

Message to Congress: Reforms to Guardianship and Abuse Response Systems Should Include *All* Vulnerable Adults

Senate Bill 178

by Thomas F. Coleman

Senate Bill 182

United States Senator Amy Klobuchar has introduced a bill (S. 182) encouraging states to improve access to justice for seniors in guardianship and conservatorship proceedings. The bill authorizes federal grants for demonstration programs that “assess the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings.”

Senator Charles Grassley has introduced a related measure (S. 178) to improve the way in which states respond to cases of elder abuse.

These bills were introduced in response to a growing chorus of individuals and organizations calling for major reforms in state guardianship and conservatorship systems they allege are abusing the rights of seniors and other vulnerable adults who have cognitive and communication disabilities. These systems are supposed to protect vulnerable adults from abuse and exploitation. But a mounting body of evidence shows that guardianship systems perpetrate institutional abuse on the people they should protect. Fundamental rights are improperly being taken from guardianship respondents. Financial assets of respondents are being depleted by the system paying lawyers and guardians who are appointed by judges who allow them to siphon off funds for exorbitant or unnecessary fees.

Since guardianship and conservatorship systems are operated by state governments, the authority of the federal government to stop institutional and individual abuse is limited. Filing complaints with the Department of Justice under the Americans with Disabilities Act is one method being explored for federal redress. If that proves to be a viable tool, that would be the stick in the quest to secure access to justice for guardianship respondents.

Awarding grants to entice states to create demonstration projects to reform guardianship systems and abuse response practices would be the carrot. These bills generate such incentives to states.

Both bills are good but they do not go far enough. As currently written, they would only apply to state projects intended to improve guardianship and abuse-response systems for adults who are over 60. Protecting seniors is a laudable goal, but vulnerable adults between 18 and 59 who have cognitive and communication disabilities need to be considered when improvements are being made.

There is ample evidence of abusive guardianship and conservatorship practices violating the rights of people with disabilities under 60. State guardianship laws apply to all vulnerable adults and not just seniors. State adult protective service agencies also are charged with protecting all vulnerable, dependent, incapacitated, or disabled adults and not just seniors. It makes logical and practical sense for these bills to be amended to include this entire population of protected adults in the scope of federal grants to stimulate state improvements.

For anyone who might wonder if guardianship systems are denying access to justice to vulnerable adults under 60, or perpetrating institutional abuse on this population, reading a short summary of several cases should erase any doubt they might have. The following stories illustrate why these bills should be expanded to include all vulnerable adults. Let’s call it a “seniors plus” amendment.

Article Online:

www.spectruminstitute.org/seniorsplus.pdf



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Michael

Michael, who is 19 years old, lives with his mother in Staten Island, New York. He has cerebral palsy – a condition he acquired due to complications at birth. Because the hospital’s negligence contributed to the condition, Michael was awarded a large settlement. Because he was a minor, the money was placed in a trust under his mother’s supervision during his childhood years.

Two days before Michael turned 18, a court-appointed guardian from his parents’ prior divorce case, filed a petition with a local court alleging that Michael is incapacitated, unable to manage his own affairs, and needs a guardian to control his assets. The court appointed a temporary guardian to take charge of Michael’s money.

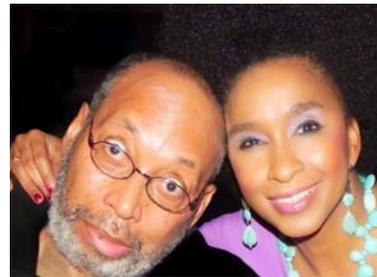
Michael found an attorney and contested the allegations. Despite his disability, Michael is not mentally incapacitated. He attends general education classes and should graduate from high school soon. He has been receiving good grades in his classes. Michael wants to manage his own finances, just as any adult has the right to do. He wanted his chosen lawyer to aggressively advocate for his right to control his financial life.

The judge assigned to the case violated Michael’s right to have an attorney of his choice – an advocate in whom Michael had trust and confidence. The attorney was removed from the case and replaced with an attorney selected by the judge. Michael’s mother and grandmother believe Michael has the capacity to select his own attorney.

When a journalist learned of the case and started researching an article for Harper’s Magazine, the temporary guardian informed the court that the case was under scrutiny by the media. The court reacted by sealing all court records and ordering Michael, his mother, his grandmother, his former attorney, and others not to speak with the media or share documents with anyone. To put fear into

them, the judge threatened to place anyone who violated the order in criminal contempt.

This entire proceeding is the antithesis of the fairness, integrity, and accessibility that S. 182 seeks to achieve in guardianship proceedings. Not only has Michael been denied the right to counsel of his choice as guaranteed by the Due Process Clause of the Fourteenth Amendment, his First Amendment rights to freedom of speech and freedom of press are being violated too.



David

For many years, David worked on the East Coast as a producer for National Public Radio. When he turned 58, David moved to San Diego so that he and his fiancée Roz could start a new life together. Soon thereafter, David was unexpectedly stricken with all illness that caused what is sometimes called “locked-in syndrome.” He became quadriplegic and lost his ability to speak. He could hear, see, and process information internally, but could not communicate with the outside world. However, with ongoing therapy he was able to regain some use of a finger and thumb on one hand, which allowed him slowly and with great difficulty to type or print.

When the nursing home refused to give Roz access to David to help him communicate and make decisions, she filed a petition seeking to be appointed as his conservator. Little did she realize that this move to help David would backfire and that once the system got its hands on them, she would be sidelined and David’s assets would be depleted. Instead of appointing Roz to care for David, the court appointed a paid fiduciary to act as temporary conservator. The conservator hired a lawyer who also was paid out of David’s assets. His life savings at that point amounted to \$78,000.

Roz continued to provide David with services and support as she tended to his daily personal care

needs – all as a labor of love. For two years, the conservator and the lawyer ran up fees which eventually depleted David’s entire estate. Then, they walked away and only then was Roz allowed to be appointed conservator.

To rub salt into the wound, the judge stripped David of his right to vote even though it violated federal voting rights protections for people with disabilities. At that time, and up until 2016, conservatees in California were routinely denied the right to vote in violation of the Americans with Disabilities Act and the Voting Rights Act of 1965. David’s voting rights were only restored last year – after Spectrum Institute intervened by filing a complaint on his behalf with the United States Department of Justice which generated considerable media attention around David’s case.



Gregory

When Gregory turned 18, his mother filed a petition in the Los Angeles County Superior Court seeking to be appointed as Gregory’s limited conservator. Gregory has autism. At the time the petition was granted, Gregory’s mother was not aware that the judge had routinely disqualified Gregory from voting.

Things went smoothly for a while, with Gregory’s mother allowing him to participate in decision-making about matters in his life. She allowed Gregory to make social decisions about whom he would or would not associate. When Gregory started objecting to visiting his father, expressing fears and a desire to avoid his dad, his mother respected Gregory’s right to freedom of association. In response, his dad went to court and had the mother removed as conservator. A professional conservator was appointed. Then, when the new conservator and the service providers all continued to support Gregory’s right to make his own social decisions, the dad went back to court and obtained an order removing all of them from the case. A new professional conservator was appointed who

agreed with the dad that Gregory, then in his mid-twenties, should be required to have extended visits with the father whether Gregory wanted to or not. Gregory was also forced to attend church.

When Gregory continued to object to the forced visitation, and asked for an attorney to defend his rights, the court appointed a lawyer who acted as an arm of the court rather than as advocate for Gregory. The lawyer argued against Gregory’s wishes not to visit or attend church. She encouraged the court to order Gregory to associate with the man whom he said he feared. To this very day, Gregory is under an order of forced visitation.

Gregory’s right to vote was only restored after the voting rights violation was exposed in an op-ed article published in the Daily Journal, California’s premiere legal newspaper. Spectrum Institute defended Gregory’s rights when it filed a complaint with the United States Department of Justice. The complaint alleged that the court and the attorney were violating Gregory’s right to access to justice under the Americans with Disabilities Act. The complaint is still pending.



Stephen

The mother of another autistic man, Stephen, filed a conservatorship petition when he turned 18. Stephen could not make medical or financial decisions, so Stephen’s mother felt it would be best for her to assume those functions for her son even though Stephen was legally an adult. A *limited* conservatorship seemed appropriate.

The court appointed an attorney to represent Stephen in the proceeding. The actions of the attorney soon indicated that he was untrained in how to communicate with or effectively represent people with autism. Without any evidentiary basis, the attorney decided that Stephen, who was non-verbal, was also “retarded.” His words. The attorney communicated with the mother, ignoring Stephen who was present during the conversation.

Stephen's mother explained that her son used a process called "facilitated communication" in order to express his thoughts and feelings. The attorney would have none of that. He insisted on using "yes" and "no" flash cards to elicit information from his client – not realizing that such a method would not yield meaningful answers.

When the mother asked whether Stephen could retain his right to vote – something Stephen had expressed a firm desire to do in the next election – the attorney quickly and forcefully told her: "No, that would be inconsistent with conservatorship." The attorney also recommended to the court that Stephen should be ordered to visit with his father, despite Stephen's repeated expressions that he feared his father and did not want to see him.

It was only after Spectrum Institute intervened that the attorney changed his mind about Stephen's voting rights and relented on Stephen keeping the right to make his own social decisions, including the right to visit or not with his father. It should not take intervention by a civil rights organization to get an attorney to advocate for his client's rights – but in this case that is what was required.



Mickey

Mickey was diagnosed as a child with an intellectual disability. His ability to communicate was limited. Nonetheless he went to school, had friends, and

received love and attention from his younger brother Joseph as they grew up in Lancaster, California. When Mickey turned 18, his parents were appointed as his conservators. Mickey lived with them at home. As years went on, Joseph started to suspect Mickey was being abused although he lacked hard evidence.

When Mickey was about 36, Joseph reported suspected abuse to the authorities. No action was taken. When he subsequently noticed Mickey's health declining, saw bruises on his body, realized

that his parents were sometimes keeping Mickey in restraints (military handcuffs) and saw his father hosing Mickey down in the back yard instead of cleaning him in the shower in the house, another report was made to authorities. When no action was taken, Joseph contacted Spectrum Institute.

After we warned that we would go to the media, authorities did an emergency intervention. Mickey was in his bedroom on the floor. The temperature in the room was over 90 degrees. Lying on the floor in a fetal position, Mickey was barely able to whisper "help" and "water" to the deputy sheriff. The mother admitted using handcuffs on Mickey, claiming they were prescribed by a doctor. When neighbors were interviewed, they said they sometimes heard cries of "help" coming from the home.

Mickey was taken to the hospital for examination and care. He was severely under weight and dehydrated. He had a serious infection.

The authorities immediately notified the probate court investigator. After reviewing records and interviewing people, the investigator recommended that the powers of the conservators should be suspended. Instead of following that request, the court appointed an attorney to represent Mickey.

A review of the attorney's report shows that he conducted a shoddy investigation. He did not talk to Joseph, Mickey's primary doctor, the hospital staff, or the sheriff. He interviewed the parents and their attorney and then became their apologist instead of acting as Mickey's advocate.

Since the court did not suspend the parents as conservators, the hospital released Mickey to them. A few weeks later, Mickey was dead. At Joseph's request, an autopsy was done. The coroner concluded that the reason for Mickey's death was "undetermined" and suggested further investigation be done to ascertain whether the parents had been negligent in their care of Mickey. That suggestion was ignored. No further investigation was done by the court, the sheriff, APS, or other authorities. Thus, even in death, Mickey was denied access to justice.