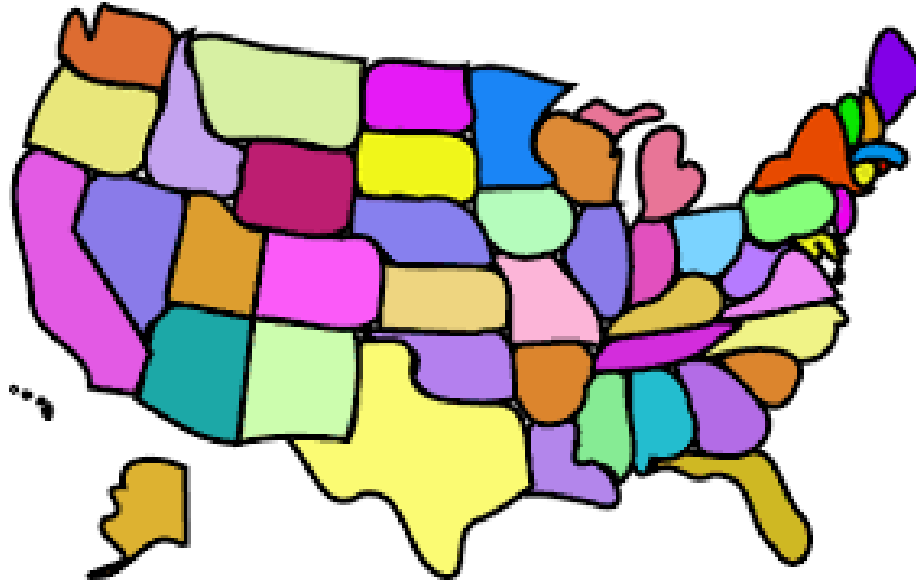


Poll:



What state/territory are you joining us from today?



Guardianship & the Right to Vote

2020 Virtual Conference
Wednesday, June 10

The Panelists

Morgan Whitlatch

Legal Director, Quality Trust for Individuals with Disabilities
Lead Project Director, National Resource Center for
Supported Decision-Making

Fred Nisen

Supervising Attorney for Voting Rights, Disability Rights
California

Julia Bascom

Executive Director, Autistic Self Advocacy Network



- ▶ Independent advocacy and monitoring
- ▶ Children and adults with disabilities
- ▶ Dignity, respect, and autonomy
- ▶ Rights protection and decision-making supports
- ▶ Partnering with families
- ▶ Jenny Hatch Justice Project (2013 to present)
- ▶ National Resource Center for Supported Decision-Making (2014 to present)

Poll:



How familiar are you with supported decision making?

What is “Guardianship”?



Poll:



How well do you know the
guardianship/conservatorship laws in your
state?



How Does Guardianship Impact the Right to Vote?



Poll:



In your state, is an adult's right to vote impacted by whether or not they are under guardianship/conservatorship?

Why Does It Matter?

Interview Participant: “I think that one of the ways that you can **really silence someone** and **make them feel not a part of society** is by taking away something that’s as **fundamental** as the right to vote.”

For more, see National Council on Disability, Report: “Beyond Guardianship: Towards Alternatives That Promote Greater Self-Determination,” at p. 105 (March 2018).



Guardianship's Impact on the Right to Vote

- ▶ **Varies under state law**
 - Bar vs. protection
 - Type of guardian
 - Only if a court has determined a specific lack of capacity to vote

For more, see Bazelon, ASAN, NDRN, Schult Roth& Zabel LLP, 2018.



Advocacy Tips



- ▶ Many would-be **petitioners do not know** about guardianship's impact on voting.
- ▶ **Only a court** can decide a person's lack of competency to vote.
- ▶ The right to vote **may be retained or restored**.
- ▶ Voter competency requirements **can be challenged under federal law**.
 - U.S. Constitution, Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Help America Vote Act, Voting Rights Act
- ▶ **Supported Decision-Making** should be a part of this discussion.

Contact Information

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VOTING RIGHTS FOR PEOPLE UNDER CONSERVATORSHIP

Fred Nisen

**Supervising Attorney for Voting Rights
Disability Rights California**

June 10, 2020

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CONSERVATORSHIPS AND VOTING

- California uses the term "conservatorship of the person" for what most other states calls "guardianship over an adult." In a conservatorship, a court-appointed fiduciary, the conservator, manages the personal care of a person who cannot properly provide for his or her personal needs for physical health, medical care, food, clothing, or shelter. This person is known as the "conservatee."
- Unless the court has specifically taken away the right to vote, a conservatee is otherwise eligible to vote and can register to vote.

BACKGROUND ON SB 589

- Before January 1, 2016, the standard for which a court was required to apply to determine whether a conservatee was eligible to vote was whether they could fill out a Voter Registration card.
- In 2014, it became apparent that some judges had the ongoing practice of removing the right to vote for everyone who has a conservator. The ACLU of California sponsored a bill (SB 589) that addressed this problem, which Disability Rights California supported. The bill was passed by the Legislature and signed by the Governor.

SB 589 AND RESTORING VOTING RIGHTS IN CALIFORNIA

- The main provision in SB 589 holds that, before a court removes the right to vote from a person under a conservatorship for having “mental incompetence,” it first must have “clear and convincing evidence” that the person cannot communicate, with or without reasonable accommodations, their desire to participate in the voting process.
- Also, there is the presumption that a person who has completed a Voter Registration Card is able to communicate their desire to participate in the voting process.

A PERSON HAS THE RIGHT TO REGISTER TO VOTE EVEN IF THEY ARE NOT ABLE TO SIGN

If the person is not able to sign their name, the alternative options are:

- Marking with an “X,” or
- Use a signature stamp, if they:
 - Use the online voter registration AND they have used the signature stamp at the DMV; OR
 - Use the signature stamp at the County Elections Office to sign the Voter Registration Card

For more info:

<http://www.disabilityrightsca.or/pubs/547301.pdf>

HOW CAN SOMEONE GET THE RIGHT TO VOTE BACK?

- The court will need to issue a new order restoring voting rights. Upon review of the conservatorship, the judge will need to determine by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.
- Unless the person is found incapable of communicating that desire, the person's right to register to vote shall be restored. The court must then notify the Secretary of State and the county elections official in the format prescribed by the Secretary of State that has been very recently sent to the Superior Courts by the Judicial Council.

CONT: HOW CAN SOMEONE GET THE RIGHT TO VOTE BACK?

- If someone wants their voting rights restored right away, they can contact the court to request a review of the right to vote. A letter can be directly mailed or sent to the court. Disability Rights California has a toolkit on our website: <http://www.disabilityrightsca.org/pubs/559001.pdf>
- A conservatee can get the right to vote back by waiting for the court's regular review of the conservatorship, or by contacting the court and requesting a review.

CONT: HOW CAN SOMEONE GET THE RIGHT TO VOTE BACK?

- Under SB 589, court investigators have an obligation to ensure that conservatees who are eligible to vote get their right restored. During regular evaluations, court investigators should make a determination about a conservatee's ability to express their desire, with or without reasonable accommodations, to participate in the voting process.
- If there is no evidence that the conservatee is unable to express their desire, with or without reasonable accommodations, to participate in the voting process, the court investigator must recommend that the court reinstate the conservatee's right to vote.

EXAMPLE

- 18-year-old John Doe, severe cerebral palsy is non-verbal.
- His family decides to become his conservator, so they can make healthcare decisions.
- Before the 2016 primary, as he was about to vote for his favorite candidate, about whom he studied in school that month, the family received the conservatorship papers in the mail and noticed that the judge had taken away the conservatee's right to vote.
- The family called the Public Defender who said that if the conservatee cannot state his name and address in court, the judge would not restore his right to vote.

CONT: EXAMPLE

- When I met John, his father had just told him on the drive over what had happened, and he was obviously upset.
- John's motorized wheelchair was covered in campaign stickers for his favorite candidate and he had an iPad with a specialized app which allowed him to communicate, as long as he was asked yes, no, or simple questions the app was able to help him answer.
- After fifteen minutes, he warmed up to me and we were able to communicate enough for me to understand very clearly that he wanted to vote.

CONT: EXAMPLE

- I contacted the Public Defender and explained SB 589 and convinced him that John, in my opinion, was able to express his desire to vote. His iPad would be considered a reasonable accommodation.
- The Public Defender brought the issue to the court's attention and his right to vote was restored. He voted in the November Elections.



Easy Read Edition

Your Vote Counts:
A Self-Advocate's Guide to
Voting in the U.S.


Voting rights toolkit

For self-advocates, by self-advocates

Cognitively accessible


Easy Read: 4th-ish-grade reading level, visuals, white space, one idea at a time

Without sacrificing content.




2. Why should I vote?


Voting is one of our most important rights.



Laws affect our lives.



Voting lets us have a say in laws that affect our lives.



This is important for people with disabilities!



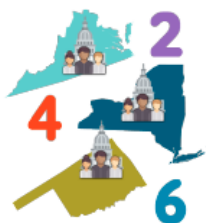
Voting is a way to speak up for ourselves.
Voting is our voice! Voting is our right!

8

Easy Read



In the past, people tried to stop groups like women, Native Americans, and African Americans from voting.



- Different states have different terms for their Governors and State representatives.



If there isn't a machine, you put your ballot in a box.



Sometimes, one candidate will get more people to vote for them.



But the other candidate will get more state votes.

Covers:

- What is voting?
- Why should I vote?
- Registering to vote
- How do I vote?
- What to expect
- What if I'm under guardianship
- Voter suppression

...and more!

- What's a ballot?
- Different kinds of elections
- Different things to vote for
- Political parties
- People outside of a polling place
- Recounts and runoffs
- The electoral college

...much, much more.

Can I vote if I'm under guardianship?

We give a general overview of guardianship and voting.

We connect it to voter suppression.

We do a quick state-by-state summary of what your rights probably are

We tell people to contact their P&A if they want to vote but aren't sure if they can, or know they aren't allowed.

15. Am I Allowed to Vote?



In some states, people with intellectual disabilities are not allowed to vote.



The laws that say this are usually very old. But nobody got rid of them.



People can still use these laws to take away our rights.



This is a kind of voter suppression, too.



Some people with disabilities have **guardians**.

You might be hearing from folks...

We tell people to contact their P&A if they want to vote but :

- aren't sure if they can, or
- know they aren't permitted.

When the law wasn't clear, we erred on the side of caution and told them to contact their P&A.

1.=
2.=

Find your state to find out the rules about voting where you live.



If you can't vote, you can work on getting your rights back.



If you can vote, you can work to help others get their rights!

ASAN & NDRN Partnership

- New materials coming!
 - Graphics
 - Videos
- Integrating with other disability voting projects & resources
- Working with non-disability orgs to build understanding around voters with disabilities, especially around I/DD and guardianship
- Big push to grassroots on voter registration, get out the vote

We need your help

- We'll be sending folks your way!
- You also have deep connections to people with I/DD in your state.



If that happens, there are people you can call to help you.



You can call your **Protection and Advocacy organization (P&A)**.



P&As help people with disabilities fight for our rights.



They make sure states follow disability laws.



There is a P&A in every state.

Accessible outreach

Voter clinics

- Don't call them clinics!
- Think about technology
- Partner w/local groups

Accessibility:

- Think about language
- Think about formatting
- Think about technology

Presume competence:

- People can learn and handle complex information with the right supports
- People are adults
- People can make their own decisions

autisticadvocacy.org/policy/toolkits/voting

Q&A



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