

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

JANE DOE, JILL DOE and )  
JUNE DOE, by and through their )  
guardian, Maine Department of Human )  
Services, and THE DISABILITY RIGHTS )  
CENTER OF MAINE, INC., )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
ANDREW KETTERER, Attorney General )  
for the State of Maine, ET AL., )  
 )  
Defendants )

Docket No. 00-CV-206-B-S

**ORDER ON DEFENDANTS’ MOTION TO CERTIFY  
STATE LAW ISSUES TO THE MAINE SUPREME JUDICIAL COURT**

Singal, District Judge.

Before the Court is a motion by the State Defendants to certify several questions to the Maine Supreme Judicial Court (Docket #21). For the reasons explained below, Defendant’s Motion is DENIED.

**I. STANDARD FOR CERTIFICATION**

Pursuant to Maine statute, a federal court may certify issues of Maine law to the Maine Supreme Judicial Court when “there are involved in any proceeding before it one or more questions of law of this State, which may be determinative of the cause, and there are no clear controlling precedents in the decisions of the Supreme Judicial Court . . . .” 4 M.R.S.A. § 57; see also Me. R. Civ. P. 76B. Additionally, to qualify for certification, there must be no dispute regarding the material facts of the case. See Fireman’s Fund Ins. Co. v. Childs, 52 F. Supp. 2d 139, 141 (D. Me. 1999).

## II. DISCUSSION

Through its motion, the State Defendants ask the Court to certify the following questions:

1. Under Article II, § 1 of the Maine Constitution and 21-A M.R.S.A. § 115, does the term “mental illness” include mental retardation and other conditions that would render a person of unsound mind?
2. Under the Maine Probate Code, 18-A M.R.S.A. § 5-304(a), does a Probate Judge have the authority in the case of a full guardianship to reserve the right to vote to a ward who is capable of understanding the nature and effect of the act of voting?
3. Under Article II, § 1 of the Maine Constitution and 21-A M.R.S.A. § 115, if a person is under full guardianship for reasons of mental illness and the guardianship order reserves to the ward the right to vote or the person is under limited guardianship and the right to vote has not been suspended by the Probate Court, is such a person a “person under guardianship for reasons of mental illness” within the meaning of Article II, § 1 and 21-A M.R.S.A. § 115 such that the person is disqualified from voting?

(State Defs. Mot. to Certify State Law Issues at 1-2.) While the Law Court has not previously addressed these questions, the Court declines Defendants’ invitation to certify because no combination of answers to these three questions would be determinative of Plaintiffs’ federal claims.

With regard to the second question, the Court believes that the answer to this question is clear despite the lack of explicit precedent from the Law Court. Quite simply, the answer is “yes.” Under Maine’s Probate Code, a Probate Judge is directed to “make appointive and other orders only to the extent necessitated by the incapacitated person’s actual mental and adaptive limitations or other conditions . . .” 18-A M.R.S.A. §§ 5-304(a) & 5-408. Thus, it is clear that a Probate Judge has the authority to reserve the

right to vote to a ward who is capable of understanding the act of voting.<sup>1</sup> The experience of Jane Doe “who at the 11<sup>th</sup> hour was able to get her guardianship modified to ‘reserve the right to vote’” serves as further proof of a Probate Judge’s authority in this regard. (Pls. Obj. to State Defs. Mot. to Certify at 3 (Docket #27).)

Moreover, the Court reads Plaintiffs’ Second Amended Complaint (Docket #29) to allege, in relevant part, that despite possessing the authority to do so, Probate Judges are not required to probe a ward’s understanding of the act of voting before making a decision that may, in fact, disenfranchise the ward. Additionally, Plaintiffs allege that Probate Judges do not even notify wards that they may lose the right to vote. In short, Plaintiffs do not challenge the authority of Probate Judges, but rather the procedure utilized by Probate Judges during guardianship proceedings.

Turning to the third proposed question, the Court believes that, to the extent the question is relevant to this case, the Court and the parties are in agreement that the answer to this question is “no.” The alternative answer would create a scenario in which a Probate Judge could reserve a person’s right to vote but the Maine Constitution would still prohibit the individual from voting. The Court is confident that the Law Court would not adopt this rather illogical construction of state law. See Marbucco Corp. v. Suffolk Constr. Co., 165 F.3d 103, 105 (1<sup>st</sup> Cir. 1999) (“It is inappropriate, however, to use certification ‘when the course state courts would take is reasonably clear.’”) (quoting Porter v. Nutter, 913 F.2d 37, 41 n. 4 (1st Cir.1990)).

Finally, the Court examines State Defendants’ suggestion that the definition of “mental illness” may be determinative of Plaintiffs’ federal claims. In question one, the

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<sup>1</sup> Whether the Probate Judge chooses to do this through a full guardianship that specifically reserves the right to vote or a limited guardianship is a semantic difference that does not affect Plaintiffs’ federal claims in this case.

State Defendants propose that the Law Court should decide whether mental illness includes “mental retardation and other conditions that would render a person of unsound mind” or whether mental illness is subject to some narrower definition.

As the Court previously discussed in its Findings of Fact and Conclusions of Law on Plaintiffs’ Motion for Preliminary Injunction (Docket #16), there is evidence that the State Defendants have advocated both narrow and broad definitions of “mental illness” in implementing Maine’s voting restriction. Thus, the various State Defendants have yet to present a unified position on the definition of “mental illness.” In response to Defendants’ suggestion to certify this question, Plaintiffs argue that both the narrow and broad definitions of “mental illness” raise federal questions because they make Maine’s voting restrictions either under inclusive or over inclusive. Thus, Plaintiffs’ federal claims would remain regardless of any clarification the Law Court might offer as to the definition of “mental illness.”

Moreover, as the Court has explained in its previous order, the varying definitions offered by the State as well as the lack of guidance offered to registrars, who must determine when someone is “under guardianship for mental illness,” demonstrate that the provision has been and continues to be subject to arbitrary application. The fact that the Law Court might conclude that the relevant Maine provisions should be implemented differently in the future would not change Plaintiffs’ allegations that, as applied, Maine’s voting restrictions have violated their federal statutory rights as well as their rights to equal protection and due process.

To the extent that Plaintiffs also present a facial challenge to Maine’s disenfranchisement of those “under guardianship for reasons of mental illness,” the Court

finds that certification is still unnecessary. Pursuant to the well-established principle that statutes be read to avoid constitutional problems, this Court may subject Maine's voting restriction a narrowing construction in order to avoid finding a constitutional violation—assuming that there is such a feasible construction. (See Findings of Fact and Conclusion of Law at 9 n.5 (Docket #16).)

### III. CONCLUSION

Thus, the Court concludes that guidance from the Law Court clarifying the authority of Probate Judges and the definition of mental illness is unnecessary and would not dispose of Plaintiffs' federal claims.<sup>2</sup> For these reasons, Defendants' Motion to Certify is hereby DENIED.

SO ORDERED.

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George Z. Singal  
United States District Judge

Dated on this 16<sup>th</sup> day of January 2001.

JANE DOE  
    plaintiff  
[term 10/12/00]

KRISTIN L. AIELLO, ESQ.  
    [term 10/12/00]  
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JILL DOE  
    plaintiff

KRISTIN L. AIELLO, ESQ.  
    [term 10/12/00]

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<sup>2</sup> To the extent that the Defendants' proposed questions reflect a general desire to clarify various provisions of Maine's Probate Code as well as Maine's law regarding voter registration, State Defendants should seek such clarification through the Maine Legislature rather than through the courts.

[term 10/12/00]

(See above)  
[COR LD NTC]

JUNE DOE  
    plaintiff  
[term 10/12/00]

KRISTIN L. AIELLO, ESQ.  
    [term 10/12/00]  
(See above)  
[COR LD NTC]

v.

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    defendant

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WILLIAM R. STOKES  
(See above)  
[COR LD NTC]