Voter's Rights
People with Down syndrome have the right to vote

Voting is a fundamental right and a cornerstone of American democracy. The U.S. Constitution and federal law ensure the right to vote for individuals with disabilities who understand what it means to vote. Knowing the voting rights and various obstacles to voting for individuals with disabilities is the first step towards a more accessible and inclusive voting process, a civic duty shared by all Americans.

Individuals with disabilities can be excluded from the voting process due to state voter-competence laws or because election officials, poll workers or service providers impose their own voting requirements.

Many state voting laws require a certain level of competence to vote. These laws vary state to state.

15 States and DC have laws that bar voting to individuals who are “under guardianship” or adjudged “mentally incompetent” or “mentally incapacitated”

Some states bar someone’s right to vote only if a court determined that an individual specifically lacks the capacity to vote

11 states place no disability-related restrictions on the right to vote

Even if a state has voter-competency requirements, only a court can decide that someone is not competent to vote

If a person is told by an election official or poll worker that he or she is not competent to vote, the person should ask to vote a provisional ballot that will be counted later if found eligible to vote

In many states, a person under guardianship could lose his or her right to vote

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

Most states’ laws provide for challenges to a person who has lost the right to vote based on a voter-competency requirement

If a state law disenfranchises people who are “mentally incompetent” or under guardianship, it could likely violate the violate the Constitution and the American with Disabilities Act if they are used to take away a person’s right to vote based on disability even if the person has the capacity to vote

national down syndrome society
ndss.
Voters Have the Right to Assistance

People who need help voting have the right to help from a person of their choice (excluding the person’s employer or an officer of that person’s union)

Election officials must ensure voting systems are accessible to individuals with disabilities

Service providers must provide help with the voting process to those who need it

Disability Services Offices must provide help with voter registration including assistance in completion and transmitting forms to state officials

The Americans with Disabilities Act (ADA)

Public entities may not exclude qualified voters with disabilities from the voting process and must provide reasonable modifications to voting policies, practices, and procedures

Laws or voting practices that categorically bar based on factors like guardianship status or residence in a developmental disability center could violate the ADA because they disenfranchise individuals who may have the capacity to vote and meet the essential requirements for voting

Legal Framework

United States Constitution

The Equal Protection Clause of the 14th Amendment

No state shall deny to any person the equal protection of the law

People who have the capacity to vote and meet the age and residency requirement for voting cannot be treated differently from other voters

For example, disenfranchising general groups of people based on guardianship status or mental competence could violate the Constitution

The Due Process Clause of the 14th Amendment

Before a state can take away a person’s voting rights, he or she must be informed of the reasons why and have the opportunity to challenge it in due process

Help America Vote Act (HAVA)

Regulates voting systems in federal elections to ensure accessibility for all voters with disabilities

Authorizes grant applications from state and local governments to improve voting accessibility and training of elections officials and poll workers to assist voters with disabilities

Regulates state imposed voter-competency standards

Voting Rights Act (VRA)

Prohibits “literacy tests” to determine voter eligibility unless it is applies to all voters equally

Requiring a person with a disability to pass a voter-competency test that is not required to all voters violates the VRA

Section 208 of the VRA ensures 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 or an officer of the voter’s union

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