**Motion to Retain the Right to Vote When a Guardian is Initially Appointed**

**IN THE \_\_\_\_\_\_\_\_\_\_\_ COURT FOR THE STATE OF [STATE NAME]**

**FOR THE COUNTY OF [COUNTY NAME]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In the Guardianship of** **)**

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**)**

**JOHN DOE,** **)** **Case No. \_\_\_\_\_\_\_\_\_**

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**An Incapacitated Person.**  **)**

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MOTION TO RETAIN VOTING RIGHTS IN GUARDIANSHIP ORDER

Movant John Doe respectfully asks that in its Order appointing Jane Roe as Mr. Doe’s guardian, the Court specify that Mr. Doe retains the right to vote. Mr. Doe’s rights under the United States Constitution and federal law require that this court evaluate this request. Mr. Doe retains the capacity and the desire to participate in the voting process and would like to vote in the upcoming election scheduled to take place on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and in subsequent elections.

Mr. Doe is entitled to an individualized determination of his capacity to participate in the voting process. *Minnesota Voters All. v. Ritchie*, 890 F. Supp. 2d 1106,1117 (D. Minn. 2012), *aff'd*, 720 F.3d 1029 (8th Cir. 2013) (“[T]he constitutional prohibition against voting based on guardianship status applies only when there has been an individualized judicial finding of incapacity to vote.”). Moreover, Mr. Doe has a right to specific notice that his right to vote may be removed pursuant to these guardianship proceedings, and to a hearing on whether he should retain the right to vote. *Doe v. Rowe*, 156 F. Supp. 2d 35, 49 (D. Me. 2001) (“...due process requires that the State elevate the right to vote to the same level of notice and opportunity for hearing that is provided for all other aspects of guardianship.”) In addition, under the Americans with Disabilities Act, Mr. Doe is entitled to reasonable accommodations to demonstrate his capacity and communicate his desire to vote, and to effectuate the voting process. 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7).

As demonstrated in the attached affidavits from Mr. Doe and his treating **[mental health/medical/social service]** professional, **[name]**, Mr. Doe understands what it means to vote and how the voting process works. Mr. Doe has the capacity to choose from among the candidates whose names will appear on the general election ballot, and to form an opinion concerning the questions presented on the ballot. Mr. Doe wishes to express his preferences by voting. Mr. Doe can and has communicated a desire to vote by [**briefly describe method of communication**]. Mr. Doe requires the following accommodations [**to communicate his desire**] to participate in the voting process: [**briefly describe accommodations needed]**. Mr. Doe’s proposed guardian supports this Motion. *See* Affidavit of Jane Roe, attached.

As provided in the attached Proposed Order, Mr. Doe requests that the Order appointing Ms. Roe as his guardian include the following sentence:

*Mr. Doe retains the right to vote.*

Should the Court deem further proceedings necessary to decide this Motion, Mr. Doe requests that the Court appoint an attorney to represent him in such proceedings.

Respectfully submitted,

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Doe