



U.S. DEPARTMENT OF JUSTICE

United States Attorney
Eastern District of California

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United States Attorney

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MAY 18 2015

CHAMBERS OF THE
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May 15, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Alex Padilla
California Secretary of State
1500 11th Street
Sacramento, California 95814

The Honorable Tani Cantil-Sakauye
Chief Justice
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Investigation of California's Voting Practices and Procedures in Superior Court
Conservatorship Proceedings for Persons with Disabilities, DJ # 204-11E-398*

Dear Secretary Padilla and Chief Justice Cantil-Sakauye:

In response to a complaint filed regarding California's voting practices and procedures that are impacted by conservatorship proceedings for persons with disabilities, the U.S. Department of Justice has opened an investigation to determine whether violations of title II of the Americans with Disabilities Act of 1990 (ADA), as amended 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35, have occurred. Title II of the ADA prohibits discrimination against individuals with disabilities by public entities. The text of the ADA, the Department's regulation, and many technical assistance publications can also be accessed on our ADA Home Page at www.ada.gov. <http://www.ada.gov>.

The complaint alleges that the State of California unlawfully deprives persons with disabilities of their right to vote when they are adjudged to be limited conservatees. In particular, the complaint alleges that the Los Angeles Superior Court has deprived persons with disabilities of their right to vote by finding such persons are not capable of completing an affidavit of voter registration, without applying objective standards or fully investigating voter competency issues. The complaint further alleges that the Superior Court has restricted the inquiry regarding a person's capability to complete the affidavit to be without assistance, contrary to the ADA and other federal laws protecting the right to vote.¹ The

¹ The complaint included allegations that the State's actions violated other federal laws including Section 504 of the Rehabilitation Act. The Department reserves the right to expand the scope of this investigation to include other applicable federal laws, as appropriate.

complaint alleges that once a superior court determines that a person is not capable of completing the affidavit of voter registration, the person is then removed from the voting rolls or prohibited from registering to vote by the county clerk's office and that further reviews of the determination are not conducted.

The Department of Justice is authorized to investigate alleged violations of title II of the ADA, 28 C.F.R. §§ 35.172, and, if voluntary compliance is not achieved, to take appropriate action, including filing an enforcement action in U.S. district court for injunctive relief and monetary damages. 28 C.F.R. §§ 35.172, 35.174. Although the allegations filed with the Department concerned the Los Angeles Superior Court, we find the allegations to be of concern throughout the State of California as they involve the State's election code and state-wide policies, practices, and procedures.

To evaluate this complaint, we seek your cooperation in providing the following preliminary information:

1. The name, address, and telephone number of the individual to whom this office should direct any future questions and correspondence. Please indicate if this person has authority to negotiate a settlement of this matter. If the State will be represented by an attorney in this matter, please provide the attorney's name, address, and telephone number;
2. Your response to the allegations of the complaint and any additional information you consider relevant to resolution of the complaint;
3. A description of the process for disqualifying a person subject to limited conservatorship from registering to vote or voting;
4. A description of any State of California policy, practice, or procedure regarding the right to vote of persons subject to limited conservatorship proceedings, including but not limited to, the State's election code and any superior court policies, practices, or procedures, and, where such policies, practices, or procedures are written, a copy thereof;
5. A description of the State's rationale for disqualifying persons with disabilities subject to limited conservatorships from registering to vote or voting;
6. To the extent the State disqualifies persons with disabilities subject to limited conservatorships from registering to vote or voting based on the inability of such persons to complete an affidavit of voter registration, a description of the State's rationale for such practice.
7. A description of any standards, criteria, or evidentiary basis used by the California Superior Court in making a determination that a person is not able to complete the affidavit of voter registration;
8. A description of any re-evaluation process of the voter competency determination conducted by the Superior Courts or other government agencies, including the events that trigger a re-evaluation, who conducts the re-evaluation, and the standards used to re-evaluate the determination;
9. A description of the process for a person in a limited conservatorship to have his or her voting rights restored;

10. The number of persons in the State in the last three years that have been adjudged to be limited conservatees and that have been disqualified from voting or registering to vote, by county; and the number of persons who had their voting rights restored that were previously subject to disqualification in a limited conservatorship proceeding, by county;

11. A description of any training and a copy of any training material (including sample conservatorship documents) provided to judges, attorneys, investigators, or other persons involved in conservatorship proceedings (including the person moving for the conservatorship) regarding the voter competency provisions in conservatorship proceedings;

12. A description of any notice or information and a copy of any notice or information provided to persons subject to the conservatorship proceedings regarding the voter competency provisions in conservatorship proceedings; and

13. Please identify whether the Secretary of State's Office or the California Superior Court receive any federal funding, and, if so, the name of the federal agency that provides the funding and the name(s) of all programs that receive that funding or to which any of that funding is distributed.

Please provide these documents and information no later than thirty (30) days from the date of this letter. Please send a copy of the requested information and documents by overnight delivery to: Vincente Tennerelli, United States Attorney's Office, 2500 Tulare Street, Suite 4401, Fresno, CA 93721. Alternatively, you may email the documents and information to: Vincente.Tennerelli@usdoj.gov and elizabeth.johnson@usdoj.gov.

Be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has filed a complaint with the Department of Justice, or has otherwise either taken action or participated in an action to secure rights protected by the ADA. Such behavior would constitute an additional ADA violation.

We strongly recommend that you consult with this office before making any operational changes to address these allegations. Any such changes must comply with all applicable statutes. Any modifications you undertake which are not in compliance with those requirements may need to be made before this complaint can be resolved.

If you have questions or concerns, please contact Vincente Tennerelli at 559-497-4080 or Elizabeth Johnson at 202-307-3543.

Sincerely,

BENJAMIN B. WAGNER
United States Attorney

by Vincente Tennerelli
Vincente A. Tennerelli
Assistant United States Attorney

Elizabeth Johnson
United States Department of Justice
Disability Rights Section,
Civil Rights Division