Reaffirming the Right of People with Disabilities to Freedom of Association

by Thomas F. Coleman

Children do not have the same constitutional rights as adults. Their freedom to choose can be overridden by parents who have a legal responsibility to protect them from harm.

But when children turn 18, they are vested with all constitutional rights that are inherent in adulthood. They have a fundamental right to make choices, wise or unwise, regarding their relationships. One of those rights is the freedom of association.

There are two aspects to freedom. One is the freedom to do something, while the other is the freedom not to do it: freedom to marry *or not*; freedom to have sex *or not;* freedom to vote *or not;* freedom to speak *or not.*

The United States Supreme Court has clarified that: "Freedom of association . . . plainly presupposes a freedom not to associate." (Roberts v. Jaycees (1984) 468 U.S. 609).

Adults regularly exercise their freedom of association in connection with family relationships. They may choose to visit their parents or they may choose to reject contact with them. No one has the right to override an adult's decision to avoid that which he or she fears or dislikes.

The Lanterman Act was passed by the California Legislature decades ago. It affirms that people with developmental disabilities have the same constitutional rights as all people. (Welfare and Institutions Code Section 45502) This includes "a right to make choices in their own lives" including in the area of "social interaction."

Unfortunately, the affirmation of the Supreme Court about freedom not to associate, and the description of rights in the Lanterman Act, has apparently not permeated the minds of some California judges. This is evident from a review of dozens of limited conservatorship cases in Los Angeles County.

Probate Court judges routinely take away the right of adults with developmental disabilities to make their own social decisions. A review of court records suggests that thousands have lost their social rights.

Gregory, a 28-year-old man with autism, is one of them. During the course of several limited conservatorship proceedings, Gregory stated, again and again, that he did not want to visit his father and he did not want to attend church. He said this to his court-appointed attorney, to a psychiatrist, to a court investigator, and even to the judge in open court.

Because his court-appointed attorney did not advocate for Gregory's right to say no, and because the judge was not mindful of the "freedom not to associate," Gregory has been ordered to spend every third weekend with his father, during which visits he must attend church. So much for the Lanterman Act's declaration that Gregory and thousands of others with developmental disabilities have the same rights as everyone. In theory, maybe, but not in practice – at least not in Los Angeles County.

To help clarify this issue, the Disability and Abuse Project recently made a formal request to the California Department of Developmental Services to amend state regulations on the right to "social interaction" to specify that this "includes the right to associate with specific individuals or not to associate with them."

With enough support from disability rights organizations, self advocates, and civil libertarians, the regulation will be amended to clarify the scope of the freedom of association. It is important that Gregory and other adults with developmental disabilities have their personal choices legally protected. ◊◊◊

Thomas F. Coleman is the Legal Director of the Disability and Abuse Project of Spectrum Institute. Contact him at: tomcoleman@earthlink.net

The full report on Gregory's case is available at: www.disabilityandabuse.org/gregorys-case