

Mental Incapacity and the Right to Vote in Colorado

Background

The United States Constitution protects its citizens' right to vote. However, the Constitution also allows states to determine who qualifies to vote within their jurisdiction. This right is, of course, limited and must comply with the Constitution and Federal Statutes. Some states have decided to restrict those who are mentally incapacitated from voting. Federal Law- 52 U.S.C. § 20507 (a)(3)(B) allows States to remove voters from registration rolls if they have a "mental incapacity". Many have done so: currently only eleven states have placed no mental disability-related restrictions on the right to vote. Colorado is one of those states.

Colorado Law

The State of Colorado guarantees the right to vote to individuals who:

- are U.S. Citizens,
- will be at least 18 years old on Election Day, and
- will have resided in the state for 22 days prior to the election.

The only exception to this rule is that those who are currently serving a sentence for a felony.

There is no similar restriction in Colorado statute for anyone who might be considered "mentally incapacitated." In fact, there are several statutes that specifically reserve the right to vote for individuals with mental incapacities. Title 1, Article 2, Section 103 of the Colorado Code specifically states that individuals who are confined in a mental illness institution "shall not lose the right to vote because of the confinement". Other statutes require that mental health treatment facilities not only allow those being treated to vote, but also require that they, "assist such persons . . . to obtain voter registration forms and mail ballots and to comply with any other prerequisite for voting". This same right is reserved for those with developmental disabilities who are being treated and cared for by an agency or institution.

What does this mean?

In Colorado individuals with mental disabilities, including those who are being cared for by a treatment facility have the right to vote if they otherwise qualify. Anyone involved in the care of these individuals must allow them to vote as they wish. Failure to do so would be a violation of Colorado Statute, and of that individual's Constitutional right.

Practically speaking, if an individual has the ability to direct how they would like to vote, then they must be allowed to do so, regardless of how others might view that individual's state of mind. However, if the individual is unable to articulate their preference when voting then others around them should not cast a vote for them. What matters is the voter's intent- if it can be determined then it should be counted.