

Editorial An unreasonable restriction on the right to vote



Stephen Lopate and his mother, Teresa Thompson, outside Lopate's school in Whittier. Lopate lost his right to vote after Thompson said he was unable to fill out forms on his own. (Los Angeles Times)

Who's competent to vote?

ONE OF THE MOST fundamental rights of an American citizen is the right to vote. And though not nearly as many citizens take part in elections as we'd like, no one should be stripped of that right without clear cause. But thousands of Californians with developmental disabilities have been barred from voting without full consideration of their capabilities and, according to a complaint filed with the Justice Department, likely in violation of the Americans with Disabilities Act.

Although voting is a constitutional right, most of the mechanisms for determining eligibility are left to the states, which has resulted in a patchwork of restrictions. For instance, most states, including California, bar people from voting while they are serving a felony sentence. But California's Constitution also disqualifies the "mentally incompetent," and related state laws say the test of competence is whether a person can fill out a voter registration form. This usually only becomes an issue when the courts place a person under a conservator's care.

But is that the right test? Asking the developmentally disabled to navigate a registration form to prove they are eligible to vote is alarmingly similar to submitting them to a literacy test, the sort of barrier that was used for years in the South to deny voting rights to illiterate African Americans. Besides, in what way is filling out a form a good measure of whether a person has the mental

capacity to make the judgments necessary to select his or her preferred candidate? For the last year, the state has been allowing the disabled to fill out the forms with the help of a caregiver, but that's not enough of a change to make the system rational.

Senate Bill 589, by Sen. Marty Block (D-San Diego), would establish a more sensible benchmark. As recommended by the American Bar Assn., the bill would create a presumption that a developmentally disabled person is eligible to vote unless a judge explicitly determines the person cannot express a desire to do so. That approach recognizes all Americans' inherent right to vote, while allowing a judge to disqualify those who are clearly incapable of participating. The bill has passed the Senate.

Advocates believe there may be more than 50,000 Californians under conservatorship for developmental disabilities or age-related problems, an unknowable number of whom have been unfairly denied the right to vote. Often they were declared ineligible simply because a relative without a legal background or someone else seeking to become a conservator checked a box on a form saying the person couldn't fill out a voter registration form, and unwittingly signed away their right to cast a ballot.

Restoring those rights will take time, and will likely be difficult. But ultimately, the state has a responsibility to ensure that those who can express a desire to vote be able to do so.



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