

Voting and Mental Illness

Doe v. Attorney General
(George Z. Singal, D. Me. 1:00-cv-206)

One month before the 2000 general election, three women under psychiatric guardianships filed a federal complaint challenging Maine’s exclusion of persons under such guardianships from the right to vote. Approximately three weeks later, the court denied injunctive relief. On a more complete record the following year, the court invalidated the franchise exclusion.

Subject: Nullifying registrations. *Topic:* Equal protection.

On October 4, 2000, three women under psychiatric guardianship filed a federal complaint in the District of Maine’s Bangor courthouse challenging the constitutionality of Maine’s excluding from the right to vote “persons under guardianship for reasons of mental illness.”¹ With their complaint, the plaintiffs filed a motion for a preliminary injunction and a motion for expedited hearing.²

Meanwhile, the November election would include a ballot referendum to remove the mental-health guardianship exclusion from Maine’s constitution.³

The court assigned the case to Judge George Z. Singal,⁴ the only district judge in Bangor at the time.⁵ Judge Singal had been on the bench for less than three months.⁶ He held an injunction hearing on October 24 and denied the injunction on October 27.⁷

He determined that the record at that time did not justify the extraordinary relief of ordering a right to vote for the plaintiffs in the November 7 election.⁸

Jane Doe was under guardianship for bipolar disorder.⁹ “As a result of this litigation, Jane Doe learned that it was the position of the State of Maine

1. Docket Sheet, *Doe v. Att’y Gen.*, No. 1:00-cv-206 (D. Me. Oct. 4, 2000); *Doe v. Rowe*, 156 F. Supp. 2d 35, 38 (D. Me. 2001); *see* Me. Const. art. II, § 1.

2. Docket Sheet, *supra* note 1.

3. *See Voting Rights Urged for Mentally Ill*, Bangor Daily News, Oct. 5, 2000.

4. Docket Sheet, *supra* note 1.

Tim Reagan interviewed Judge Singal for this report by telephone on July 26, 2012.

5. Interview with Hon. George Z. Singal, July 26, 2012.

6. *Id.*; Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges (noting commission received on July 11, 2000).

7. Findings of Fact and Conclusions of Law, *Doe v. Att’y Gen.*, No. 1:00-cv-206 (D. Me. Oct. 27, 2000), D.E. 16, www.med.uscourts.gov/Opinions/Singal/2000/GZS_10272000_1-00cv-206_Doe_v_Ketterer.pdf, archived at web.archive.org/web/20181202135955/www.med.uscourts.gov/Opinions/Singal/2000/GZS_10272000_1-00cv-206_Doe_v_Ketterer.pdf; Docket Sheet, *supra* note 1; *see* Jeff Tuttle, *Judge Denies Three Women Right to Vote*, Bangor Daily News, Oct. 28, 2000.

8. Findings of Fact and Conclusions of Law, *supra* note 7, at 4.

9. *Doe v. Rowe*, 156 F. Supp. 2d 35, 39 (D. Me. 2001).

that a person under full guardianship by reason of mental illness could vote if the Probate Court specifically reserved the individual's right to vote."¹⁰ She obtained a right-to-vote order from the probate court on November 3.¹¹ Jill Doe was also under guardianship for bipolar disorder, but the probate judge hearing her petition for amendment determined that Maine's constitution deprived her of the right to vote, so her petition was denied.¹² June Doe was under guardianship for intermittent explosive disorder, antisocial personality, and mild organic brain syndrome.¹³ Because her amendment petition would be heard by the same probate judge as Jill Doe's, she did not file one.¹⁴

On November 7, the referendum failed.¹⁵

On August 9, 2001, after briefing on cross-motions for summary judgment, Judge Singal determined that Maine's disfranchisement of persons under guardianship for mental illness violated the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.¹⁶ There was a much better record supporting the plaintiffs' claims by then.¹⁷ The full record included not only affidavits from psychiatrists about the capacity to vote by persons under guardianship but also psychiatric evidence supporting the plaintiffs' capacity to vote.¹⁸ The full record also showed inconsistent applications of the franchise exclusion in the probate courts.¹⁹ The state declined to appeal Judge Singal's decision.²⁰

10. *Id.*

11. *Id.*

12. *Id.* at 39–40.

13. *Id.* at 40.

14. *Id.* at 40–41.

15. See Jeff Tuttle, *Mainers Reject Voting Rights for Mentally Ill*, Bangor Daily News, Nov. 8, 2000.

16. *Doe*, 156 F. Supp. 2d at 59 (also finding violations of the Americans with Disabilities Act and the Rehabilitation Act); see *Developments in the Law—The Law of Mental Illness*, 121 Harv. L. Rev. 1114, 1185–87 (2008); Sally Balch Hurme & Paul S. Appelbaum, *Defining and Assessing Capacity to Vote: The Effect of Mental Impairment on the Rights of Voters*, 38 McGeorge L. Rev. 931, 953, 957 (2007); Kingshuk K. Roy, *Sleeping Watchdogs of Personal Liberty: State Laws Disenfranchising the Elderly*, 11 Elder L.J. 109, 129–36 (2003); Daniel P. Tokaji & Ruth Colker, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 McGeorge L. Rev. 1015, 1028–29 (2007); Jeff Tuttle, *Voter Restriction Unconstitutional*, Bangor Daily News, Aug. 11, 2001, at A1; see also Paul S. Appelbaum, Richard J. Bonnie & Jason H. Karlawish, *The Capacity to Vote of Persons with Alzheimer's Disease*, 162 Am. J. Psychiatry 2094 (2005) (developing a method of assessing capacity to vote based on Judge Singal's opinion).

17. Interview with Hon. George Z. Singal, July 26, 2012.

18. *Id.*

19. *Id.*

20. *Id.*