



Disability and Guardianship Project

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August 23, 2016

Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
Washington, DC

AMENDED COMPLAINT
on behalf of David Rector and all
conservatees and limited conservatees
who need voting rights restored

Attn: Ms. Elizabeth Johnson, Disability Rights Section, Washington, D.C.
Mr. Vincente Tennerelli, Assistant United States Attorney, Fresno, CA

Re: Amendment to complaint filed on July 10, 2014
Restoration of Voting Rights for Conservatees and Limited Conservatees

Dear Attorney General Lynch:

On July 10, 2014, Spectrum Institute filed a complaint with the Department of Justice on behalf of limited conservatees under the jurisdiction of the Los Angeles Superior Court. The complaint alleged that the Los Angeles Superior Court was implementing state statutes and utilizing procedures authorized by the Judicial Council of California, to deprive people with developmental disabilities of their voting rights. It alleged that the statute constituted a literacy test in violation of the Voting Rights Act of 1965 and that judicial practices violated the Americans with Disabilities Act. The original complaint is found online at <http://disabilityandabuse.org/doj/>

Based on our complaint, the Department of Justice contacted Spectrum Institute on May 15, 2015, notifying us that the DOJ had opened a formal investigation on the matter. However, due to the information we provided, the DOJ broadened the investigation to look into the practices of the Judicial Branch *statewide*. That investigation is pending and remains active.

On June 26, 2015, Spectrum Institute announced a voting rights restoration project. As part of that project, we wrote to the Presiding Judge of the Los Angeles Superior Court asking for the court to take pro-active measures to reach out to conservatees who had previously been disqualified from voting. <http://spectruminstitute.org/restore-voting-rights/>

That same day, an op-ed article appeared in the Los Angeles Daily Journal criticizing Judge Daniel Murphy for failing to restore the voting rights of Mr. Gregory Demer, a limited conservatee, despite being notified by court investigators on two occasions that Mr. Demer was able to complete an affidavit of voter registration. That same day Judge Murphy entered an order, on his own motion, reinstating Mr. Demer's right to vote.

Senate Bill 589 was subsequently enacted by the California Legislature. It became effective January 1, 2016. Under the new legislation, a conservatee cannot be disqualified from voting if he or she can express the desire to vote. Communicating the words “I want to vote” is sufficient to retain or regain the right to vote. Of course, a person with communication disabilities can express the desire to vote in any number of ways, including with assistance from technology or with the help of another person of his or her choice.

Conservatorship orders can be modified at any time. Conservatees are entitled to communicate with a judge through an ex parte letter or note. Under existing conservatorship laws, and pursuant to SB 589, if a judge learns that a conservatee has expressed a desire to vote, the judge has an obligation to restore that person’s right to vote. An adversarial proceeding is not required. The conservatee does not need an attorney. A pro-per notification to the court, ex parte, that a conservatee wants to vote triggers the court’s duty to restore the right to vote.

The problem is that conservatees in California who have been disqualified from voting by order of a probate judge – and there may be thousands or tens of thousands of seniors and people with disabilities in this category – do not know about SB 589. They do not know they can write to a judge, ex parte, to ask that their right to vote be restored. They are unaware of this right because no one has notified them. Courts have not taken the pro-active approach we recommended last year.

It appears that local probate judges are taking a passive approach to the reinstatement of the fundamental right to vote to conservatees. They are waiting for court investigators to raise the issue during biennial reviews. One problem with this passive approach is that in many counties the investigators have huge caseloads and that biennial reviews often occur two or three or more years late. Furthermore, there is no way of monitoring whether these investigators are even raising this issue during a biennial review.

The case of David Rector came to our attention last week. He is a 66-year old man who lives in San Diego. David, who is quadriplegic, has “locked-in syndrome.” David can think, feel, comprehend, remember, see, hear, and express emotions, but cannot move his limbs functionally. He can communicate, although not verbally. His medical condition arose in 2009. Prior to that, he was a producer with National Public Radio. David last voted in 2010. A judge of the San Diego County Superior Court entered an order in 2011 disqualifying David from voting. That order remains in effect today. Since the time he was placed under conservatorship, David has not received a biennial review. No court investigator has inquired about his desire to vote.

David has informed us that he wants his voting rights restored *immediately* so he can cast a ballot in November. David does not have an attorney nor does he have the funds to hire an attorney – nor should he have to. David is going today to the courtroom of San Diego County Superior Court Judge Julia Kelety to give the clerk a note advising the court that he wants his right to vote reinstated – immediately. He is also going to the ADA Office of the court to make doubly sure that his expressed desire is not lost in a bureaucratic shuffle.

We are submitting this document to the Department of Justice as an amendment to the original complaint we filed in 2014. We are filing the amendment on behalf of David Rector and all other conservatees and limited conservatees throughout the State of California who were previously

ordered disqualified from voting by judges of the Superior Court of the State of California, wherever located. We believe there are thousands of such disenfranchised seniors and people with disabilities. We are asking the DOJ to consider and act on this request as a part of its pending investigation.

The actions of Judge Murphy in the case of Gregory Demer show just how quickly superior court judges can act to restore voting rights – when they want to. We believe that all conservatees throughout California should receive the same type of expedited justice that Mr. Demer received last year in Los Angeles.

We encourage the DOJ to communicate with the Judicial Council of California, the Secretary of State, the San Diego County Superior Court, and the San Diego County Registrar of Voters. The DOJ can ask the court to notify conservatees, immediately, of SB 589 and that voting rights can be restored in response to an ex-parte request to probate court. Unless such notification occurs, it is unlikely that the victims of these voting rights violations will know about their rights, and act on them, in time to get back on the registered voter list by the deadline of October 24. The Secretary of State can communicate with the Registrar of Voters in all counties to ask them to act expeditiously to remove such individuals from the disqualified list as soon as they receive notification from the court that voting rights of an individual have been restored.

Unless the DOJ takes action, and immediately shares these concerns with the relevant state and local government entities, we believe that thousands of seniors and people with disabilities will be unfairly deprived of exercising their fundamental right to vote on November 8.

We appreciate what the DOJ has done so far on this issue. Considerable progress has been made in California. <http://www.spectruminstitute.org/doj/what-a-difference-report.pdf> However, without further assistance from the DOJ a significant segment of the California population will be excluded from the voting process this November.

Respectfully submitted:



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p.s. This amended complaint and supporting materials are available online at:
www.spectruminstitute.org/votingrights