

Capacity to Vote

California law on the capacity of conservatees to vote has changed dramatically in the past few years, largely due to the advocacy efforts of Spectrum Institute.

When we first studied the issue in 2014, we discovered that about [90% of conservatees](#) were having their voting rights taken away due to alleged incapacity. We tackled the problem by convening a [voting rights conference](#), [sponsored reform legislation](#), and filed a [complaint](#) with the United States Department of Justice that year. The following year we supported follow-up legislation that changed the criteria for capacity to vote for conservatees. As a result, almost all *new* conservatorship orders allow conservatees to retain the right to vote. Existing conservatorships are another matter.

Prior to 2015, the law provided that a conservatee would be [disqualified](#) from voting if a judge in a conservatorship proceeding determined that the person was not able to complete an affidavit of voter registration. [Some judges](#) interpreted this to mean they had to complete the affidavit on their own and without assistance. Partial reform occurred in 2015 due to the passage of [AB 1311](#) which clarified that someone with a disability has the right to assistance in completing an affidavit of voter registration.

The following year, [SB589](#) was passed. It went into effect on January 1, 2016. The bill created a presumption that a person has the capacity to vote regardless of his or her conservatorship status. Removing the right to vote now requires proof, by clear and convincing evidence, that a person is unable to express a desire to vote. This burden is so onerous that after the passage of SB589, we estimated that 90% of conservatees are retaining their right to vote.

However, those who had been disqualified prior to the passage of SB589 remained disqualified. Affirmative action is necessary to restore the right to vote of the [estimated 32,000](#) conservatees who had been disenfranchised over the previous 10 years. Although SB589 requires court investigators to inquire about a conservatee's desire to vote when the conservator conducts a biennial review, there is no evidence that this is routinely being done. No one is monitoring this process. In some local courts, biennial reviews are seriously backlogged.

In 2016, we advocated for [voting rights restoration](#) and encouraged all regional centers to take a proactive approach to ensuring their clients had their right to vote restored. It is unknown if any such action was taken in response to our request.

To verify that voting rights have been restored to conservatees with developmental disabilities, the Legislature should direct the Department of Developmental Services to require regional centers, as part of their ongoing contractual duties, to take steps to ensure that all conserved regional center clients who desire to vote have their voting rights restored. To verify voting rights restoration for conserved seniors, the Legislature should direct the Department of Aging to coordinate with the Judicial Council to survey all superior courts about their voting rights restoration practices.