

What a Difference a Year Makes

Progress in Securing Voting Rights for People with Developmental Disabilities



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United States Department of Justice Investigates Voting Rights Violations by the State of California

What a Difference a Year Makes

June 20, 2014 to June 22, 2015



Paula Davis, Nora Baladerian, Thomas Coleman, Michael Vasquez, and Stephen Lopate before filing complaint with DOJ on July 10, 2014

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Voting Rights of People with Developmental Disabilities

A Roundtable Conference
sponsored by the
Disability and Abuse Project

June 20, 2014 – 9:30 am to 12:30 pm
at the Olympic Collection in West Los Angeles

A Roundtable Conference will be held to focus on the policies and practices of the Limited Conservatorship System in Los Angeles County (and California) which frequently takes away the voting rights of adults with developmental disabilities who are declared to be conservatees.

Recent monitoring of the Limited Conservatorship System has revealed that proposed conservatees are having their voting rights removed: (1) without regard to federal laws that protect the voting rights of people with developmental disabilities; (2) without training of or advocacy by court appointed attorneys who are supposed to protect the legal rights of proposed conservatees; (3) without awareness by parents that their adult children generally should have the right to vote; (4) without apparent training of probate investigators of criteria for determining the capability of proposed conservatees to vote; (5) without assessment of voting capacities by Regional Centers which are left out of the process on this issue; (6) without close scrutiny by Probate judges and without evidentiary hearings that show clear and convincing evidence that proposed conservatees are unable, with assistance, to complete an affidavit of voter registration; (7) without involvement or monitoring of this problem by Area Boards of the State Council on Developmental Disabilities; (8) without involvement, monitoring, or advocacy by the Office of Client Rights of Disability Rights California which is under contract with the State Department of Developmental Disabilities to protect the rights of Regional Center clients; and (9) without the awareness of the Attorney General of California and the Civil Rights Division of the Department of Justice.

Agencies that should be protecting the voting rights of people with developmental disabilities will be invited to this Roundtable Conference on Voting Rights. Their attention will be called to this problem. Participants will discuss solutions to what appears to be the routine disenfranchisement of an entire class of voting-age California citizens. Strategies will be discussed for filing petitions with the court to reinstate voting rights for limited conservatees who have been improperly disqualified to vote due to mistake or neglect (by participants in the conservatorship system).

Representatives from these groups will be invited to the table: ~~Association of Regional Center Agencies (2); Area Board 10 (1); State Council on Developmental Disabilities (2); Secretary of State (1); Los Angeles County Registrar of Voters (1); California Department of Justice (1); City of Los Angeles ADA Compliance Office (1); Bet Tzedek Legal Services (1); Disability Rights California (2); State Department of Developmental Services (1); Los Angeles Superior Court Probate Investigator's Office (1); The Arc of California (1); TASH (1); ACLU (1); Los Angeles County Bar Association (1).~~ **Strikeout = they were invited but did not send anyone.**

For more information, contact:

Thomas F. Coleman, Legal Director, Disability and Abuse Project, Spectrum Institute
(818) 230-5156 / tomcoleman@earthlink.net / www.disabilityandabuse.org



2100 Sawtelle, Suite 204, Los Angeles, CA 90025
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July 10, 2014

Attorney General Eric Holder
Civil Rights Division
Disability Rights Section - NYA
U.S. Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530

Re: Complaint regarding voting rights violations by the Los Angeles Superior Court

Dear Attorney General Holder:

With this letter we are transmitting a formal complaint against the Los Angeles Superior Court for systematic violations of several provisions of federal voting rights laws. The primary violations are: (1) using a literacy test; and (2) not providing reasonable accommodations of persons with disabilities in registering to vote.

Judges in the Probate Division of the Los Angeles Superior Court are routinely issuing orders disqualifying persons with developmental disabilities who are adjudged to be limited conservatees. The Los Angeles County Registrar of Voters is then notified by the court of the names of persons the court has disqualified.

Over the past several years, scores of adults with developmental and intellectual disabilities have been declared to be disqualified. These orders are based on judges finding that the adult in question "is not capable of completing an affidavit of voter registration." This is a test which violates federal law. We have also found that court-appointed attorneys who represent these adults in conservatorship proceedings have been instructed by judges that a conservatee may not receive assistance in completing the registration form.

We have alerted the judges, attorneys, and agencies that are involved in administering the Limited Conservatorship System that the policies and practices of this system violate federal voting rights laws. We have also notified the California Attorney General and other state agencies of this problem. We have not received any indication that these illegal practices will stop or that past injustices will be corrected.

As a result, we are filing this complaint and are asking for intervention by the United States Department of Justice. American citizens are being disenfranchised because of their disabilities. We are asking the Department of Justice to instruct the Los Angeles Superior Court to remedy this problem, and if it does not, for your office to take appropriate legal action against the Superior Court.

The Superior Court is ignoring the California Secretary of State's directive: "There is no literacy requirement for participation in the elections process." Perhaps intervention by your office will get the attention of the judges and cause the court to change its policies and practices.

People with developmental disabilities in Los Angeles County are relying on you. Please help them to retain or regain their fundamental right to vote.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "N. J. Baladerian, Ph.D.", written over a light blue horizontal line.

NORA J. BALADERIAN, PH.D.
Executive Director
(310) 473-6768 nora@disability-abuse.com

A handwritten signature in blue ink, appearing to read "Thomas F. Coleman", written over a light blue horizontal line.

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net



2100 Sawtelle, Suite 204, Los Angeles, CA 90025
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EMBARGOED UNTIL:
July 10, 2014

CONTACT: Thomas F. Coleman
(818) 482-4485 / tomcolem@earthlink.net

VOTING RIGHTS COMPLAINT FILED WITH U.S. DEPARTMENT OF JUSTICE
To Eric Holder: "Help people with developmental disabilities retain and regain their voting rights."

(Los Angeles) A formal complaint was filed today with the Department of Justice on behalf of thousands of Americans with intellectual and developmental disabilities who have been denied the right to vote in Los Angeles County.

The violations are occurring as judges in Probate Court administer California laws governing "limited conservatorships," which are known in other states as "adult guardianships." Parents often petition the court to appoint them as conservators so they can make legal decisions for adult sons or daughters with developmental disabilities who may lack capacity to make some financial, medical, or other decisions.

The complaint alleges that judges in the Los Angeles Superior Court are routinely violating federal law by using literacy tests, prohibited by the Voting Rights Act of 1965, to determine whether the adults should keep or be denied the right to vote. It also alleges that the judges, and the attorneys they appoint to represent clients in these cases, are violating federal laws that allow people with disabilities to have assistance in completing voter registration forms or in casting ballots.

Judges in Los Angeles process some 1,200 new limited conservatorship cases per year. Cases remain "open" until the conservatee dies. Since people with developmental disabilities often receive a conservatorship order when they turn 18, their cases may stay open for decades. During this time, they may remain disqualified from voting because they fail the literacy test imposed by court officials.

There may be 10,000 or more open limited conservatorship cases in Los Angeles County alone, with perhaps 40,000 or more open cases throughout California. A recent audit of a block of such cases in Los Angeles showed that 90% of limited conservatees had been ordered disqualified from voting.

"What is happening in Los Angeles is the tip of the iceberg," said attorney Thomas F. Coleman, who filed the complaint for the Disability and Abuse Project on behalf of limited conservatees under the jurisdiction of the Los Angeles Superior Court. "The problem of voting rights violations of people with intellectual and developmental disabilities is not isolated to Los Angeles. Such civil rights violations are occurring elsewhere in California. Indeed, this is happening in many states throughout the nation."

Dr. Nora J. Baladerian, Executive Director of the Project and a clinical psychologist in Los Angeles, emphasized that the impact on people with disabilities is not just legal and political. "Being told that you are less than other Americans and that you cannot exercise your right to vote has a detrimental emotional and psychological effect on people with disabilities," she said. "We trust that Attorney General Eric Holder will take action to protect the rights of these deserving American citizens."

(The complaint and exhibits are now available to media, but they and the story are embargoed until July 10.)

This story ran today in newspapers and on media websites coast to coast.

AP Exclusive: Disabled Often Banned From Voting

by The Associated Press

July 10, 2014 1:53 AM ET

LOS ANGELES (AP) — At a time when election officials are struggling to convince more Americans to vote, advocates for the disabled say thousands of people with autism spectrum disorder, cerebral palsy and other intellectual or developmental disabilities have been systematically denied that basic right in the nation's largest county.

A Voting Rights Act complaint to be filed Thursday with the U.S. Justice Department goes to a politically delicate subject that states have grappled with over the years: Where is the line to disqualify someone from the voting booth because of a cognitive or developmental impairment?

The complaint by the Disability and Abuse Project argues that intellectual and developmental disabilities, including conditions such as Down syndrome, are not automatic barriers to participating in elections. It seeks a sweeping review of voting eligibility in Los Angeles County in such cases, arguing that thousands of people with those disabilities have lost the right to vote during the last decade.

"We want these past injustices to be corrected, and we want the judges and court-appointed attorneys to protect, not violate, the rights of people with developmental disabilities," Thomas F. Coleman, the group's legal director, said in a statement.

At issue in the California case is access

to the ballot box for adults who enter so-called limited conservatorships, legal arrangements in which parents or guardians assume the right to make certain decisions for people who lack the ability to manage their financial and medical affairs. In the course of taking that step in court, voting rights are routinely voided, according to the advocacy group.

California has over 40,000 such cases, and those covered by the arrangements usually live with their families or in group homes. A recent sample of 61 cases by the advocacy group in Los Angeles County found that 90 percent of the people covered by limited conservatorships had been disqualified from voting.

The complaint says judges in Los Angeles Superior Court use literacy tests to determine if adults in limited conservatorships should have voting rights, a violation of the federal Voting Rights Act. It also says that judges and court-appointed attorneys violate federal laws that allow people with disabilities to have assistance to complete voter-registration forms and cast ballots.

"Autism is a broad spectrum, and there can be low skills and there can be high skills. But what I observed was that people tend to just dismiss it as though they have no skills," Teresa Thompson, whose son has autism and whose case helped prompt the complaint, said in a videotaped statement.

Los Angeles Superior Court spokeswoman Mary Eckhardt Hearn said she had not seen the complaint and declined comment.

The complaint could trigger an investigation by the Justice Department. It also asks Superior Court to rescind thousands voter-disqualification notices it has issued in those cases over a decade.

For years, advocates brought attention to the obstacles to voting faced by the physically disabled. More recently, the focus has shifted to the mentally or developmentally disabled, who advocates say have long been stigmatized in the voting process.

In the past, advocates in Missouri sued to make it easier for people under guardianship for mental disabilities to vote, and New Jersey voters in 2007 stripped language from the state constitution that held "no idiot or insane person shall enjoy the right of suffrage."

All but about a dozen states have some type of law limiting voting rights for individuals based on competence. But how those laws are enforced varies widely, advocates say.

A 2007 report for the American Bar Association concluded that "excluding the broad and indefinite category of persons with mental incapacities is not consistent with either the constitutional right to vote ... or the current understanding of mental capacity."

The California complaint could create a testing ground for such cases. State election law says a person is considered mentally incompetent and disqualified from voting if he or she cannot complete a voter-registration form, which the complaint argues is an illegal literacy test.

"There is this constant struggle to make sure everyone can vote privately and independently, regardless of disability," said Curtis Decker, executive director of the National Disability Rights Network.

Clarifies that Conservatees Can Have Assistance in Voting

Sponsored by the Secretary of State

Amended On August 8, 2014 (Sen. Bradford)

Supported by The Arc and United Cerebral Palsy California Collaboration

Senate and Assembly analyses cite research by Spectrum Institute as a rationale for the amended version of this bill and also refer to our complaint to the Department of Justice.

Quote from Senate Committee Report

Voting Rights Act Complaint . In July of this year the Disability and Abuse Project of Spectrum Institute filed a formal complaint with the Department of Justice's Civil Rights Division against the Los Angeles Superior Court regarding their application of existing state law deeming conservatees ineligible to register to vote if they are not capable of completing an affidavit of voter registration. The complaint asserts that this practice constitutes a violation of the federal Voting Rights Act's prohibition on use of a test or device as a prerequisite for voter registration. As of the date of this analysis, the Department of Justice had yet to respond to the complaint.

Effect of this bill

Research by Spectrum Institute indicates that as a result of AB 1311, voter disqualification orders for limited conservatees dropped by 90 percent during the first three months of 2015 in Los Angeles County.

Yes, Your Honor, That Is How it Works

California Governor Jerry Brown's office announced yesterday that he signed AB 1311 protecting the voting rights of people with developmental disabilities. <http://gov.ca.gov/news.php?id=18731>

The idea for the voter registration portion of the bill came out of a Voting Rights Conference convened in June 2014 by the Disability and Abuse Project of Spectrum Institute. The conference was convened in response to an incident when Stephen Lopate, a young man with autism, almost lost his right to vote because his court-appointed attorney was unaware of voting rights protections for people with developmental disabilities. With help from the Disability and Abuse Project, Stephen finally gained the right to vote.

The bill was sponsored by California Secretary of State Debra Bowen. The Arc of California endorsed the bill and its Public Policy Director, Greg deGiere, worked diligently to promote it and line up support.

AB1311 clarifies that judges may not disqualify a person from voting because he or she has received assistance from someone in completing a voter registration form.

"Yes, your honor, a person can have help in filling out a voter registration form," said Thomas F. Coleman in response to learning that Governor Brown signed the bill. Coleman is the Legal Director of the Disability and Abuse Project.

Coleman was referring to a statement made by Los Angeles Superior Court Judge Daniel Murphy to nearly 200 lawyers at a training program earlier this year.

Murphy told the lawyers that he once warned a mother in a limited conservatorship proceeding that her son would lose his right to vote unless he could complete a voter registration form. The mother told Murphy that it would not be a problem because she could fill it out for him and then have him sign it. In recalling the incident during his remarks to the lawyers, Murphy laughed as he stated, "That's not how it works." The lawyers laughed in response, and Murphy then ended the so-called training on voting rights of limited conservatees.

Coleman, who was present at the seminar, was shocked at how callously and abruptly Murphy had handled the voting issue, so he put a spotlight on the seminar and used it as an example at the Voting Rights Conference. The issue caught the attention of Arlene Pinzler, a senior advisor to the California Secretary of State, who attended the conference. Pinzler and Chief of Staff Evan Goldberg got the ball rolling and within a few weeks, Assemblyman Steven Bradford amended a pending bill, AB 1311, with language to override the judge's bad joke. Secretary of State legislative advisor Bart Broome successfully guided the bill through the legislative process.

For once, people with developmental disabilities get the last laugh.

Some are calling AB1311 "Stephen's Law" in recognition of the advocacy of Stephen Lopate. Without his case coming to light, the voting rights conference and subsequent push for new legislation would not have happened. Stephen and his mother, Teresa Thompson, also helped the Disability and Abuse Project file a voting rights complaint against the Los Angeles Superior Court with the United States Department of Justice in July for ongoing and systematic violations by the court of the voting rights of thousands of other persons with developmental disabilities. The complaint is still pending and under investigation with the DOJ.

Special thanks to my colleague, Dr. Nora Baladerian, for her assistance and collaboration on the voting rights project, especially with the conference and the complaint to the DOJ. She was involved in the process from start to finish.

(For more information on the rights of people with developmental disabilities in conservatorship proceedings, go to: www.disabilityandabuse.org)

U.S. Department of Justice

Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Ave, NW
Washington, DC 20530

May 15, 2015

VIA First Class Mail & EMAIL

Thomas F. Coleman
Legal Director
Disability & Abuse Project
2100 Sawtelle Boulevard
Suite 204
Los Angeles, CA 90025

Re: *Complaint Against the State of California's Voting Practices and Procedures In Superior Court Conservatorship Proceedings for Persons with Disabilities, DJ # 204-11E-398*

Dear Mr. Coleman:

The United States Department of Justice has opened an investigation of your complaint alleging that the State of California violated 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. Specifically, your 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 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.

Your complaint has been assigned the complaint number shown above. Please reference the DJ number in any further correspondence or communication with our office. Please send us any additional information you may have, or that you may obtain in the future, that is relevant to your complaint. Please also let us know if you have filed the same or a similar complaint with any other federal, state, or local governmental entity.

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.

Please be advised that the Department of Justice does not represent you or your organization as your attorney and can conduct and resolve this matter without your approval. The Department of Justice represents the interests of the United States and does not act as an attorney for private individuals or organizations.

Please also be advised that we may need to disclose your identity and other information you provide during the course of our investigation but we will not do so unless it is necessary for our enforcement activities or otherwise necessary and allowed by law.

You are further advised that under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we may be required to release this letter as well as other correspondence and records related to the complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by FOIA, the release of information that constitutes an unwarranted invasion of privacy.

If you have any questions or additional relevant information, please feel free to contact Elizabeth Johnson at 202-307-3543 or by email at elizabeth.johnson@usdoj.gov. You may also contact AUSA Vincente Tennerelli at 559-497-4080 or by email at vincente.tennerelli@usdoj.gov. The U.S. Attorney's Office for the Eastern District of California is also counsel in this matter. We expect to be in touch in the near future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Elizabeth Johnson', followed by a long horizontal line extending to the right.

Elizabeth Johnson, Disability Rights Section,
Civil Rights Division

Vincente Tennerelli, United States Attorney's
Office, Eastern District of California



U.S. DEPARTMENT OF JUSTICE

United States Attorney
Eastern District of California

Benjamin B. Wagner
United States Attorney

RECEIVED

MAY 18 2015

CHAMBERS OF THE
CHIEF JUSTICE

2500 Tulare Street, Suite 4401
Fresno, CA 93721

Phone 559/ 497-4000
Fax 559/ 497-4099
TTD 559/ 497-4500

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;

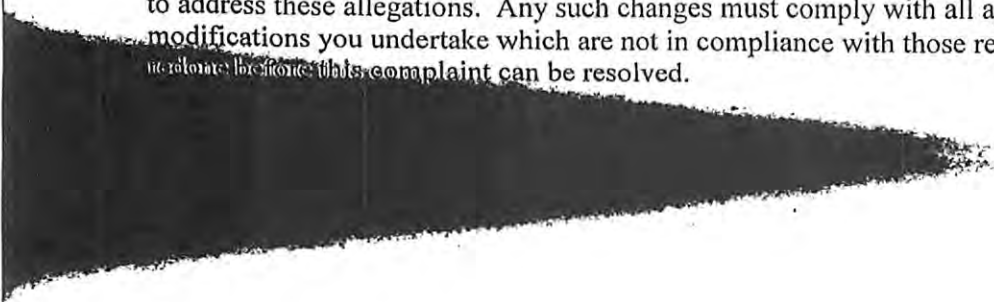
12. A description of any notice or information and a copy of any notice or information provided to persons subject to the conservatorship proceedings regarding the voter competency provisions in conservatorship proceedings; and

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 undone 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

Monday, May 18, 2015

DOJ and Senate to decide when conservatees can vote

By America Hernandez

The Department of Justice has opened a formal investigation into the state judiciary's policies regarding alleged voting rights violations of people with developmental disabilities, according to a letter issued Monday to the Judicial Council.

The announcement comes nearly a year after a class-based complaint against the Los Angeles County Superior Court was filed with the department, calling for an inquiry into the practice of having mentally disabled citizens who are placed in conservatorships prove they can fill out affidavit of voter registration forms on their own before being allowed to vote.

Thomas F. Coleman, legal director of the Disability and Abuse Project, wrote in the July 2014 complaint that the practice amounted to an illegal literacy test. AB 1131, sponsored by the American Civil Liberties Union and passed last year, removed judges' authority to disqualify conservatees from voting after failing that test.

The state Senate will vote Monday on a similar bill, SB 589, which would allow conservatees to retain the right to vote as long as they can express their desire to vote.

Disabled L.A. man's desire to vote leads to probe of alleged state violations

By **STEPHEN CEASAR**

MAY 22, 2015, 4:30 AM

Stephen Lopate was just a boy when he first mentioned he wanted to vote someday in a presidential election.

It was 2008, and he told his mother he liked Hillary Clinton because she was a smart woman.

Years later, when he turned 18, Lopate's mother sought a court guardianship of her severely autistic son so that she could oversee his medical affairs and other legal matters.

FOR THE RECORD:

Disability voting: An article in the May 22 California section about a federal investigation into how California decides to strip people under limited conservatorships of the right to vote incorrectly said that an attorney for a disability rights group persuaded Stephen Lopate's court-appointed lawyer and a judge overseeing Lopate's case to reconsider and allow Lopate to keep his right to vote. Although the court-appointed attorney recommended that Lopate lose his right to vote, the judge had not made a ruling on that matter. After the court-appointed attorney changed his recommendation, the judge allowed Lopate to keep his right to vote. —

But she and Lopate were horrified and confused when they discovered that the move would result in her son being stripped of his right to vote.

"I have always made sure ... that he knows his opinion matters," said Lopate's mother, Teresa Thompson. "It was just awful."

Thompson complained to a local disability rights group in Los Angeles, setting off a chain of events that led this week to federal authorities announcing they are investigating allegations that California has systematically and illegally denied intellectually disabled residents such as Lopate the right to vote.

The group, the Disability and Abuse Project, filed a complaint last year with the U.S. Department of Justice contending that the Los Angeles County Superior Court has wrongly stripped people under limited conservatorships of the right to vote if they could not fill out a voter registration affidavit.

□bra J. Baladerian, the group's executive director, said the issue impacts some of society's most vulnerable citizens, including people with cerebral palsy, autism spectrum disorder and traumatic brain injury, among other intellectual disabilities.

"Naïve me. I thought in the courtroom the law was followed," Baladerian said. "It wasn't so. The rights of individuals with disabilities were not being upheld in court."

It is unclear how many people under conservatorship have their right to vote taken away each year. A spokesman for the county's Registrar of Voters said 123 voters had their registrations canceled since January 2014 for "mental incompetence."

A lawyer with Baladerian's group conducted a review of 61 conservatorship cases involving adults with developmental disabilities in L.A. County and found that nearly 90% of the people had been disqualified from voting, according to the group's complaint.

A spokeswoman for the Los Angeles County Superior Court said court officials have not yet received a copy of the complaint and would respond to the Department of Justice once they do.

Investigators from the U.S. Department of Justice in Sacramento have requested records from the state, including those that would show the number of people disqualified from voting in each county and an explanation of policies for disqualifying people under limited conservatorship from voting.

The Judicial Council, which oversees courts in California, will provide the documents, according to council spokesman Peter Allen.

"The view here is that the Chief [Justice] and Judicial Council are committed to the civil rights of all Californians," Allen said in a statement.

Michael Waterstone, a Loyola Law School professor, said people with physical and mental or intellectual disabilities have long suffered discrimination when it comes to voting. He said they continue to encounter obstacles that include inaccessible polling places and conservatorship laws that hastily or automatically deem them unfit to cast a ballot.

Under the Americans with Disabilities Act, people with disabilities are afforded the right to receive assistance filling out voter registration forms and while voting, Waterstone said. A

requirement to successfully fill out the form or be denied the right to vote would violate the Voting Rights Act, he said.

"It is basically a literacy test," he said.

Individual states are responsible for protecting the integrity of their elections and must determine who is capable of making an informed decision when casting a ballot, Waterstone said.

The decision to disqualify someone from the ballot box, especially among the disabled, should be taken seriously, he said.

"It has to be something more than 'you can't fill out a form by yourself,' or, 'someone else told us you can't fill out a form,' he said. "You take someone's right to vote away, you're taking their ability to create change away. That's why it's such a dangerous thing to do."

The federal investigation comes as state lawmakers are weighing a proposal that would make it more difficult for judges and juries to remove the right to vote from someone under a conservatorship. The measure — Senate Bill 589 — would create a presumption that people with disabilities can vote whether under a conservatorship or not, said Sen. Marty Block (D-San Diego), who wrote the proposed legislation.

"A disability shouldn't mean a disenfranchisement," Block said.

The bill could come up for a vote on the Senate floor as early as Friday. Last year, lawmakers approved a measure ensuring that people — including those under conservatorship — cannot be denied the right to vote because they need the help of another person to sign a voter registration affidavit or use a mark, a cross or a signature stamp to sign it. The legislation was spurred by the work of the Disability and Abuse Project.

The group became involved in the issue after first hearing from Lopate's mother, Thompson.

Before Lopate's 18th birthday, his mother began the process of applying for a limited conservatorship over her son. Lopate is endlessly curious and observant, but has trouble talking and can sometimes become overwhelmed, his mother said.

Thompson attended a self-help clinic and was asked whether Lopate was able to fill out a voter registration form on his own. She answered no, because he needs help with anything that involves communicating.

That, she found out, meant she was essentially signing away her son's right to vote. A court-appointed attorney assigned to assist Lopate told a judge that Lopate should not be given the ability to vote.

"His attorney told me that it would be inconsistent with the concept of conservatorship for Stephen to have the right to vote," Thompson said. "I was very upset."

Lopate, who mostly communicates using a speech-generating device or by tapping on letters of a print-out keyboard, said he was disappointed when the court deemed him incapable of casting a ballot.

"The boy got angry," Lopate said, referring to himself. "Really against the law."

His mother contacted Lopate's therapist, Baladerian, who put her in contact with the Disability and Abuse Project's attorney, Tom Coleman. Coleman stepped in and convinced Lopate's attorney and the judge to reconsider. Lopate was allowed to keep his right to vote.

Lopate said he wanted to help other people who have difficulties speaking to make sure they too are able to vote.

"The mom made sure they did not take my rights away from me," Lopate said, communicating with his printed keyboard. "I am the lucky young man."

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Times staff writers Patrick McGreevy, Maura Dolan and Marisa Gamber contributed to this report.

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Removes the Literacy Test from California Voting Law

Sponsored by the American Civil Liberties Union

Introduced on February 22, 2015 (Sen. Marty Block)

Senate analyses cite research by Spectrum Institute as a rationale for this bill and refer to our complaint to the Department of Justice as the impetus for last year's bill (AB 1311) that prohibited judges from disqualifying conservatees from voting if they could fill out a voter registration form with the assistance of another person.

Quote from Senate Floor Report

Last year the Disability and Abuse Project of Spectrum Institute filed a formal complaint with the United States Department of Justice's Civil Rights Division against the Los Angeles Superior Court regarding their application of existing state law deeming conservatees ineligible to register to vote if they are not capable of completing an affidavit of voter registration. The complaint asserted that this practice constitutes a violation of the federal Voting Rights Act's prohibition on use of a test or device as a prerequisite for voter registration.

That complaint was the impetus for AB 1311 (Bradford, Chapter 591, Statutes of 2014), which prohibited a person, including a conservatee, from being disqualified from voting on the basis that he or she signs the affidavit of voter registration with mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of registration with the assistance of another person.

Quote from Senate Committee Report

Last year, AB 1311 (Bradford, Chapter 591, Statutes of 2014) clarified the voting protections for conservatees. AB 1311 was a response to a complaint filed by the Disability and Abuse Project of Spectrum Institute with the Department of Justice's Civil Rights Division against the Los Angeles Superior Court regarding that court's application of existing state law which deems conservatees ineligible to register to vote if they are not capable of completing an affidavit of voter registration. The complaint asserted that this practice constituted a violation of the federal Voting Rights Act's prohibition on use of a test or device as a prerequisite for voter registration.

Quoting from our research, another committee report said:

Under current law, adults with developmental disabilities under conservatorships are routinely being disenfranchised at extremely high levels. A review of 61 conservatorship cases involving adults with developmental disabilities in Los Angeles County found that close to 90% of conservatees in those cases had been disqualified from voting due to their actual or perceived inability to complete the voter registration affidavit. Furthermore, this review found that probate attorneys are being trained to disqualify adults under conservatorships from voting when he/she are not able to sign a registration affidavit.



Disability and Guardianship Project

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(818) 230-5156 • www.spectruminstitute.org

June 1, 2015

Honorable Carolyn Kuhl
Presiding Judge
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Dear Judge Kuhl:

As you know, the issue of voting rights of limited conservatees has received much attention in the past year. That attention was stimulated by the education and advocacy efforts of Spectrum Institute.

AB 1311, signed into law last year, was prompted because some judges had a misunderstanding that proposed limited conservatees should be disqualified from voting if they could not complete an affidavit of voter registration without assistance. That misunderstanding was imparted to a room full of PVP attorneys at a training program last year – one that I attended. SB 589, which passed the Senate last month, is pending in the Assembly. It will eliminate the literacy test inherent in current law.

My own research into a sample of cases in the Los Angeles Superior Court found that 90 percent of limited conservatees were disqualified from voting and that their own attorneys contributed to the loss of their right to vote. Without understanding federal laws prohibiting literacy tests and without understanding ADA accommodation requirements, PVP attorneys had been checking off a box on the PVP report that they knew would result in their clients losing the right to vote.

Regional centers in Los Angeles County reported to the Department of Developmental Services that some 12,000 clients have open conservatorship cases. While we do not know exactly how many of them were disqualified from voting during conservatorship proceedings, we believe that thousands of them we so disqualified. In response to an administrative records request last year, data from the County Clerk indicated that about 1,100 limited conservatees were stripped of their right to vote last year alone due to orders issued by judges of the Los Angeles Superior Court. Based on our research, we estimate that as many as 10,000 adults with developmental disabilities have been disqualified from voting based on judges and attorneys who did not understand the requirements of federal law.

We suggest that the Superior Court take a pro-active approach to assist these adults to have their voting rights restored. Such an approach is required by Title II of the Americans with Disabilities Act. The court knows these individuals have cognitive and communication disabilities that make it difficult, if not impossible, for them to submit a petition to restore voting rights on their own. Most of them do not have attorneys since the court dismissed their attorneys when conservatorship orders were granted. Since the court may have improperly disqualified them from voting based on a lack of awareness of applicable federal laws, the court has an obligation to take action, on its own motion, to correct these erroneous orders. The next presidential cycle has begun, so corrective action by the court should start now.

Very truly yours,

Thomas F. Coleman
Executive Director
tomcoleman@spectruminstitute.org

cc: Chief Justice Tani Cantil-Sakauye

A man in a dark suit is talking on a blue mobile phone. He is holding a yellow and white folder. A woman with dark hair and sunglasses is looking up at him. They are standing in front of a dark, textured wall.

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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