

Spectrum Institute

Subject: email to Department of Justice about the restoration of voting rights

Comments by Thomas F. Coleman, Legal Director of Spectrum Institute

The following communication was sent on November 16, 2015 by email from me to an attorney with the United States Department of Justice. It explained our concerns about the failure of the California judiciary to devise an effective plan to restore the voting rights of thousands of conservatees who had those rights taken away by judges pursuant to a literacy test that violated the Voting Rights Act of 1965 and the Americans with Disabilities Act. In view of the huge caseloads of court investigators, and serious delays (in some counties delays of years) of biennial reviews of conservatorship cases, the State of California should have adopted a pro-active and effective plan for voting rights restoration. SB 589 became effective on January 1, 2016. Some 8 months later, the state still does not have an effective plan. There may be 30,000 or more conservatees whose voting rights were removed in violation of federal laws.

Elizabeth,

Last Saturday I attended an "advanced" training for PVP attorneys conducted by the Los Angeles county Bar Association.

Presiding Judge Maria Stratton spoke about new legislation.

She addressed SB 589.

Neither she nor anyone else said one word about what court-appointed attorneys should do in regards to the new law.

Judge Stratton merely advised attorneys about what court investigators would be doing and what the court itself would do.

As far as how new petitions for conservatorship would be handed in terms of voting rights, I found no fault with what was said.

However, in terms of those who lost their right to vote under the old law, I do see a problem.

She did not say anything about reinstating the right to vote for these folks, other than what investigators will do during biennial reviews.

She said that, during a biennial review, investigators will inquire if the person has a desire to vote.

If the investigator says they can express a desire to vote, the court will reinstate the right to vote. No problem with that.

However, if the investigator says the person cannot express a desire to vote, the court will do nothing. Doing nothing means the person remains disqualified to vote.

During a normal biennial review, the conservatee does not have an attorney. This is an ex-parte investigation and report to the court.

Due to the nature of their disability, the conservatee will not know they have a right to contest the finding of the investigator or that they can ask the court to reinstate their voting rights.

So for new petitions, the person does have an attorney and a finding of inability to express a desire to vote will trigger the need for an evidentiary hearing and proof by clear and convincing evidence. There is a presumption of capacity to vote that must be overcome by evidence.

But for thousands who lost the right to vote through a literacy test violating federal law (inability to complete an affidavit of voter registration), the fact that the disqualification was based on a violation of federal law means nothing to the state court. The disqualification orders remain in effect unless the investigator makes a finding of ability to express a desire to vote.

There should be a presumption of invalidity of the prior orders since they violated federal law. Everyone should start with a presumption of capacity to vote – whether it is a new petition or a biennial review. For biennial reviews, if the court intends to allow the disqualification order to continue, an attorney should be appointed to advocate for reinstatement of the right to vote. Attorneys are generally discharged when the conservatorship order is granted. So for most conservatees, they have not had an attorney for years. They are completely on their own in terms of regaining their right to vote.

I think the DOJ should require the court to appoint an attorney for each biennial review if the court intends to allow the disqualification order to remain in effect. These attorneys should be trained in federal voting rights laws and how to challenge voting disqualification orders.

I'm glad I attended the training and was able to hear, with my own ears, what the court intends to do on voting rights. New cases are fine. Existing cases where the conservatees were disqualified due to a literacy test and lack of accommodation, there is a real problem. This is the nub of a settlement with the state to make sure the reinstatement process is handled in a way that acknowledges that the prior process violated federal law.

Tom