

Voting by People with Mental Illness

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While voting laws trend toward universal suffrage, there are still some who encounter barriers in exercising the right to vote. Citizens with mental illness or cognitive and emotional impairments are especially vulnerable to exclusion from the political process, contributing to disenfranchisement. Facilitating the process for hospitalized patients to vote can increase their agency and amplify their voices and concerns. Through exercising their civic responsibility, psychiatric patients can have a hand in shaping a community in which they feel valued. In this article we will review the literature about voting, the current voting laws, and our lessons learned facilitating voting by proxy at Cambridge Hospital in the 2016 U.S. Presidential election, as well as the obstacles encountered. We will also propose methods to improve implementation of voting by hospitalized psychiatric patients for upcoming elections.

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Voting is a defining virtue of American society. For citizens, voting is a fundamental right and part of the foundation of our democracy.¹ The right to freely elect government representation affirms the importance of each individual's contribution to the social fabric and order of our society. While the U.S. Constitution protects this virtue, the right to vote has often conflicted with the eligibility to vote, an authority defined by each state. These conflicts have resulted in four constitutional amendments, the 15th, 19th, 24th, and 26th, which affirm that no citizen should be denied the right to vote on the basis of race, gender, ability to pay poll taxes, or age, respectively. While these amendments have progressively expanded access to the polls, they do not specifically grant the right to vote to those with mental illness or cognitive and emotional impairments. Misunderstanding and ignorance of voting laws can put this population at risk of being barred from fully

joining the fabric of our society by being excluded from the democratic process. In other words, these citizens are excluded from the full rights of citizenship. Citizenship refers to the civil, political, and social rights and responsibilities each citizen has in a democratic society.² People living with mental illness are often stigmatized and stripped of the benefits of full citizenship due to the perception of mental incompetence.² "Citizenship-oriented care" is a new concept in mental health that goes beyond clinical and personal models of recovery to recognize the impact of discrimination and disenfranchisement in populations with mental illness.³ It also promotes social inclusion by placing an "emphasis on the person's rightful place in society" (Ref. 3, p 20). A citizenship-oriented approach to recovery is rooted in activism and social justice. It calls for "socioeconomic and political efforts and a reaching across boundaries of disability and other barriers... to recover [the] right to full and valued participation in society" (Ref. 3, p 20).

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Federal Law

States have the authority to establish voting qualifications, as long as these qualifications are in line with federal regulations.⁴ Qualifications may be related to residency,⁵ citizenship,⁶ criminal record,⁷ or mental capacity.⁸ In the past, states have used this power to prevent "undesirable" groups from voting by enact-

ing laws that established additional barriers to casting ballots, which in reaction prompted the enactment of federal laws. These federal laws include the Voting Rights Act, the National Voter Registration Act, the Americans with Disabilities Act, and the Help America Vote Act.

The Voting Rights Act (VRA) of 1965, which was enacted to address the obstacles that undermined the right of African-Americans to vote, was later expanded to require voters with disabilities to be allowed to receive assistance from a person of their choice.⁹ It also prohibits conditioning the right to vote on passing a test.¹⁰ The first provision of the act ensures that individuals with disabilities can appoint someone to assist them with voting, but does not clearly define what is meant by assistance. The second provision protects people with mental disabilities from unjust discrimination based on the ability to complete a test that is not required of all voters.¹⁰

The National Voter Registration Act (NVRA) of 1993 requires voter registration materials to be available in all state offices that offer services to people with disabilities.¹¹ These offices must also provide assistance in filling out and submitting the forms.¹² As mentioned above, the VRA requires voting standards to be applied equally to all voters. While the NVRA allows states to remove registered voters based on “mental incapacity,” the basis for removal must be in line with the VRA, which prevents states from treating individuals with mental disabilities differently from the general voting population.¹³ It is important to keep in mind that mental illness and mental disability are not the same as mental incapacity, as the latter is a legal determination made by a judge. For example, a person with a mental illness may have a sudden head injury that results in an inability to perform the minimum requirements of voting, and could be determined “mentally incapacitated” to vote. However, in this case the person is not “mentally incapacitated” due to a mental illness, and can regain the capacity to vote if the head injury sequelae resolve.

The Americans with Disabilities Act (ADA) provides the most robust protection for people with disabilities.¹⁴ The Act defines disability as “[a] physical or mental impairment that substantially limits one or more major life activities” (Ref. 14, section 3). The ADA bars discrimination on the basis of disability in all services, programs, and activities provided to the public by state and local governments. In terms of

voting rights, Title II of the ADA requires that both state and public governments ensure that people with disabilities, including those under guardianship,¹⁵ have an equal opportunity to vote.¹⁴ Title III of the ADA prohibits the establishment of practices that would prevent individuals from voting based on residence in a hospital, group home, or developmental disabilities center.¹⁴ The U.S. Department of Justice further stated that the ADA “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” (Ref. 16, p 1).

The Help America Vote Act of 2002 (HAVA), which was passed after the 2000 Presidential election in wake of the controversy surrounding numerous disqualified ballots, made significant reforms in the voting process, including improving access to voting for the disabled.¹⁷ HAVA includes a nonspecific accessibility mandate that states “[voting systems] shall be accessible for individuals with disabilities” (Ref. 17, section 271). This has been interpreted to include people with mental disabilities with the capacity to vote.¹⁸ The HAVA included provisions to ensure that voters, including those with disabilities, had access to a secret and independent ballot, meaning that they could submit their vote in private.¹⁷ Therefore, this law ensures that individuals with mental disabilities have equal access to registration and voting and prevents states from implementing overly stringent voter competency standards.

These four acts work together on the federal level to ensure that individuals with mental disabilities have equal opportunity and access to vote with necessary assistance, without being discriminated against by the enactment of regulations that do not apply to the entire voter population. While each state establishes its own voting qualifications, their rules and regulations must abide by these federal laws.⁴

State Law Overview

Most states have mental health–related restrictions on the right to vote, with difficult-to-interpret restrictions that vary from state to state.¹⁹ For example, half of the states disenfranchise those with court-determined incapacity.¹⁹ Eleven states have laws with unclear terms such as “idiots,” “insane persons,” and “*non compos mentis*,” which Appelbaum argued “lead to a profound, and arguably unconstitutional, vagueness about whom they are intended to exclude”

(Ref. 20, p 849). Ten states, including Massachusetts, have laws that bar voting by individuals who are “under guardianship” and have been found by a court to lack the capacity to vote.¹⁹

International Considerations

The right of citizens to vote in public elections and the duty of states to protect these rights are defined by numerous international treaties, but the laws that uphold these rights vary across countries. The United Nations’ International Covenant on Civil and Political Rights has 169 cosignatory parties and protects the right of every citizen to vote “without unreasonable restrictions” (Ref. 21, p 179). Of United Nations Member States with laws or constitutional provisions related to the right to vote for individuals with mental illness, Bhugra found that over one third denied the right to vote to anyone with a mental health disorder, without qualifier.²² Only 21 Member States placed no restriction on the right to vote for citizens with a mental health diagnosis. The remainder placed some restrictions on voting rights for persons with mental health impairments, leading to variable degrees of disenfranchisement around the globe. For example, the New Zealand Electoral Act of 1993 protects the voting rights for hospitalized patients with mental health disorders or intellectual disabilities, with few exceptions.²³ Australian laws, conversely, do not clearly protect the rights of psychiatric hospital patients, leading to variable application of federal provisions.²⁴ In Western Australia, psychiatrists can advocate to suspend the voting rights of patients they deem incapable of voting.²⁵ The United Kingdom allows for citizens to elect a proxy to deliver their vote if they are unable to go to the polls, but they can lose their right to vote if deemed to lack mental capacity by a health care provider.²⁶

Capacity and Voting

A person’s capacity for a task is generally defined as whether the person possesses the necessary abilities to complete the task.²⁷ How a specific symptom would functionally impact a specific capacity should be considered.²⁷ In evaluation of specific capacities, critical factors often include factually understanding the task and the likely consequences of a decision, rationally manipulating information, and communication of a choice that is maintained long enough to

implement that choice.²⁷ A high level of understanding is not necessary; for example, for capacity to make medical decisions, the amount of information that needs to be understood is only what one requires to make a reasonable decision. With regard to voting, knowledge about politics varies greatly across society. In *Dunn v. Blumstein*,²⁸ the Supreme Court held that, under the Equal Protection Clause of the 14th Amendment, Tennessee could not have a yearlong residency requirement to register to vote because the durational requirement was not necessary to have knowledgeable voters or to ensure the ballot box’s purity.

Voting should require a lower level of understanding and decision-making than does making a will (distributing one’s assets), and a much lower level than the capacity to enter a contract (which has competing interests) or medical decision-making (which can have severe consequences). In balancing the risks of not allowing someone to vote who is competent versus allowing someone who is not competent to vote, the harms are quite limited if a marginally competent person were to vote, versus the large harms of disenfranchising voters.²⁹ Appelbaum noted that a 1982 American Bar Association project suggested that, to be allowed to vote, one must be able to provide the information required to register to vote.²⁰ This suggested quite a low bar (i.e., providing one’s name, address, age, citizenship information), which likely only persons with severe dementia, intellectual disability, or psychosis would not be able to meet.³⁰

In general, adults are presumed competent for tasks unless they are otherwise adjudicated. Guardianship is granted when an adult is incapacitated, and this limits the individual’s rights significantly.²⁷ A person under guardianship may have difficulties specifically with managing their finances or self-care without assistance, which is not necessarily related to the capacity to vote.^{20,29} Though it varies by jurisdiction, those who have guardians are often interpreted as being legally unable to vote.³¹ In 2001, a federal district court in Maine ruled in *Doe v. Rowe* that the automatic exclusion of three people from casting ballots on the basis of them being under guardianship for reasons of mental illness violated their rights to procedural due process and equal protection from discrimination under the ADA and the 14th Amendment.³²

Early research demonstrated that persons with mental illness demonstrate voting patterns common

to their geographic area.³³ In Canada, Valentine and Turner found that the voting patterns of institutionalized psychiatric patients reflected the voting patterns of the surrounding community.³⁴ Another Canadian survey of hospitalized psychiatric patients revealed a high level of political knowledge among the patients and concluded that previous laws restricting the voting rights of psychiatric patients were unnecessarily restrictive.³⁵ Similarly, in Israel, Melamed and colleagues concluded that facilitating the right of hospitalized psychiatric patients to vote “contributes to their feeling of being a participating member of the community . . . rather than a rejected minority with no rights” (Ref. 36, p 72).

These studies demonstrate that patients do not vote in a psychotic or confused manner, and that voting fosters a sense of order and belonging. In the *Doe v. Rowe*³² decision, criteria for voting capacity were offered based on the person understanding the nature and effect of voting. This standard was meant to protect the integrity of voting, ensuring that those who vote have a basic understanding of the voting process, while not depriving those who wish to vote of their right to do so.³⁷ The assessment of decision-making ability should focus on specific functional capacities rather than diagnosis or history alone.³⁸ For example, one study suggested that individuals with mild Alzheimer’s disease likely maintained capacity to vote, while individuals with severe Alzheimer’s disease were likely not competent.³⁹ The Competency Assessment Tool for Voting (CAT-V) was developed based on *Doe* criteria, and it includes queries about understanding, appreciation, reasoning, and choosing.³⁷ Findings suggested that, in general, people with serious mental illness living in the community have the necessary capacities to vote.

Just as there is a risk of undue influence when writing a will, there is the possibility of undue influence on voters. For example, it has been alleged by proponents of voting restrictions that persons with mental illness can be taken advantage of and exploited.⁴⁰ States have a compelling interest in preventing fraudulent behavior and undue influence in voting.³⁰ In intellectual disability, concerns may relate to the person’s desire to please others.³⁰ Hallmarks of undue influence in will cases include the abuse of a position of trust or power by a beneficiary, such that the testator lacks free will.²⁷ Isolation, medications that cloud cognition, and manipulation by controlling access to substances are also factors con-

sidered in undue influence cases. Consider the hospitalized patient who overhears well-meaning staff members discussing their political opinions at work. If these same staff members are facilitating the voting process, this conversation may unduly influence the voter’s choice. Staff should be cognizant of this and help guard against swaying patients’ decision-making, no matter how contentious an election. Schriener and colleagues note that, because ballots are cast in secrecy, this can help prevent pressure or threats.³⁰

Field Notes

Recognizing that there was no existing system to facilitate voting by hospitalized patients and that hospitalization is often a barrier to full participation in citizenship, the Social Justice Coalition (an interprofessional organization at the Cambridge Hospital in Cambridge, MA) aimed to expand the hospital’s patients’ access to the polls. The organization is focused on promoting equity and improving the social, cultural, economic, environmental, and political health of the communities served. As such, patients who were hospitalized near Election Day 2016 were offered the opportunity to vote. While all hospitalized patients were extended an invitation, the resident psychiatrists spearheading this initiative (J.A.O., J.B.M.) took a special interest in the legal questions raised in trying to help psychiatric inpatients exercise the right to vote.

According to the Massachusetts Official Absentee Ballot Application, registered voters who have entered into a hospital or health care facility within five days of a primary or election day can have a ballot mailed to them or elect a proxy to hand-deliver their ballot.⁴¹ Given this provision in the law, psychiatry resident volunteers consulted with the Massachusetts Election Commission, who advised that these absentee ballot applications and the ballots themselves should be hand-delivered to the voters’ local election office.

With the support of the Cambridge Hospital’s legal team, volunteer resident physicians created educational material to explain this last-minute absentee voting procedure, promote awareness among hospital staff, and provide copies of the absentee ballot application to patients. Patients were encouraged to designate a family member or friend as their voting proxy, and for those without someone to serve as proxy, hospital volunteers were made available. On November 3, 2016, five days before the election, this

material was distributed through email and physical copies were delivered to each hospital unit, where volunteers were also able to educate staff about this opportunity. Patients admitted to the hospital after noon on that day were identified as being potentially eligible for this opportunity to vote and were approached by clinical staff and volunteers to facilitate this process, if they were interested. Once absentee ballot applications designated a proxy, the applications were hand-delivered to the patient's local election office in exchange for the absentee ballot. This ballot was then hand-delivered to the hospitalized patient, and they voted in private and sealed the ballot. Then the completed ballot was returned in-person to the local election office.

In the development and execution of this program, there were a number of obstacles, the first of which was a lack of awareness of these laws and obligations that health care facilities have to assist patients who are unable to get to the polls. Federal statutes dictate that people with disabilities should not be subject to discrimination by any private^{42,43} or public facility^{44,45} or any facilities receiving federal financial assistance.⁴⁶ As such, service providers must make reasonable modifications to their policies and practices to ensure that patients who need help with the voting process receive it.¹⁹ At the time of this project, volunteer resident physicians were unaware of this mandate and did not seek wider institutional support. As such, this effort was predominantly supported by the time and financial resources of the two resident physician volunteers who served as voting proxies. This dearth of financial and administrative resources likely limited the scope of impact that the program could make, given that the majority of eligible patients requested hospital proxies to submit their ballots. Depending on where patients were registered to vote, volunteers were required to drive significant distances to submit the ballot. In the case of psychiatric patients, there was uncertainty among hospital staff and patients themselves about their right to vote while admitted to an inpatient psychiatric unit.

Additional obstacles encountered while enacting this program included patients not knowing whether they were registered, or in what town. In those cases, resident volunteers needed to call local election offices to confirm registration prior to completing the absentee ballot application. During these phone calls, the resident volunteers encountered election

officials who were equally uninformed or provided incorrect information about proxy voting for hospitalized patients, unearthing another potential barrier to voting for marginalized patients.

One resident facilitator (J.A.O.) wrote an article about this effort,⁴⁷ and the story was picked up by a number of other media outlets including *Boston Magazine*,⁴⁸ ABC News,⁴⁹ and Marketplace.⁵⁰ This prompted hospitalized patients and providers from other health care systems to seek advice on the procedures used at the Cambridge Hospital due to the obstacles they encountered when trying to implement similar programs.

Additional Barriers to Voting

The stigma of mental illness is just one barrier to the voting rights of psychiatric patients. Additional obstacles include the logistics of gaining entry into forensic or secure facilities where patients are housed. As discussed previously, absentee ballots and voting proxies are ways in which confined psychiatric patients can vote. Access to the patient is necessary for these methods to be effective. Forensic and secure facilities have specific protocols and policies that have the potential to restrict access to patients.

Citizenship-oriented care is especially important at the intersection of the mental health and criminal justice systems.⁵¹ Historically, in the United States, felons have been ineligible to vote.⁵² Psychiatric patients in forensic and secure facilities may be ineligible to vote based on a felony conviction. However, in the past decade, some states have revoked the felony ineligibility statute. Currently, there is a spectrum of laws restricting felons' rights to vote in various ways (the interested reader is referred to the National Conference of State Legislatures, which has categorized individual states).⁵² Felons retain their ability to vote, even while incarcerated, in Maine and Vermont.⁵² Felons lose their voting rights only while incarcerated in 14 states and the District of Columbia. In 21 states, felons are ineligible to vote during incarceration and automatically have their rights restored after their sentence is complete, which may include postincarceration supervision.⁵² In 13 states, felons are indefinitely ineligible to vote without additional action, such as receiving a governor's pardon or completing a postsentence waiting period.⁵² In these 13 states, the key difference is that rights are not automatically restored, but may be restored by some

additional action, and in some states, certain offenses result in permanent disenfranchisement.

Making Accommodations

While great strides have been made to pass the aforementioned laws, there is still progress to be made, including becoming more aware of who is responsible for carrying out the regulations. As previously described, the VRA requires that people with mental disabilities be allowed to designate someone of their choice to assist them when voting.¹⁰ This agent cannot be the voter's employer, an agent of the employer, or a representative of the voter's union.⁵³ The chosen agent must respect the voter's choices and is prohibited from making assumptions about how the individual wants to vote. Interpretation of the meaning of the word "assistance" has ranged from picking up and returning absentee ballots for patients currently hospitalized to filling out ballots for individuals not physically capable.

Elections officials are also required to provide mentally disabled voters with assistance.⁵⁴ This assistance may be in the form of making voting systems readily accessible or making reasonable modifications to help mentally disabled individuals register to vote.¹⁴ One method by which an election official can fulfill this obligation is by ensuring that residents of nursing homes and care settings are aware of how to apply for, complete, and submit absentee ballots. For election officials to be able to help voters in their precinct, they must first know the rules themselves. For example, prior to election day, officials are to be made aware that service animals must be allowed in the polling place, that people with disabilities are allowed to have assistance from a person of their choice, and that additional modifications may be needed and should be provided to accommodate voters with disabilities.¹¹

If a voter is currently staying or living in a facility that is providing care, such as a hospital, group home, or nursing home, the facility is required to make reasonable efforts and modifications to assist them in exercising their right to vote.¹⁴ These efforts should include providing information about how to register to vote, how to apply for and submit an absentee ballot sufficiently in advance, and offering assistance if help is needed with these tasks.¹¹ Additional responsibilities include allowing for voter education on-site so that residents are able to make informed decisions.¹⁴ To fulfill this responsibility, hospital

employees need to be aware of local rules and regulations around voting and to be educated on how best to have conversations with patients regarding their right to vote. Even with several agencies responsible for educating, empowering, and assisting voters with mental disabilities to access the polls, there appears to be little enforcement of these regulations, which means there is a great need for advocacy.

Role of the General and Forensic Psychiatrist

General psychiatrists are in a unique position to address the barriers to voting among people with mental illness by educating the community about these rights as well as facilitating means to vote. To do this, general psychiatrists must be familiar with the state laws affecting the voting rights of people with mental disabilities in the jurisdiction in which they practice, especially in states with specific legal guidelines to determine whether a person has the capacity to vote. In addition, guardians should be reminded that the individual retains certain capacities, including the capacity to vote, unless noted otherwise.

Forensic psychiatrists may be asked to determine whether an individual has the capacity to vote. There is no consensus on what capacities a person actually requires to be able to vote.⁵⁴ Most states restrict the reasons that a voter's capacity may be challenged, and some states do not permit challenges based on the perception of incompetence.¹⁹ As previously mentioned, the CAT-V operationalized the *Doe* standard into a structured assessment tool.³² Although no standard currently exists to determine an individual's voting capacity, one may consider administering the CAT-V given the preliminary data in individual cases in which a person's right to vote is being challenged. Other screening tools or psychological or cognitive testing do not specifically address an individual's understanding of the voting process.

After an individual has been adjudicated incompetent to vote, forensic psychiatrists could be asked to opine about the likelihood of restoration to voting competence. Although this may not be a common referral question, the finding of incompetency related to voting is not necessarily a permanent state. Certainly, individuals with mental illness may experience periods of time during which they are more symptomatic and their decision-making capacities are compromised. However, with adequate treat-

Table 1 Suggestions for Reducing Barriers to Voting by Hospitalized Psychiatric Patients

- Educate facility staff and patients about anti-discrimination laws that allow hospitalized patients to vote (e.g., informational handouts and posters around the hospital).
- Understand state laws affecting the voting rights of people with mental disabilities.
- Encourage hospital to promote voter registration year-round.
- Liaise with local election commission office.
- Organize staff and volunteers to help hospitalized patients who have expressed desire to vote to apply for, complete, and submit absentee ballots.

ment, it is likely that individuals with mental illness can be restored to voting capacity.

The voting rights of psychiatric patients are an integral component of the citizenship-based model of psychiatric care.³ As Kelly points out, a large proportion of psychiatric inpatients are often unaware of their right to vote, which likely contributes to their decreased participation in elections.⁵⁵ Nash concludes in his work on social inclusion that “having the right to vote in principle is one thing, being able to exercise it is another and mental health professionals should be fully aware of this” (Ref. 56, p 702).

These observations and the residents’ experiences described in this article demonstrate the need to raise awareness among both patients and providers. Table 1 provides suggestions for psychiatrists and other mental health professionals to help address the barriers to voting in the psychiatric population.

Countries around the world have recognized the importance of the voting rights of individuals with mental illness and have made strides to protect these rights. In the United States, the VRA, NVRA, ADA, and HAVA were passed to protect the suffrage of marginalized populations. Recognizing that persons with psychiatric disabilities may face unique barriers to voting, such as inpatient hospitalization, guardianship, and the perception of incompetence, these laws obligate health care providers to facilitate patients’ access to the polls. As Rowe and Baranoski conclude, “the citizenship of all strengthens the community as a whole and enhances the citizenship of each member, while the non-citizenship of some impoverishes the community and weakens the citizenship of each member” (Ref. 57, p 263). This citizenship-oriented approach to care not only respects a patient’s health, but also their rightful place in society.

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