electoral Statutes: Persons Disqualified	No person adjudicated an incapacitated person is qualified to vote. Voter registration may be cancelled if a person is adjudicated an incapacitated person. A person is not qualified to register if adjudicated an incapacitated person. ARIZ. CONST. art. 7, § 2(C); ARIZ. REV. STAT. §§ 16-165, 16-101(A)(6).
Guardianship / Conservatorship Statutes	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 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 the person. In limited guardianship cases, a person is not deemed incapacitated for voting if the person petitions, receives 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 Statutes	Persons undergoing court-ordered mental-health evaluation or treatment are not determined legally incompetent and may not be denied the right to vote. Court-ordered treatment or evaluation is not a determination of legal incompetency except to the extent provided in the emergency-medical-care statute. ARIZ. REV. STAT. § 36-506(A).
Developmental Disabilities Statutes	
Arkansas	
State Constitution / Electoral Statutes: Persons Disqualified	Registration to vote is cancelled if a person is adjudged mentally incompetent by a court of competent jurisdiction. ARK. CONST. amend. 51, § 11(a)(6).

Guardianship / Conservatorship Statutes	If a guardian was appointed before October 1, 2001, the guardian must obtain express court approval to prohibit voting. No guardian appointed on or after October 1, 2001 shall authorize an incapacitated person to vote without filing a petition and receiving express court approval. An incapacitated person for whom a guardian has been appointed is not presumed incompetent and retains all legal and civil rights except those expressly limited by court order or specifically granted by court order to the guardian. ARK. CODE ANN. §§ 28-65-302(a)(1)(E), 28-65-302(a)(2)(E), 28-65-106.
Mental Health Statutes	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).
Developmental Disabilities Statutes	

California	
State Constitution / Electoral Statutes: Persons Disqualified	The Legislature shall provide for disqualification of electors while mentally incompetent. A person is presumed competent to vote regardless of conservatorship status. A person is deemed mentally incompetent and disqualified from voting only if, during specified proceedings, 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. The current statute lists covered proceedings, including specified Probate Code conservatorships, LPS conservatorships, certain proceedings involving incompetence to stand trial, and certain not-guilty-by-reason-of-insanity / grave-disability situations. A person shall not be disqualified based on needing to sign by mark, use a signature stamp, receive assistance, or use reasonable accommodations to complete a voter-registration affidavit. Cal. Const. art. II, § 4; Cal. Elec. Code § 2208(a)–(e).
Guardianship / Conservatorship Statutes	A person is presumed competent to vote regardless of conservatorship status. If an order establishing a conservatorship is made and 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, the court must provide notice to the Secretary of State under Elections Code § 2211.5. Cal. Elec. Code § 2208(a), (c).
Mental Health Statutes	A conservatorship report shall include a recommendation for or against disqualification from voting. CAL. WEL. & INST. CODE § 5357(c).
Developmental Disabilities Statutes	

Colorado	
State Constitution / Electoral Statutes: Persons Disqualified	No constitutional disqualification provision identified. A person confined in a state institution for persons with behavioral or mental-health disorders does not lose the right to vote because of that confinement. Colo. Rev. Stat. § 1-2-103(5).
Guardianship / Conservatorship Statutes	
Mental Health Statutes	People receiving evaluation, care, or treatment for mental illness shall be given the opportunity to exercise the right to register and vote in primary and general elections. The agency or facility must assist such persons, upon request, in obtaining voter-registration forms and mail ballots and complying with other voting prerequisites. COLO. REV. STAT. § 27-65-120.
Developmental Disabilities Statutes	A person receiving evaluation, care, or treatment under article 65 must be given the opportunity to exercise the right to register and vote in primary and general elections. The agency or facility providing evaluation, care, or treatment shall assist the person, upon request, to obtain voter-registration forms and mail ballots and comply with other voting prerequisites. Colo. Rev. Stat. § 27-65-122.
Connecticut	
State Constitution / Electoral Statutes: Persons Disqualified	No constitutional disqualification provision. Current Conn. Gen. Stat. § 9-12(a) no longer states that a mentally incompetent person may not be admitted as an elector; the statutory history states that June Special Session Public Act 21-2 deleted that provision effective June 23, 2021. Conn. Gen. Stat. § 9-12(a); June Sp. Sess. P.A. 21-2, § 95.
Guardianship / Conservatorship Statutes	The guardian or conservator of an individual may file a petition in probate court to determine the individual's competency to vote in a primary, referendum, or election. CONN. GEN. STAT. § 45a-703.

Mental Health Statutes	A patient hospitalized or treated for psychiatric disabilities may not be deprived of personal, property, or civil rights, including the right to vote, except in accordance with due process of law and unless declared incapable under the cited conservatorship provisions; any finding must specifically state which rights the patient is incapable of exercising. Conn. Gen. Stat. § 17a-541.
Developmental Disabilities Statutes	
Delaware	
State Constitution / Electoral Statutes: Persons Disqualified	No person adjudged mentally incompetent shall enjoy the right of an elector. For registration purposes, "adjudged mentally incompetent" means a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence, that the individual has a severe cognitive impairment that precludes exercise of basic voting judgment. Del. Const. art. V, § 2; 15 Del. C. § 1701(a).
Guardianship / Conservatorship Statutes	
Mental Health Statutes	Every patient eligible to vote under Delaware law is entitled to vote in primary and general elections. The facility must offer affirmative assistance to enable patients to exercise voting rights, including assistance accessing voter-registration forms and absentee-ballot applications. 16 Del. C. § 5182(20).
Developmental Disabilities Statutes	
District of Columbia	
State Constitution / Electoral Statutes: Persons Disqualified	A person is not a qualified elector if legally incompetent to vote as adjudged by a court of law. D.C. CODE § 1-1001.02(E).
Guardianship / Conservatorship Statutes	A finding that a person is incapacitated is not considered a finding of legal incompetence. The person retains all legal rights and abilities other than those expressly limited or curtailed in a guardianship or protective order or subsequent court order. D.C. CODE § 21-2004.

Mental Health Statutes	A person admitted or committed for treatment may not, by reason of admission or treatment, be denied the right to vote unless adjudicated incompetent and not restored to legal capacity. D.C. CODE § 21-564(a).
Developmental Disabilities Statutes	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 assistance from a person of their choosing. D.C. CODE § 1-1001.05.
Florida	
State Constitution / Electoral Statutes: Persons Disqualified	A person is not qualified to vote if adjudicated, in Florida or another state, to be mentally incompetent until the disability has been removed. A person adjudicated mentally incapacitated with respect to voting and whose right has not been restored is not entitled to vote. FLA. CONST. art. 6, § 4(a); FLA. STAT. § 97.041(2)(a).
Guardianship / Conservatorship Statutes	The right to vote can be removed if a person is determined incapacitated, but it may not be delegated to a guardian. Persons must be evaluated for voting disqualification at guardianship proceedings. FLA. STAT. §§ 744.3215(2)(b), 744.331(3)(g)(2).
Mental Health Statutes	A patient who is eligible to vote has the right to vote, and the department shall establish rules enabling patients to obtain voter-registration forms, vote-by-mail applications, and vote-by-mail ballots. FLA. STAT. § 394.459(7).
Developmental Disabilities Statutes	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	
State Constitution / Electoral Statutes: Persons Disqualified	A person adjudicated mentally incompetent cannot register, remain registered, or vote unless the disability has been removed. The Georgia Attorney General stated that a person must be adjudicated mentally incompetent before the right to vote is removed. GA. CONST. art. 2, § 1, ¶ III(b); GA. CODE ANN. § 21-2-216(b); Ga. Att'y Gen. Op. No. 95-27 (1995).
Guardianship / Conservatorship Statutes	The appointment of a guardian is not a determination regarding the ward's right to vote. GA. CODE ANN. § 29-4-20(b).
Mental Health Statutes	Patients may vote if otherwise eligible under state law. The superintendent or regional state hospital administrator shall permit and reasonably assist patients to obtain registration forms, absentee-ballot applications, and absentee ballots; comply with voting prerequisites; and vote by absentee ballot if necessary. GA. CODE ANN. § 37-3-144.
Developmental Disabilities Statutes	Clients may vote if otherwise eligible. The superintendent or regional state hospital administrator shall permit and reasonably assist clients to obtain voter-registration forms, absentee-ballot applications, and absentee ballots; comply with voting prerequisites; and vote by absentee ballot if necessary. GA. CODE ANN. § 37-4-104.
Hawaii	
State Constitution / Electoral Statutes: Persons Disqualified	No person who is "non compos mentis" is qualified to vote. Current HRS § 11-23 provides that, when the clerk receives information of death, felony-related loss of voting rights, adjudication as an incapacitated person under chapter 560, loss of citizenship, or another voting disqualification, the clerk may accept the reported information as prima facie evidence to maintain and update the general register; a person removed under the section may reregister or appeal under §§ 11-26 and 11-51. Haw. Const. art. II, § 2; Haw. Rev. Stat. § 11-23.

Guardianship / Conservatorship Statutes	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.
Mental Health Statutes	Admission to a psychiatric facility itself does not modify or vary the right to vote. There is no presumption of insanity or legal incompetency by reason of admission to a psychiatric facility. HAW. REV. STAT. § 334-61.
Developmental Disabilities Statutes	
Idaho	
State Constitution / Electoral Statutes: Persons Disqualified	No disqualification statute.
Guardianship / Conservatorship Statutes	
Mental Health Statutes	A mental-health facility cannot deny the right to vote unless the right is limited by prior court order; this right shall not be denied by the facility director under any circumstances. IDAHO CODE § 66-346(a)(6), (c).
Developmental Disabilities Statutes	Developmentally disabled persons have the right to vote unless limited by prior court order. IDAHO CODE § 66-412(3)(j).

Illinois	
State Constitution / Electoral Statutes: Persons Disqualified	No disqualification statute. A patient of any hospital or mental institution is deemed a resident of the town, city, village, election district, or precinct where the patient resided immediately before becoming a patient. Certain residents of certified and licensed facilities or community-integrated living arrangements who meet citizenship and residency requirements are entitled to vote in the election district where the home or arrangement is located if they declare bona fide intent to become a resident there. 10 ILL. COMP. STAT. 5/3-4, 5/3-3; 210 ILL. COMP. STAT. 135/3(d).
Guardianship / Conservatorship Statutes	
Mental Health Statutes	No recipient of mental-health or developmental-disabilities services shall be deprived of rights, benefits, or privileges guaranteed by law or by the Illinois or United States Constitutions solely on account of receiving such services. 405 ILL. COMP. STAT. 5/2-100.
Developmental Disabilities Statutes	No recipient of mental-health or developmental-disabilities services shall be deprived of rights, benefits, or privileges guaranteed by law or by the Illinois or United States Constitutions solely on account of receiving such services. 405 ILL. COMP. STAT. 5/2-100.
Indiana	
State Constitution / Electoral Statutes: Persons Disqualified	No disability-related voter-competence disqualification provision. A person adjudged mentally ill and committed to an institution has only one voting residence and may state either the institution address or the address where the person lives when not committed, but not both. IND. CODE § 3-5-5-17.
Guardianship / Conservatorship Statutes	

Mental Health Statutes	Detention or commitment for mental-health treatment does not deprive an individual of the right to vote; no restoration procedure is required. IND. CODE § 12-26-2-8(a)(1)(F), (b).
Developmental Disabilities Statutes	The civil-rights protection in IND. CODE § 12-27-2-3(a) applies to individuals treated for developmental disabilities.
Iowa	
State Constitution / Electoral Statutes: Persons Disqualified	A person adjudged mentally incompetent to vote or convicted of an infamous crime is not entitled to the privilege of an elector. A person incompetent to vote is disqualified from registering and voting; certification that the person is no longer incompetent restores eligibility if otherwise qualified. "Person who is incompetent to vote" means a person with an intellectual disability found to lack mental capacity to vote in a guardianship proceeding. IOWA CONST. art. II, § 5; IOWA CODE §§ 48A.6(2), 48A.2(4).
Guardianship / Conservatorship Statutes	If a guardian is appointed based on mental incapacity because the protected person has an intellectual disability, the court separately must determine voting competency and may find incompetency only if the person lacks sufficient mental capacity to comprehend and exercise the right to vote. A person found incompetent to vote may request reinstatement in a petition to terminate the guardianship or in a separatepetition to modify the voting-competency determination. IOWA CODE §§ 633.552(3), 633.679(2).
Mental Health Statutes	A person hospitalized or detained under chapter 229 retains constitutional and other legal, medical, religious, social, political, personal, and working rights as far as possible consistent with effective treatment. Voluntary or involuntary hospitalization under chapter 229 does not itself constitute, equate with, or create a presumption of incompetency or legal disability. IOWA CODE §§ 229.23(3), 229.27(1).
Developmental Disabilities Statutes	

Kansas	
State Constitution / Electoral Statutes: Persons Disqualified	No disability-related voter-competence disqualification statute. A voter unable to mark a ballot because of temporary illness, disability, lack of English proficiency, or age 65 or older may request assistance. "Disability" includes a physical or mental impairment that substantially limits a major life activity. KAN. STAT. ANN. § 25-2909(a), (e).
Guardianship / Conservatorship Statutes	The statement of rights provided after appointment of a guardian must notify the adult subject to guardianship that the adult retains the right to vote. KAN. STAT. ANN. § 59-30,151(b)(3).
Mental Health Statutes	Voluntary psychiatric treatment or a court order under the Care and Treatment Act does not itself remove civil rights, property rights, or legal capacity, or create a presumption that a guardian or conservator is needed. Emergency detention or treatment under the Crisis Intervention Act likewise does not itself remove civil rights, property rights, or legal capacity, or create a guardianship or conservatorship presumption. KAN. STAT. ANN. § 59-29c03 (created 2017; amended effective Jan. 1, 2026).
Developmental Disabilities Statutes	

Kentucky	
State Constitution / Electoral Statutes: Persons Disqualified	"Idiots" and "insane" persons shall not have the right to vote. KY. CONST. § 145(3). A person disqualified under the Constitution may not vote. KY. REV. STAT. § 116.025(1). Attorney General opinions state that a declaration of incompetency for purposes other than insanity does not necessarily disqualify a person from voting. Ky. Att'y Gen. Op. Nos. 73-700 (1973), 76-549 (1976). 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). Upon notice from a circuit clerk that a person has been declared incompetent, the State Board of Elections removes the person from the voter-registration records, subject to the statute's timing, protest, restoration, and authorization-to-vote procedures. KY. REV. STAT. § 116.113.
Guardianship / Conservatorship Statutes	If disability or partial disability is found, the court separately must determine whether the respondent retains the right to vote. A ward may be deprived of voting rights only if the court separately and specifically makes a finding on the record. KY. REV. STAT. §§ 387.580(3)(c), 387.590(7).
Mental Health Statutes	
Developmental Disabilities Statutes	Individuals with intellectual or developmental disabilities have the right to participate freely in the political process to the extent provided by law. KY. REV. STAT. § 210.033(2)(l) (effective July 15, 2024).

Louisiana	
State Constitution / Electoral Statutes: Persons Disqualified	The right to vote may be suspended while a person is interdicted and judicially declared mentally incompetent. A fully interdicted person judicially declared mentally incompetent may not vote. A person under limited interdiction may vote unless the judgment specifically suspends voting rights. LA. CONST. art. I, § 10(A); LA. REV. STAT. § 18:102(A)(2).
Guardianship / Conservatorship Statutes	Within 15 days after qualifying, a curator must send a certified copy of a full-interdiction judgment, or a limited-interdiction judgment for mental incompetence that specifically suspends registration and voting, to the appropriate registrar of voters. The curator also must send later modifications or terminations within 15 days and provide specified identifying information. LA. CODE CIV. PROC. art. 4552(C).
Mental Health Statutes	Status as a patient in a treatment facility does not alone deprive a person of voting rights; any incompetency determination is separate from the commitment determination. A person involuntarily confined for mental treatment outside the parish of registration, who is not interdicted or judicially declared incompetent, may vote absentee by mail. LA. REV. STAT. §§ 28:171(A)–(B), 18:1303(B)(6).
Developmental Disabilities Statutes	Louisiana encourages full voting participation by persons with intellectual or cognitive disabilities who are not fully interdicted or specifically deprived of voting rights in a limited interdiction, and the Louisiana Department of Health must adopt implementing rules. Election-day and early-voting assistance is available only to a voter unable to read or unable to vote without assistance because of a physical disability, including visual impairment. A qualified voter may qualify to vote absentee by mail with specified disability documentation. LA. REV. STAT. §§ 18:102.1(A)–(B), 18:564(A), 18:1309.3(A), 18:1303(I)(1).

Maine	
State Constitution / Electoral Statutes: Persons Disqualified	Maine's Constitution states that persons under guardianship for reason of mental illness are not electors. Doe v. Rowe held the prior automatic disenfranchisement scheme unconstitutional as applied through the former guardianship process because it denied due process and equal protection. Guardianship alone does not disqualify an individual under current law; voting rights may be removed only under the individualized standard in title 18-C, § 5-310(2)(A). ME. CONST. art. II, § 1; Doe v. Rowe, 156 F. Supp. 2d 35 (D. Me. 2001); ME. REV. STAT. tit. 18-C, § 5-310(2)(A).
Guardianship / Conservatorship Statutes	An adult subject to guardianship retains the right to vote unless a court orders otherwise. An order removing the right must find that the adult cannot communicate, with or without support, a specific desire to participate in the voting process. ME. REV. STAT. tit. 18-C, § 5-310(2)(A).
Mental Health Statutes	A patient in a psychiatric hospital or residential care facility retains civil rights, including the right to vote, unless the right is restricted for medical welfare, the patient has been adjudicated incompetent and not restored, or another law or rule restricts the right. Admission alone is not a basis for denying the right. ME. REV. STAT. tit. 34-B, § 3803(1)(A)–(C).
Developmental Disabilities Statutes	A person with an intellectual disability or autism, or an acquired brain injury, may not be denied the right to vote. ME. REV. STAT. tit. 34-B, § 5605(5).
Maryland	
State Constitution / Electoral Statutes: Persons Disqualified	The State may regulate or prohibit the right to vote of a person under care or guardianship for mental disability. An individual is not qualified to be a registered voter if under guardianship for mental disability and a court specifically finds by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process. MD. CONST. art. I, § 4; MD. CODE ANN., ELEC. LAW § 3-102(b)(2).
Guardianship / Conservatorship Statutes	Appointment of a guardian of the person is not evidence of incompetency and does not modify any civil right unless the court orders otherwise. MD. CODE ANN., EST. & TRUSTS § 13-706(b).

Mental Health Statutes	An individual may not be deprived of the right to vote solely because the individual is in a facility or Veterans' Administration hospital for a mental disorder. MD. CODE ANN., HEALTH-GEN. § 10-704.
Developmental Disabilities Statutes	An individual may not be deprived of the right to vote solely because the individual has a developmental disability or receives services under title 7. MD. CODE ANN., HEALTH-GEN. § 7-1004.
Massachusetts	
State Constitution / Electoral Statutes: Persons Disqualified	Every citizen, excepting persons under guardianship, has a right to vote. The Secretary of State opinion interprets the constitutional provision to require a specific finding of incompetence to vote before disenfranchising someone. Every citizen not under guardianship may have his or her name entered on the list of voters and may vote. MASS. CONST. art. 3; MASS. ANN. LAWS ch. 51, § 1; Sec. of the Cmmw. of Mass., Elections Div., Persons Subject to Guardianships That Do Not Specifically Forbid Voting Are Eligible Voters, 41 Pub. Rec. 5 (Jan. 1991).
Guardianship / Conservatorship Statutes	
Mental Health Statutes	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(1); Boyd v. Board of Registrars of Voters, 334 N.E.2d 629 (Mass. 1975).
Developmental Disabilities Statutes	
Michigan	
State Constitution / Electoral Statutes: Persons Disqualified	The Legislature may exclude persons based on mental incompetence. No disqualification electoral statute is identified. MICH. CONST. art. 2, § 2.
Guardianship / Conservatorship Statutes	
Mental Health Statutes	

Developmental Disabilities Statutes	
Minnesota	
State Constitution / Electoral Statutes: Persons Disqualified	Persons under guardianship, "insane," or not mentally competent are not entitled or permitted to vote. Read narrowly to avoid unconstitutional burden on right to vote by Minnesota Voters Alliance v. Ritchie. Individuals are not eligible to vote if under guardianship in which the court order revokes the right to vote or adjudicated legally incompetent. MINN. CONST. art. 7, § 1; Minnesota Voters Alliance v. Ritchie, 890 F. Supp. 2d 1106, 1117 (D. Minn. 2012), aff'd, 720 F.3d 1029 (8th Cir. 2013); MINN. STAT. § 201.014(2)(b), (c).
Guardianship / Conservatorship Statutes	Unless otherwise ordered by the court, the ward under guardianship retains the right to vote. 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. §§ 524.5-313(c)(8), 524.5-310(g)(2).
Mental Health Statutes	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).
Developmental Disabilities Statutes	Appointment of the commissioner as conservator shall not constitute a judicial finding that the developmentally disabled person is legally incompetent except for the restrictions the conservatorship places on the conservatee. The appointment of a conservator shall not deprive the conservatee of the right to vote. MINN. STAT. § 252A.12.

Mississippi	
State Constitution / Electoral Statutes: Persons Disqualified	"Idiots" and "insane" persons are not qualified electors. Persons adjudicated to be "non compos mentis" shall not be entitled or permitted to vote. MISS. CONST. art. 12, § 241; MISS. CODE ANN. § 23-15-11.
Guardianship / Conservatorship Statutes	
Mental Health Statutes	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.
Developmental Disabilities Statutes	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	
State Constitution / Electoral Statutes: Persons Disqualified	No person under guardianship of estate or person because of mental incapacity, where the guardian was appointed by a court of competent jurisdiction, nor a person involuntarily confined in a mental institution pursuant to a court adjudication, can vote. No person adjudicated incapacitated is entitled to register or vote. A person who had been committed to a mental hospital many years earlier but did not have a guardian of estate or person was not disqualified under the constitutional provision. MO. CONST. art. VIII, § 2; MO. REV. STAT. § 115.133(2); New v. Corrough, 370 S.W.2d 323 (Mo. 1963).
Guardianship / Conservatorship Statutes	
Mental Health Statutes	
Developmental Disabilities Statutes	

Montana	
State Constitution / Electoral Statutes: Persons Disqualified	A person is not a qualified elector if of "unsound mind," as determined by a court. No person adjudicated to be of unsound mind has the right to vote unless restored to capacity as provided by law. MONT. CONST. art. 4, § 2; MONT. CODE ANN. § 13-1-111(3).
Guardianship / Conservatorship Statutes	Guardianship for an incapacitated person may be used only as necessary to promote and protect the person's well-being; it must be designed to encourage maximum self-reliance and independence and ordered only to the extent the person's actual limitations require. An incapacitated person for whom a guardian has been appointed is not presumed incompetent and retains all legal and civil rights except those expressly limited by court order or specifically granted to the guardian. MONT. CODE ANN. § 72-5-306.
Mental Health Statutes	Unless specifically stated in a court order, a person involuntarily committed to a facility for evaluation or treatment does not forfeit any legal right. MONT. CODE ANN. § 53-21-141.
Developmental Disabilities Statutes	(1) Unless specifically stated in an order by the court, a person committed to a residential facility or for whom a community treatment plan has been imposed for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except to the extent that it may be necessary to detain the person for habilitation, evaluation, or care.

Nebraska	
State Constitution / Electoral Statutes: Persons Disqualified	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 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").
Guardianship / Conservatorship Statutes	None identified.
Mental Health Statutes	None identified.
Developmental Disabilities Statutes	None identified.
Nevada	
State Constitution / Electoral Statutes: Persons Disqualified	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)(b).

Guardianship / Conservatorship Statutes	A person with a guardian retains the right to vote unless the court 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. If the court makes a finding pursuant to this statute, the court must include the finding in a court order and provide a certified copy of the order to the county clerk or the registrar of voters, as applicable, of the county in which the protected person resides and to the Office of the Secretary of State, in the manner set forth in NRS 293.542 (indicating that the court should issue the order within 30 days of the finding). NV. REV. STAT. ANN § 159.0594.
Mental Health Statutes	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. If there is no such reason to believe the consumer is unable to exercise these rights, the medical director shall immediately initiate proper action to cause to have the consumer restored
Developmental Disabilities Statutes	A person is not ineligible to vote on the ground of having been adjudicated mentally incompetent unless a court specifically finds by clear and convincing evidence that the person lacks mental capacity to vote because the person cannot communicate, with or without accommodations, a specific desire to participate in the voting process and includes that finding in a court order. NV. REV. STAT. ANN. § 293.5415.

New Hampshire	
State Constitution / Electoral Statutes: Persons Disqualified	No constitutional disqualification provision. No disqualification electoral statute. Certain absentee ballot voters must swear an oath stating that they have not been "adjudicated mentally incompetent, or, if so, my voting rights have been reinstated." N.H. REV. STAT. § 657:8.
Guardianship / Conservatorship Statutes	None identified.
Mental Health Statutes	No person shall be deemed incompetent to vote or to exercise any other civil right solely by reason of that person's admission to the mental health services system. No person receiving treatment for mental illness shall be deprived of any legal right to which all citizens are entitled, except as provided for by law. N.H. REV. STAT. ANN.§ 135-C: 56. Caselaw notes that this statute creates a presumption that mentally ill persons who have not been adjudicated incompetent have full panoply of personal rights recognized in society. Opinion of the Justices (1983) 123 N.H. 554, 465 A.2d 484. (Decided under prior law.)
Developmental Disabilities Statutes	No person shall be deemed incompetent to vote solely by reason of developmental disability or participation in the service-delivery system, and department rules shall not restrict such rights. N.H. REV. STAT. ANN. § 171-A:14(1).
New Jersey	
State Constitution / Electoral Statutes: Persons Disqualified	No person adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage. N.J. CONST. art. 2, § 1, ¶ 6; N.J. STAT. ANN. § 19:4-1(1).
Guardianship / Conservatorship Statutes	None identified.

Mental Health Statutes	Subject to other law and the New Jersey and United States Constitutions, no patient in a mental-health institution shall be deprived of the right to vote solely by reason of receiving treatment, and treatment shall not modify or vary any legal or civil right, including registration and voting. A patient in a mental-health institution cannot be presumed incompetent because the patient has been examined or treated for mental illness. Persons receiving in-patient assessment or treatment may register and vote subject to laws and the Constitution. N.J. STAT. ANN. §§ 30:4-24.2(a), 30:4-24.2(c), 30:4-27.11c(a).
Developmental Disabilities Statutes	No admission or residency at a facility or receipt of any service for persons with developmental disabilities shall deprive persons of the right to register and vote. A determination of eligibility for mental-retardation services does not create a presumption of incompetency; an individual's right to vote cannot be revoked based solely on placement at a residential facility. N.J. STAT. ANN. § 30:6D-4(a); Carroll v. Cobb, 354 A.2d 355 (N.J. Super. Ct. 1976).
New Mexico	
State Constitution / Electoral Statutes: Persons Disqualified	No person adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage. N.J. CONST. art. 2, § 1, ¶ 6; N.J. STAT. ANN. § 19:4-1(1). 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. New Mexico previously had statutes related to the cancellation of a voter registration based on "legal insanity," codified at N.M. STAT. ANN. § 1-4-26(A); these provisions were eliminated in 2019. Individuals with mental retardation "who can understand the nature of their actions should be allowed to register and vote." 1974 Op. An, Gen. No. 74 35.

Guardianship / Conservatorship Statutes	The voting rights of a person with an appointed guardian or conservator shall not be abridged or restricted except pursuant to Article 7, Section 1 of the New Mexico Constitution. An incapacitated person for whom a guardian has been appointed retains all legal and civil rights except those expressly limited by court order or specifically granted to the guardian by the court. The same reservation of rights is specified for limited guardianships. N.M. STAT. ANN. §§ 45-5-109, 45-5-301.1, 45-5-312(A).
Mental Health Statutes	None identified.
Developmental Disabilities Statutes	None identified.
New York	
State Constitution / Electoral Statutes: Persons Disqualified	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). However, this provision is unconstitutional as applied to persons involuntarily committed to hospitals by court order who had not been adjudged incompetent. Manhattan State Citizens' Group, Inc. v. Bass, 1981, 524 F.Supp. 1270.
Guardianship / Conservatorship Statutes	An incapacitated person for whom a guardian has been appointed retains all powers and rights except those granted to the guardian. "Incapacitated person" means a person incapable of adequately protecting his or her rights, including a person for whom a guardian has been appointed under article 81 of the mental hygiene law. A court held that appointment of a conservator does not include a finding of incompetence and therefore does not deprive the conservatee of voting rights. N.Y. MENT. HYG. LAW § 81.29; N.Y. SURR. CT. PROC. ACT LAW § 103(25); Matter of Fisher, 147 Misc. 2d 329, 552 N.Y.S.2d 807 (1989).
Mental Health Statutes	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 that right. N.Y. MENT. HYG. LAW § 33.01.

Developmental Disabilities Statutes	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 that right. Each person residing in a community residence has the same basic and legal rights as others of the same age, including the right to vote and to participate in activities that educate persons with developmental disabilities in civic responsibilities. N.Y. MENT. HYG. LAW §§ 33.01, 41.41.
North Carolina	
State Constitution / Electoral Statutes: Persons Disqualified	No Constitutional disqualification provision on the basis of incompetency. 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. (Note Bills proposing a repeal amendment have been introduced repeatedly, most recently H.B. 93 and S.B. 14 (2025), which would place repeal on the November 2026 ballot; as of August 2026, no repeal amendment has been submitted to the voters.) No disqualification election statute.
Guardianship / Conservatorship Statutes	An incapacitated ward has the right to register to vote and vote in elections if otherwise qualified. 41 N.C. Att'y Gen. Op. 85 (1973).
Mental Health Statutes	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.
Developmental Disabilities Statutes	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.

North Dakota	
State Constitution / Electoral Statutes: Persons Disqualified	No person 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.
Guardianship / Conservatorship Statutes	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).
Mental Health Statutes	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.
Developmental Disabilities Statutes	An individual with a developmental disability may not be presumed 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	
State Constitution / Electoral Statutes: Persons Disqualified	No "idiot" or "insane person" shall be entitled to the privileges of an elector. Voter registration is cancelled if the person is adjudicated incompetent for the purpose of voting. OHIO CONST. art. 5, § 6; OHIO REV. CODE ANN. § 3503.21(A)(5).
Guardianship / Conservatorship Statutes	Persons under guardianship retain the right to vote if legally able. Ohio Att'y Gen., The Ohio Guardianship Guide; see also OHIO REV. CODE ANN. §§ 5122.301, 3503.21(A)(5) (guardianship alone does not remove the right to vote; registration is cancelled only upon an adjudication of incompetency for the purpose of voting).
Mental Health Statutes	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.

Developmental Disabilities Statutes	Persons with developmental disabilities have the right to participate in the political process. OHIO REV. CODE ANN. § 5123.62(W).
Oklahoma	
State Constitution / Electoral Statutes: Persons Disqualified	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.
Guardianship / Conservatorship Statutes	The court shall make a specific determination of the voting capacity of a person under limited guardianship. OKLA. STAT. tit. 30, § 3-113(B)(1).
Mental Health Statutes	
Developmental Disabilities Statutes	
Oregon	
State Constitution / Electoral Statutes: Persons Disqualified	A person "suffering from a mental handicap" is entitled to the full rights of an elector, if otherwise qualified, unless adjudicated incompetent to vote as provided by law. No disqualification statute identified. OR. CONST. art. 2, § 3.
Guardianship / Conservatorship Statutes	A protected person retains all legal and civil rights provided by law except those expressly limited by court order or specifically granted to the guardian by the court. OR. REV. STAT. § 125.300(3).

Mental Health Statutes	Every person with mental illness committed to the Oregon Health Authority has the right to vote unless adjudicated incompetent and not restored to legal capacity. While receiving mental-health services, every person has the right to be encouraged and assisted in exercising all legal rights. These rights are in addition to, and do not limit, other statutory and constitutional rights afforded to all citizens, including the right to vote. OR. REV. STAT. §§ 426.385(1)(p), 430.210(2).
Developmental Disabilities Statutes	The rights of persons receiving developmental-disability services are in addition to, and do not limit, all other statutory and constitutional rights afforded to all citizens, including the right to vote. OR. REV. STAT. § 427.107(3).
Pennsylvania	
State Constitution / Electoral Statutes: Persons Disqualified	No constitutional disqualification provision. Subject to state law, a person over 21 who has been a U.S. citizen for at least one month and has resided in the state and election district for the specified time may vote. No disqualification election statute. A person residing at an institution for the mentally ill or mentally retarded may choose to vote either in the district where the institution is located or where the person was registered or resided before institutionalization. PA. CONST. art. 7, § 1; 25 PA. CONS. STAT. § 1302(a)(4).
Guardianship / Conservatorship Statutes	No statutory provision disqualifies a person under guardianship from voting; an incapacitated person is presumed to retain the right to vote unless the guardianship order expressly removes it. Except in areas designated by court order as areas over which a limited guardian has power, a partially incapacitated person retains all legal rights. 20 PA. CONS. STAT. § 5512.1(g).

Mental Health Statutes	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 an 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.
Developmental Disabilities Statutes	A mentally retarded or mentally ill person cannot be disenfranchised solely because the person is undergoing treatment for a mental disability or is known to reside in an institution for treatment of the mentally disabled. A person residing at such an institution in Pennsylvania cannot lawfully be denied the right to register as a qualified elector in the voting district where the institution is located. 1973 Op. Att'y Gen. Pa. No. 48.
Puerto Rico	
State Constitution / Electoral Statutes: Persons Disqualified	Every person over 18 can vote if other conditions determined by law are fulfilled. No person shall be deprived of the right to vote because the person does not know how to read or write or does not own property. Any citizen not declared mentally incompetent by a court of law shall be a voter in Puerto Rico. A person declared mentally incompetent by a court of law is not entitled to exercise the right to vote, even if otherwise a qualified voter. The Courts Administrator must send the Commission periodic lists of persons legally declared mentally incompetent. P.R. CONST. art. 6, § 4; 16 LPRA §§ 4063, 4065, 4081.
Guardianship / Conservatorship Statutes	
Mental Health Statutes	An adult receiving mental-health services continues to enjoy rights, benefits, and privileges under the U.S. Constitution, the Puerto Rico Constitution, and state and federal laws while receiving evaluation, treatment, and rehabilitation, and during admission, transfer, or release in a providing institution. 24 LPRA § 6154a.

Developmental Disabilities Statutes	
Rhode Island	
State Constitution / Electoral Statutes: Persons Disqualified	No person adjudicated "non compos mentis" shall be allowed to vote. A qualified voter is defined as someone not otherwise disqualified by law. R.I. CONST. art. 2, § 1; R.I. GEN. LAWS § 17-1-2(13).
Guardianship / Conservatorship Statutes	
Mental Health Statutes	Patients admitted to a facility shall not be deprived of the right to vote and participate in political activity solely by reason of admission. R.I. GEN. LAWS § 40.1-5-5(f)(10).
Developmental Disabilities Statutes	A community-residence resident will not be deprived of the right to vote solely by reason of admission. Each resident has the right to vote and participate in political activity, including reasonable assistance when desired in registration and voting. R.I. GEN. LAWS § 40.1-24.5-5.
South Carolina	
State Constitution / Electoral Statutes: Persons Disqualified	The General Assembly shall establish disqualifications for voting by reason of mental incompetence and may provide for removal of such disqualifications. A person is disqualified from registering or voting if mentally incompetent as adjudicated by a court of competent jurisdiction. S.C. CONST. art. 2, § 7; S.C. CODE ANN. § 7-5-120(B)(1).
Guardianship / Conservatorship Statutes	The probate court shall set forth the rights and powers removed from the ward. To the extent the right to vote is not removed, it is retained by the ward. S.C. CODE ANN. § 62-5-204A.
Mental Health Statutes	Unless a patient has been adjudicated incompetent, no patient may be denied the right to be a qualified elector if otherwise qualified. County boards of voter registration in counties with department facilities must reasonably assist patients who express a desire to vote with registration forms, absentee-ballot applications and ballots, compliance with voting prerequisites, and absentee voting if necessary. S.C. CODE ANN. § 44-22-80(7).

Developmental Disabilities Statutes	Clients of department facilities with intellectual disabilities have the right to be qualified electors if otherwise qualified. County boards of voter registration in counties with department facilities must reasonably assist clients who express a desire to vote with registration forms, absentee-ballot applications and ballots, compliance with voting prerequisites, and absentee voting if necessary. S.C. CODE ANN. § 44-26-90(7).
South Dakota	
State Constitution / Electoral Statutes: Persons Disqualified	A person is not entitled to vote if disqualified by law for mental incompetence. The clerk of courts must prepare and send an abstract of persons declared mentally incompetent, and the county auditor must remove the names of persons identified as mentally incompetent from the master registration list. S.D. Const. art. VII, § 2; S.D. Codified Laws § 12-4-18.
Guardianship / Conservatorship Statutes	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. The protected person otherwise retains all rights not granted to the guardian or conservator, with a stated exception regarding creation of an agency and conferral of authority under Section 59-2-1. S.D. CODIFIED LAWS § 29A-5-118.
Mental Health Statutes	No person may be deemed incompetent to register and vote solely by reason of detention, admission, or commitment under the relevant title. S.D. CODIFIED LAWS § 27A-12-1.2.
Developmental Disabilities Statutes	No person is incompetent to register and vote solely by reason of a diagnosis of developmental disability or by reason of commitment by a county review board. S.D. CODIFIED LAWS § 27B-7-44.
Tennessee	
State Constitution / Electoral Statutes: Persons Disqualified	No constitutional disqualification provision. No disqualification election statute.

Guardianship / Conservatorship Statutes	The probate court may remove the right to vote if a person is placed under conservatorship. A petition for appointment of a conservator should include the rights that will be removed. TENN. CODE ANN. § 34-3-104(8).
Mental Health Statutes	No person with mental illness, serious emotional disturbance, or developmental disability who is hospitalized or admitted, voluntarily or involuntarily, or ordered to participate in non-residential treatment or service, shall solely by reason of such hospitalization, admission, or order be denied the right to vote unless the service recipient has been adjudicated incompetent by a court of competent jurisdiction and not restored to legal capacity, or denial is authorized by state or federal statute. TENN. CODE ANN. § 33-3-102(a).
Developmental Disabilities Statutes	No person with mental illness, serious emotional disturbance, or developmental disability who is hospitalized or admitted, voluntarily or involuntarily, or ordered to participate in non-residential treatment or service, shall solely by reason of such hospitalization, admission, or order be denied the right to vote unless the service recipient has been adjudicated incompetent by a court of competent jurisdiction and not restored to legal capacity, or denial is authorized by state or federal statute. TENN. CODE ANN. § 33-3-102(a) .
Texas	
State Constitution / Electoral Statutes: Persons Disqualified	Persons determined mentally incompetent by a court shall not be allowed to vote, subject to legislative exceptions. A person determined totally mentally incapacitated or partially mentally incapacitated without the right to vote by final judgment of a probate court is not a qualified voter and is not eligible to register. TEX. CONST. art. 6, § 1; TEX. ELEC. CODE ANN. §§ 11.002(a)(3), 13.001(a)(3).
Guardianship / Conservatorship Statutes	An incapacitated person for whom a guardian is appointed retains all legal and civil rights and powers except those designated by court order as legal disabilities by virtue of being specifically granted to the guardian. TEX. EST. CODE ANN. § 1151.001.

Mental Health Statutes	Patients have the right to register and vote unless specific law limits rights under a special procedure. TEX. HEALTH & SAFETY CODE ANN. § 576.001(b)(1).
Developmental Disabilities Statutes	Persons with intellectual disabilities have the rights, benefits, and privileges guaranteed by the U.S. and Texas Constitutions and laws, and have the right to a presumption of competency. TEX. HEALTH & SAFETY CODE ANN. §§ 592.011, 592.021.
Utah	
State Constitution / Electoral Statutes: Persons Disqualified	A person who is mentally incompetent may not be permitted to vote unless the right to vote is restored as provided by statute. No disqualification election statute identified. UTAH CONST. art. IV, § 6.
Guardianship / Conservatorship Statutes	
Mental Health Statutes	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.§ 26B-5-310(1)(d). When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days. UTAH CODE ANN.§ 26B-5-310(2)(a) - (c).
Developmental Disabilities Statutes	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.§ 26B-5-310(1)(d). When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days. UTAH CODE ANN.§ 26B-5-310(2)(a).

Vermont	
State Constitution / Electoral Statutes: Persons Disqualified	To be entitled to the privilege of voting, persons must be of "a quiet and peaceable behavior." No disqualifying election statute. Any person over 18 who is a U.S. citizen and Vermont resident and has taken the voter's oath may vote. VT. CONST. ch. II, § 42; VT. STAT. ANN. tit. 17, § 2121.
Guardianship / Conservatorship Statutes	A person under guardianship retains the same legal and civil rights guaranteed to all Vermont residents under the Vermont and U.S. Constitutions and all Vermont and U.S. laws and regulations. VT. STAT. ANN. tit. 14, § 3068a.
Mental Health Statutes	Subject to hospital rules and regulations, and except to the extent the head of the hospital determines restrictions are necessary for the medical welfare or needs of the patient or hospital, every patient has the right to vote on his or her own initiative unless adjudicated incompetent and not restored to legal capacity. VT. STAT. ANN. tit. 18, § 7705(a)(3).
Developmental Disabilities Statutes	
Virginia	
State Constitution / Electoral Statutes: Persons Disqualified	As prescribed by law, no person adjudicated mentally incompetent is qualified to vote until competency is reestablished. No person adjudicated incapacitated shall be a qualified voter unless capacity has been reestablished as provided by law. The Attorney General stated that election-law references to "mentally incompetent" and "incapacitated" as voting-disqualification standards are not in conflict, noting court discretion to determine competence. VA. CONST. art. 2, § 1; VA. CODE ANN. § 24.2-101; Op. Att'y Gen. of Va., 01-102 (Dec. 10, 2001).

Guardianship / Conservatorship Statutes	A. No person shall be deemed disqualified to vote due to lack of capacity for the purposes of Article II, § 1 of the Constitution of Virginia unless a court makes a specific finding by clear and convincing evidence that such person lacks the capacity to understand the act of voting. No court shall find a person disqualified to vote due to lack of capacity pursuant to this section based on the determination of a guardian ad litem in the report submitted in accordance with § 64.2-2003 without a showing that reasonable accommodation appropriate to such person's diagnosis or condition has been provided for the purpose of determining such person's capacity to understand the act of voting. B. No court shall, in determining that a person lacks capacity pursuant to this section, consider the results of or such person's failure to complete or comply with any test or device that evaluates such person's (i) ability to read or write, (ii) educational achievement or knowledge of any particular subject, or (iii) moral character. For purposes of this subsection, medical reports or medical information shall not constitute such prohibited tests or devices. C. Any person who was deemed disqualified to vote due to lack of capacity for the purposes of Article II, § 1 of the Constitution of Virginia prior to July 1, 2026, may petition the court that made such determination for the limited purpose of a review of such determination in accordance with the provisions of this section. D. When a person who has been deemed disqualified to vote due to lack of capacity for the purposes of Article II, § 1 of the Constitution of Virginia prior to July 1, 2026, either in accordance with the provisions of this section or by a finding of incapacity without a court order to the contrary, has not filed a petition for a review of such determination of such person's lack of capacity to understand the act of voting, a review of such determination shall be conducted at such person's next periodic review hearing pursuant to §64.2-2009 in accordance with the provisions of this section. VA. CODE ANN. § 64.2-2009.2

Mental Health Statutes	Each individual receiving services in a hospital, training center, facility, or program, operated, funded, or licensed by the Department of Behavioral Health and Developmental Services, excluding those operated by the Dept. of Corrections, shall retain his legal rights consistent with basic human dignity insofar as it is within the reasonable capabilities of the Department. VA. CODE ANN.§ 37.2-400.
Developmental Disabilities Statutes	Each individual receiving services in a hospital, training center, facility, or program operated, funded, or licensed by the Department of Behavioral Health and Developmental I Services shall retain his legal rights as provided by state and federal law. VA.CODE ANN.§ 37.2-400.
Washington	
State Constitution / Electoral Statutes: Persons Disqualified	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 a person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote, if the person subject to guardianship is a registered voter in the county, the county auditor shall cancel the person's voter registration. WASH. REV. CODE ANN. § 29A.08.515.
Guardianship / Conservatorship Statutes	A court order appointing a guardian for an adult must state whether the adult subject to guardianship retains the rights to vote and, if the adult does not retain the right to vote, including findings that support removing that right which must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process. WASH. REV. CODE ANN. § 11.130.310(1).
Mental Health Statutes	No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder under the chapter or prior Washington laws dealing with mental illness. Competency shall not be determined or withdrawn except under the specified statutory provisions. WASH. REV. CODE ANN. § 71.05.445(1)(b).

Developmental Disabilities Statutes	The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law. The secretary's determination that a person is eligible for services shall not deprive the person of civil rights or privileges, and the determination alone shall not constitute cause to declare the person legally incompetent. WASH. REV. CODE ANN. § 71A.10.030(1), (2).
West Virginia	
State Constitution / Electoral Statutes: Persons Disqualified	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. Citizens of the state may vote at all elections unless the person has been determined by final judgment of a circuit court exercising jurisdiction pursuant to §44A-1-2(c) of this code to be totally mentally incompetent. W. VA. CODE§ 3-1-3(a). For purposes of §3-1-3 (a)(3), a person is requalified to vote upon certification in writing by the clerk of the circuit court of an order or other official determination filed with his or her office that the person is no longer totally mentally incompetent. W. VA. CODE§ 3-1-3(b). Any person who has been declared 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.

Guardianship / Conservatorship Statutes	
Mental Health Statutes	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 not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven 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.
Developmental Disabilities Statutes	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 not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven 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	
State Constitution / Electoral Statutes: Persons Disqualified	Laws may be enacted excluding from 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. A person incapable of understanding the objective of the elective process or under guardianship may not vote unless the court has determined the person competent to exercise the right to vote. No person may be denied registration or voting by reason of alleged incapacity to understand the objective of the elective process unless adjudicated incompetent in Wisconsin. WIS. CONST. art. 3, § 2(4)(b); WIS. STAT. § 6.03(1)(a), (3).
Guardianship / Conservatorship Statutes	The court may, as part of a proceeding in which an individual is found incompetent and a guardian is appointed, declare incapacity to exercise the right to register or vote if the court finds the individual incapable of understanding the objective of the elective process. An 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 or vote; the finding is limited to voting eligibility. WIS. STAT. ANN. § 54.25(2)(c)(1)(g).
Mental Health Statutes	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).
Developmental Disabilities Statutes	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).
Wyoming	
State Constitution / Electoral Statutes: Persons Disqualified	All persons adjudicated mentally incompetent, unless restored to civil rights, are excluded from the elective franchise. No person is a qualified elector who is a currently adjudicated mentally incompetent person and whose civil or voting rights have not been restored. WYO. CONST. art. 6, § 6; WYO. STAT. ANN. § 22-1-102(a)(xxvi).

Guardianship / Conservatorship Statutes	
Mental Health Statutes	
Developmental Disabilities Statutes	

VI. 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, the Americans with Disabilities Act, and Section 504, 42 U.S.C. § 12132; 29 U.S.C. § 794; 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).