

Live captioning by Ai-Media

NDRN-Voting Rights of People with Disabilities Subject to Guardianship-46

MICHELLE BISHOP:

Hey everyone, welcome, welcome. Thank you, just giving a moment for everyone to join from the waiting room and get settled. Looks like everyone has their audio connected, alright. Well, welcome and thank you for joining us for Building a Culture of Health in Baltimore my name is Michelle Bishop and I am the voter access engagement manager at the national displays rightness work. I'm a white woman with rather unruly curly brown hair and I'm as always wearing my signature black plastic rimmed glasses. My pronoun are she/her/her. I'm going to be helping to moderate today's session. I want to begin by taking a couple moments were some quick announcements.

Please note the session is being recorded, also this session is eligible for CLE credit, so if you did register with an interest in doing CLE's, we are going to share 2 codewords with you during the session to get the CLE's. They will be read aloud and our producer will also write them on the slide that is being displayed at the time. We are not able to repeat these codes at any point later and they cannot be posted in the chat so we ask that you refrain from posting those codewords in the chat.

You are going to submit those codewords to verify your participation of the session today by completing a zoom poll that will be lodged at the very end of the session. So if you're doing CLE's you want to make sure you get those codes, you want to make sure you stay locked into that zoom poll told pop up that will be when you can enter the codes. That is your only opportunity submit those codewords for verification. Please make sure you do that. We will leave it up for a little while to give you time to do that.

We also some opportunities for asking questions during the session, you can actually post your questions in the chat box ultimate session. We are planning to make sure we catch those and address them towards the end of the session. If you prefer as an accommodation to ask your questions verbally, you will not be able to meet yourself. You're going to need to use the raise hand feature in zooms that we can see you there in the participation pain and you you to speak. If you're on the phone you can hit*9.

Anyone who is invited to a need to ask your question you need to prompt that will come up on your device we meet you or hit star 6 on the phone and that will actually admit you to ask your question life. We may not have time to get every question but we are going to try to get as many as again. If you put them in the chat, just know that we are watching and we will catch them. We will try to get all them asked, for excess body processes they will be read and answered out loud.

Also for excessively purposes we asked the first time you speak you identify yourself, name, affiliation and provide a short visual description of yourself as I did when we started. We also ask that you help us keep the session as accessible as possible by limiting your posts in the chat, and your questions and comments. This helped ensure that folks using screen readers will be able to use their screenwriters. We also recommend you use gallery view and zoom so you will be able to see the presenter as well as our ASL interpreter. We also have English captions available by selecting show captions here and zoom.

With all of that, it is now my pleasure to introduce our speaker today. We'll be hearing from Alyssa Gershon who is NDRN's contract attorney for voting rights and guardianship. As well as Thomas Nichols, who is the director of legal advocacy services at discipline he writes Arkansas. Each speaker will briefly introduce ourselves to view their pronouns, their discretion and a little bit about themselves.

When they begin speaking. With that I will say Alyssa, please take it away.

ELISSA GERSHON:

Thank you so much Michelle, and welcome everybody. It is a pleasure to be here with such a diverse audience. Many of us Elissa Gershon and I am NDRN's contract attorney for voting rights and guardianship. My protons are she/her and Imo white woman with shoulder length great gray hair wearing a dark blouse with some patterns on it. I'm here in Berkeley, California. I am remote from the NDRN office. So with that, I'm going to get started. Thomas, if you don't mind going to the next slide.

So I want to start up by saying we have a very diverse audience here. I think that we have people who are experts in guardianship, experts in voting. Some of you are experts in both but because of the diversity of this audience, this is going to be a pretty general overview. At least my part will be before we get to Thomas. So we have a few things that we are going to try and cover in this hour.

First, because of the nature of who is here today, I'm going start with the basic overview and the terminology that we are going to use regarding guardianship and voting. Then I'm going to give a very high-level overview of voting rights people subject to guardianship including discussion of standards for determining mental capacity and desire to vote. As well as accommodations that are available and the right of voters with this ability. Including supported decision-making.

Then I'm going to turn it over to Thomas will talk in more detail about his expense in Arkansas and then Thomas will finish up with some tips and strategies for asserting the voting rights of people subject to guardianship. Next slide please.

So as I started, again I'm going to talk a little bit about terminal be 2nd nature to many of you but the terms Guardian and conservator are commonly used in this space. Generally, they refer to a person

who is appointed by a court to make personal and were property decisions on the court finds that a person with disability's cannot make decisions for themselves.

Frequently but not always the term Guardian refers to personal decision-maker, and a conservator refers to someone who makes financial decisions. That is not always the case, like in my home state of California. But for ease of discussion for this purpose we are going to use the term guardian generically.

We also hear the term Ward used quite frequently to refer to the person who is subject to guardianship. At term tends to be disfavored in the disability committee so we will make a somewhat were your term, person subject to guardianship. And for those of you were not practicing in the guardianship space, there are different types of guardianships. There is a full or plenary guardianship and then limited guardianships. Again, this is generally speaking. A full or plenary or sometimes general garden ship may take away all legal rights including voting-- guardianship, limited guardianship typically removes or retains certain enumerated rights. Next slide please.

We are also going to use the term mental disability, which may mean lots of different things to lots of different people. Here it is the broadest definition of any sort of mental psychiatric or cognitive disability including intellectual or develop mental disbelief. Psychiatric to somebodies, brain injuries and dementia.

The terms mentally incompetent, mentally incapacitated are all over the place in terms of using different terms, using them interchangeably. Applying different legal significance to those terms. They both may be very demeaning to people disbelief. I just want to acknowledge that. Their other terms are sometimes used in this area that are quite outdated and very demeaning. We avoid using some of those terms. I do want to note that the National Voter Registration Act permits disenfranchisement of people based on mental capacities. So at the federal level that is the term that is used and is kind of our starting point. Next slide please. Once again we have a very diverse audience and very little time. I'm going to go through the legal landscape quite quickly. I want to point out however that we do have a lot of resources, links to them are posted at the end of this slide deck.

You have them when you go back through your work. Including a document that we developed called the primer on voting rights and guardianship which we will explain in much greater detail what I'm going to talk to about. Next slide please. So as a starting point, let us make sure we are all on the same page. People do studies generally have the same right as other citizens to vote. Which means that if they meet the voting eligibility requirements, specifically they are over 18, citizens of the United States. Residents of the jurisdiction in which there voting, people with disabilities should be able to vote. There are 2 exceptions that as I mentioned are in the National Voter Registration Act, that categorically allows states to deny voting rights.

Those categories are some people who have criminal convictions and people who are legally determined to lack mental capacity. It is worth noting that there are no other categories of people who may be disenfranchised. Next slide please. Given that the federal law is a very nondescriptive, there is no definition in the National Voter Registration Act of what mental incapacity means. There's no standards there is no uniformity. The state motor capacity standards are-- state voter capacity is what really controls. And state standards vary widely. Looking at state constitutions and state statutes, there may be different application of terms and different application of standards depending on the state. For example... And throughout these slides I some state examples in your. I will not call out all them for time reasons but just to help guide the discussion I want to point out that in Utah, the Utah Constitution says any mentally incompetent person may not be permitted to vote until the right is restored.

In Tennessee, one of their election statutes says that the court may remove voting rights and guardianship proceeding. The state constitution, state election laws, state guardianship laws, state laws pertaining to people with intellectual or developmental disabilities and/or psychiatric displease will typically be the starting point to understand what the state statutory and the state legal scheme look like.

However, there are also practical reasons why people might be disenfranchised in the guardianship process. Judges have a lot of discretion, most states don't have uniform standards. So what will happen in one court may look different to what happens in another court. That might be a judge imposing certain standards, a judge may not be opposing any standards. May not impose any standards at all. But courts typically have a lot of discretion, will be also see in this is really absolutely illegal that sometimes guardians, family member's, staff may determine that an individual lacks capacity to vote. We will talk about a little bit more but a court has to make a determination about whether or not Summit is incompetent or lacks capacity to vote. And even that is not satisfied legal requirements.

The practical problem that we see very frequently is that these decisions and determinations are made very informally. This is absolutely not OK. Next I please. I'm going to talk about the different types of bans that we see and why their legal problems in numbers of these. So the worst I guess if we're looking at a spectrum of disenfranchisement modes is the categorical ban on voting by people subject to guardianship. These are embedded in some state constitutions and sometimes in state laws, basically what this means is people are disenfranchised based on their diagnosis, based on their to study status rather guardianship status. There is no independent determination based on their capacity to vote. This type of blanket voting by people that have a certain category of disbelief or subject to guardianship really has serious constitutional and statutory indications. And I'll talk about it for just a moment here these are expanded discussed in much more detail in our resource materials including the primer on voting and guardianship.

Now first and foremost, there's a cause additional application here.-- There is a constitutional application with the 14th amendment. So many people are aware that the equal protection clause requires that any severe restrictions on rights like the right to vote which is a fundamental right, they must be narrowly tailored to advance a state's interest. These categorical bands fail that kind of testing and they have done in a number of court cases.

I have put a couple of the major court cases down here on the slide, one of them is *Dove versus Row* was decided with a District Court in Maine. In that case, the state constitution disenfranchises all people subject to guardianship based on mental illness.

With the court found in that case was there was no correlation between the states interest and the plaintiffs diagnosis because the plaintiffs themselves understood the nature and effect of voting. The court also found that the constitutional provision was both underinclusive and overinclusive. So far people in similar facilities who were not subject to guardianship were permitted to vote and the plaintiffs that issue in that case did have a guardian but were clearly able to vote. So in that case, the state constitutional blanket band failed the equal protection case, the equal protection test. Similarly in the *Missouri protection advocacy versus Carnahan* case not with standing the Missouri state constitutional ban on voting by people subject to guardianship, the Eighth Circuit determined that judges did in fact have discretion to determine on an individual basis whether people subject to guardianship have a capacity to vote or not. But it did note that a categorical ban would not withstand close protection screening. So important to consider protection clause, can you go back *Thomas*? Thank you. Also it implicates the due process clause is people who are subject to guardianship don't receive notice and an opportunity to challenge, the potential loss of their voting rights in the *Doe versus Roe* case the court found that a general notice was not sufficient. The people were entitled to a specific notice of the potential loss of their voting rights and the opportunity to challenge. And then the voting rights act has a provision that requires or prohibits literacy tests and prohibits imposing unequal standards on different categories of people. There is a question whether that unequal standards provision could apply here. I think it is important to note that any sort of capacity determination that is imposed on people with disabilities that others don't have to pass could potentially infringe on people's rights under the voting rights act. Then finally the Americans with disabilities act in section 504 of the rehabilitation act prohibits discrimination on the basis of disability, including a ban on eligibility criteria and methods of deadness ration that discriminate. They also require that people dispel these receive reasonable modifications to policies and procedures in order to prevent them from being discouraged against. So categorical bands clearly implicate all of these civil rights protections and constitutional protections.

Different states apply these different categorical bands differently. There are about a dozen states that do have some sort of categorical ban. But even in the states where there has been some scrutiny, it is been pretty clear that courts and other legal experts don't think that they would hold up. One thing I

want to note is that if you are looking to understand what happens in your state, a state like Massachusetts received an inquiry I believe it was the AG's office or the Secretary of State which then issued an opinion saying "notwithstanding of the states constitutional blanket band, it didn't really apply." Because the band didn't define person subject to guardianship so there is an Attorney General opinion that basically circumvents a constitutional question there.

Any interpretation really would disfavor a categorical band without an individual determination of capacity. Next slide please. Many other states do have some resemblance of individual determination of capacity or incapacity. Thomas is going to talk a lot more about Arkansas when I finish up here there sort of all over the map whether there's any uniform standard, whether the presumption is that the person in the guardianship will proceed retaining the right to vote or will have to petition to retain or restore the right to vote and him straight that they have capacity.

Different states apply these standards quite differently. I have here is an example in Alaska, the perception is that an individual subject guardianship will retain the right to vote. That removing the right to vote must be something that is specifically raised in a guardianship proceeding. Next slide please. I also want to point out that there are handful of states that don't have any capacity requirements. So even though federal law, the National Voter Registration Act permits states to disenfranchise people based on mental capacity, these estates here on the slide Colorado, Idaho, Illinois, New Hampshire, North Carolina, Pennsylvania and Vermont have no capacity requirements so it isn't something that states should need to implement in order to make sure that they are protecting their state's interest.

Next slide please. OK so now that we have talked about, we have talked around this issue of capacity to vote. I want to talk about how you determine mental capacity or what does that look like, why do we even do that? We know that the state laws and imitation of those laws is probably inconsistent, arbitrary, illegal in many situations. But in individual cases there may be a need to determine and establish mental capacity in some ways. I'm going to talk about that for one moment. Next slide please.

So when we are turning to this issue of determining mental capacity, I just want to note that in a guardianship proceeding typically a guardian is appointed when the court determines the individual is at risk in some way or cannot make decisions for themselves. There is no less restrictive way to meet the person's needs. There may be a triggering event like a health crisis or a financial crisis or an individual turning 18. My guess, and in my experience voting is typically not top of mind. Sometimes it's not even explicitly considered. And individuals may or may not get notice of their voting rights are at issue.

Sometimes there's a very general notice of rights are indicated in a guardianship proceeding but there is another top of mind issue, voting make assault under the rug. As practitioners, it is important to pick

about that and talk to potential guardians and talk to people who may be subject to guardianship about what they can do to retain or restore that right. As I talked about, and individualized assessment of capacity and desire is required by law and by the Constitution. I'm going to talk a little bit about capacity test versus expression of desire as we go forward right now. Next slide, thank you. So I would like for people to consider with the practices where you practice in your state or your jurisdiction.

What sort of capacity demonstration is typically used, if any. I compare it to what the American Bar Association has developed as a legislative policy. This is back in 2007. The ABA legislative policy came out of a symposium of legal and subject matter experts who determined that the best constitutionally protective approach is one where people who are subject to guardianship retain the right to vote. Unless it is determined, and it is established in a court order that the exclusion, well first that the determination is made by a court of competent jurisdiction, the brick due process production has been afforded and that the person cannot communicate without accommodations. A specific desire to participate in the voting process and that these findings are established by clear and convincing evidence. While this is maybe not perfect from some perspectives in terms of no capacity requirement, what it does it is but the presumption on the pretension of voting rights. It has certain legal standards including due process that the determination is made. There is a legal standard of clear and convincing evidence. And really importantly, that the individual is determined to be entitled to accommodations to be able to communicate a desire to vote.

This moves away from a functional or capacity test, it moves away from the idea that people have to demonstrate that they have capacity, which is something that no one else has to do to be able to vote. And it sort of builds in the protections of the Americans with disabilities act and the right accommodations. This is a really, really important move towards a standard that could be uniform, and it could be really protective of the rights of people with disabilities. So most states unfortunately have not adapted this standard. Next slide please.

A handful of states have that is California, Maine, Maryland, Nevada, New Mexico and Washington. And what it boils down to is as I just communicated, a person with disability so is subject to guardianship retains the right to vote. Unless they cannot communicate with or without, nations a choice about voting. I want to also note that the uniform guardianship, conservatorship and other protective arrangements act which was developed by the uniform Law commission has adopted a very similar standard to the ABA policy that I just described on the previous slide. Both Washington state and main have adopted this uniform law. So we are moving in the right direction, just a little bit more slowly than some of us would've liked. OK, next slide please.

I am going to talk a little bit about what kinds of accommodations might be available for people in the guardianship process. Next slide please. So as a starting point for those were not practitioners in the disability rights space. People with mental dishabille these are entitled to accommodations in programs

that are run by state and local entities, or public programs. That includes the guardianship and voting processes. Accommodations should be made available to people to communicate a desire to participate in the voting process. To establish their capacity to vote, that is in fact required. And also to register and cast a ballot.

I have appear on this slide the regulations from the ADA and the voting rights act section 208. So the ADA and action by before requires unless doing so would fundamentally alter the nature of the service or program at issue. While it has never been tested in the guardianship space, the voting rights act section 208 entitles voters disabilities who require assistance to vote, to receive assistance by the person of their choice in all aspects of the vetting process.

There is some argument this could be extended to the guardianship process that would establish an individual has the capacity to go but this may be kind of a stretch at this point in interpretation of law. Next slide please.

So what kind of accommodations might that look like in practice. As I said, the voting rights act section 2 weight entitles people with disabilities with assistance by some another choice in all aspects of the voting process and potentially in the process to establish their desire and competency to vote although that is untested. The more specifically more commonly people are entitled to auxiliary aids and services. I could be technology or assistive devices to assist in communication. It could be things like outreach and education in an accessible format commonly which is understandable and accessible to that individual. Could be verbal or nonverbal prompts, picture board, video, graphics all sorts of things to help make the expression of a desire to vote something that is possible for people that may have disabled is that affect their ability to communicate verbally or understand things in an abstract way.

Other modifications that could include supported decision-making principles. Next slide please. I want to spend my last dislike talking about supported decision-making, which people are familiar with it. Supported decision-making is kind of understood to be an alternative to guardianship. Some states have supportive-- decision-making inz dad kiss to guardianship. What I'm talking about is little bit more generic. Specifically be idea of supported decision-making principles that are ideally suited for assisting people to be able to demonstrate that they want to participate in the voting process, and that they have the capacity to do so. Next slide please.

Supported decision-making works the way many of us actually participate in the voting process. We become informed using trusted messengers of information. In a way that we can understand. We seek advice or input and information from knowledgeable and trusted sources that can be family, friends, politically engaged community members. We rely on information that is produced by campaigns and other sources and we find and utilize appropriate accessible materials.

So for people who require support and accommodation, those could be things like plain language materials, videos, alternative formats. There are a lot of really great examples of how people view supported decision-making principles in the decision-making process. One of the things I came across in a report I was reading was a woman who talked about how she was nonverbal, but her mother was assisting her to vote, describe the candidates, describe the positions and this woman would touch her mother's hand with her decision about who she wanted to vote for. It is very simple and straightforward way of having a conversation with a trusted supporter who can then assist the person to make a choice. What we see in real life is that people who may have even no disagreement with having a guardian, they feel very strongly about the right to vote and they want to vote and they understand that their vote is very important and they don't want to lose it.

Hopefully we can as practitioners do our part to help people in individual situations but also work legislatively and tenderly impact litigation to ensure that our state laws and practices conform to the constitutional and statutory protections that people displease our 02.

SPEAKER:

Let's pause for a moment I drive for CLE code, we're going to do the first of 2 coats, it will be-- CLE code, that first code is access, ACCESS that is access, that is your first CLE code, we will leave it up for just another moment-- CLE code, that is access, A C C E S S you want to take down both codes and enter them in a zoom pole that will open up at the end of the session today. That is a one opportunity to enter the code. We are not able to repeat the codes later in the session. So one more time you want to take down that first CLE code you can see on the slide now, access A C C E S S. Thank you so much Alyssa. Elissa.

THOMAS NICHOLS:

Good afternoon my name is Thomas Nichols, I am a middle-aged white male with round hair that is growing grayer by the day. Including in my beard, my pronouns are he and him. I have been with the protection and advocacy system for about 8 or possibly 9 years now. I'm currently the director of advocacy and legal services here at Disability Rights. I practiced in just about every area in which we work from abuse and neglect to guardianship to special education and vocational rehab. If it is something that we do, I've done it either as a staff attorney or as a managing attorney or as a legal director. But near and dear to my heart is the issue of voting rights for people who are under guardianship. There is plenty of work to do around that in the state of Arkansas. Which has one of the stranger makes of constitutional and legal frameworks that I have seen in doing our research in this area. I wanted to talk a little bit about kind of what the status of the state law is in our state.

And how we have been navigating that we do have clients who are seeking to have their voting rights restored. The first and I will talk about is, what does the Arkansas law say right now? For the purpose of this, I have to talk a little bit about our history. Pre-2001, Arkansas was much different than it is

today. As you all might remember if you are my age or older, the 2000 election had many problems. Not just (indiscernible) but in recognition of these problems we had the help America vote act passed. And the creation of the protection and advocacy system majority axis. In Arkansas, I am afraid we have gone the opposite direction at the same time. Previous to our guardianship code had a list of decisions that require expressed court approval such as authorizing determination of rights, consent to a do not resuscitate order, prohibiting at the individual subject of guardianship from obtaining a driver's license amongst other things.

In that, they had the state law at the time a Guardian has to get a court approval in order to prohibit the individual from voting. So, he audibly had the right to vote. He retained that right to vote under guardianship and less the guardian sought to restrict your right to vote.

So, little bit more history behind that, it stems, and the change from the statute stems from a hotly contested race. One candidate routinely visit one of our states large intermediate care facilities that was in his district. He would shake hands, get to know the residents and treat them like any other constituent. And the other candidate who was deeply entrenched and an incumbent hated that. He got he was taking advantage of the people there so what to expect from someone who is deeply entrenched and doesn't like what that candidate is doing. He got the law changed. So post 2001, we saw this singular change to this part of the statute, this part of our guardianship code. And the only change as it relates to voting under the guardianship code. It was a simple change, really. So instead of requiring court approval to prohibit an individual from voting, we now and currently have to get court approval to authorize an individual to vote. Now later on this was followed by massive changes to our state's Constitution as it relates to voting, as it relates to voter ID, registration and other characteristics of elections. Those were addressed to kind of retroactively correct statutes that might have been unconstitutional. Which is something that our state really enjoys doing. Going in and making things constitutional when they are not.

So let's talk about what is currently in our states constitution. I will go back really quickly, the actual provision in our states constitution says that all persons may register to vote who have not been judged mentally incompetent by a court of competent jurisdiction. And the usage of that word, as Elissa hinted earlier is pretty important. We don't see incompetent, but very often in our guardianship code. At the time, that I believe this was added to the Constitution we had already gone through the process of change in the guardianship code to reflect that instead of incompetence. Now, as it just talked about when our state constitution was amended to reflect the inability of a person registered to vote, if they are deemed incompetent. The guardianship code expressed on the other hand required a courts rule to contain findings of fact that the person is an incapacitated person and in need of a guardian before guardianship can be established. So the order of establishing guardianship may define the legal and civil rights retained by this person or this person subject to guardianship.

So you would expect to see possibly what we would hope received from lawyers and judges to address the issue and since it is a possibility but productively almost never see any specific orders that have such a prevention of this reduction of rights. We have yet to see many orders at all that actually order anything other than plenary and ready to ship. That numerate any legal or civil rights are retained by individuals.

Moving on, our statute times incapacity itself, right? So it must be an impairment that is caused by display such as a mental illness. What they call a mental deficiency in the statute, physical illness, chronic use of drugs or chronic intoxication. And, that impairment must cause an individual to lack sufficient understanding or capacity to make or communicate decisions for health and safety or to manage an estate. They did not say much about whether you retain the ability to communicate who you want to vote for. It is a total reflection of the media to emergency needs such as managing the funds that the individual might possess. So as Alyssa said earlier, courts are not going to think about the right at any point in time when they are concerned. What does that mean in practice that when compared with our state constitution?

We have the state constitution that says incompetent, and we're working with incapacity and our guardianship code. If we are talking about incapacity, albeit not a great word to use at all it is probably better than incompetent because it highlights what could be the transient event. If you're briefly incapacitated, if you are briefly not able to make a decision incapacity might be more appropriate than incompetent. You certainly don't have findings of incompetency in the guardianship code or in many other places in our state. A person that we assisted kind of meets one of those reasons, that you could become incapacitated. Now we assisted this individual were the case did not have anything to do with rights to vote but an actual case we had for other issues considered an individual who was injured in a car wreck, he was incapacitated due to physical illness for about a year.

As far as I recall, he was unable to communicate, unable to make any decisions, was in somewhat of a coma and eventually recovered. Right so guardianship at that point, if it is temporary would expire by its own terms could be the duration of time. In either case, to return the garden should because essentially it is no longer necessary. However if we are defining incapacity and incompetence a court would have judged whether an individual was incompetent or incapacitated at one time regardless of their presence. While they have been adjudged incompetent. If we go back then to the language of our states constitution, I recall that it says "a person may not register to vote if they have been judged a judge incompetent. Close close over considering those terms synonymous, if we think that incapacity means the same thing as incompetence or at least if we expect them to be interpreted that way they may have been a judged mentally incompetent even though they aren't now.

So another area that is of concern as we have other provisions that by the determinants of the Constitution authorize the restoration of the rights to vote. For example, person is been convicted of a

felony. If their sentence is discharged or the person has been pardoned, the state constitution by its own terms will allow them to vote. Now the difference between the Constitution language, and the requirement for express approval, and irreconcilable conflict. That is only if you read into capacity and incompetent as synonymous. An individual must be judged incapacitated to be appointed as (indiscernible). However, a circuit judge may authorize an individual to jet boat, not removing the incapacity. But despite the incapacity.

It doesn't resent the finding of incapacity, even if the individual has been fully restored to capacity, they have been judged incapacitated by a court of confident jurisdictions there is no constitutional mechanism at this point to restore the right to vote. The Constitution doesn't (indiscernible) the right to qualify electors in the Circuit Court as well. So I want to talk very briefly because as Elissa said there is some good leg which inherent possible some not so good linkage here, the Eighth Circuit states deployment of a full Guardian categorically prohibits an individual under guardianship from voting because he or she was quote judged incapacitated within the meaning of that statute. These statutes would not understand equal protection. But in that case, the courts expressly preserved his right to vote. Meaning that perhaps when a judge is authorized by statute to restore someone's voting rights, then it doesn't make for a constitutional conundrum or an equal protection violation. So how then does the court determine whether an individual should have the right to vote restored.

So our statute doesn't say anything about the question a court must answer with findings in fact they have to make. So a great problem that exists if you have a court who is pushing back any and all. With the car be permitted to ask them why they want to vote. Would they be permitted to ask them what information they used to inform their vote or do they determine whether they can read. All of those things are particularly offensive, I have to tell you one white vote, I don't have to have any kind of reasoning for who to vote for. If I want to vote for some damn authorized to do that. In the same vein if I want to get all of my news from someone who sides a flyer under my door I'm certainly committed to do that and use that but why then would we have that such a dissimilar analysis of whether somebody was under a guardianship would want to vote.

SPEAKER:

Let's take one quick cause hereby can interrupt Tom's records to our last CLE code. The 2nd CLE code is going to be advocate, you'll see here on the screen in a moment. That is advocate ADVOCATE once again you want to make sure you have caught that first coat and you want to take down this one as well and you'll be prompted to enter both of them and assume pulled awoken at the end of the session. We will not be able to repeat or post those codes anywhere else so we'll give you just another moment to make sure we are able to take it down. That is advocate, ADVOCATE. Advocate. So sorry to interrupt, thank you so much.

THOMAS NICHOLS:

That's OK, so we have a little bit of a conundrum in Arkansas where it all centers around registration. It doesn't necessarily disqualify a person to vote based on the Constitution, in essence forbids them from registering to vote. Which in turn creates an issue of whether or not they are qualified voter at that point. So there are a number of problems that you could identify with whether or not an individual may be prevented from registering to vote. The truth is that it's not really enforced in our state. There is not really a purging of the voter rolls. They don't get notice from the Circuit Court that an individual has undergone a guardianship.

There is just no effort to monitor this in any other way other than to have a question on the voter application. Even then, the voter application does not say "have you ever been adjudged to be using their language incompetent" it says "are you presently adjudged by a court to be mentally incompetent" and that is complete contrary to the part of the Constitution that prevents the individual from voting. With the language that I just described that is on the voter registration application is also in the Constitution. So lots of conflict that appears system from possibly hurried drafting, probably drafting that was not paid much attention. As a result of that, we have what possibly might be bad advice coming out of it. Because, how can you authorize an individual to fill out a replication that is in conflict with another provision of the Constitution.

And in turn, even if they are authorized by the court to be allowed to vote, they are not necessarily authorized by the court to legally file their registration. It is a very strange conflict of a bunch of different provisions of law and Constitution that we would like very much to be able to attack. But it being in the circuit and not having as much help from the federal level in the current state of laws, it is problematic but we did assist an individual and we are going to play a video of him right now.

(Video plays)(Captioned video plays)

SPEAKER:

A group in Tulsa Oklahoma, moved to Arkansas in 2021. I could feel it I was part of a community that did my best to make sure I was confident in who I was voting for. What interests me are my communities, people I care about regardless of who they vote for. I want to make sure everybody is safe. I mean, I know right now, we are divided, one of the reasons I would like to vote is to someday help amend our relationships more.

SPEAKER:

Tell me about moving to Arkansas, and how you learned you weren't able to vote?

SPEAKER:

Well, we had just gotten here. I think it was maybe a year we lived out here. And though my mom kind of saw something, or I know what it was and I was like "Hah, wait a minute. That doesn't sound right."

That is when we decided we needed to get an attorney out here Sue could sort through all this.? I did not find out until we lived over here and I saw online that he could not

SPEAKER:

That he could not legally vote here because we have guardianship. I don't think it gave a reason other than, if you have a legal guardian, or if you are illegal guardian to someone then whoever has the guardianship cannot vote. And it didn't even say that we could take it to the court and get approval. I didn't find that out until we talked to you. When I come to you guys to say "is this right?" And that was when I found out that we can at least get it changed. There's no reason that a by view of the fact that they have a guardian, why should that stop them from voting? It makes no sense.

SPEAKER:

That was probably my proudest moment because it made me feel like I did everything I could to make sure that I voted, and I voted for the right person. I voted for the right causes. Because it is important that we represent our country however we can. I usually try to conclude most people, and whoever they want to vote for its their choice. And I want to make sure that they get that choice, which is why I wanted to get people disabilities the right to vote. So that they can have their own voice, it's probably my proudest moment because it made me feel like I promoted change. And sometimes change is a good thing. Thats what I tried to do, I know I try to tell a lot of people this who will cure it. I know there's a lot of negativity going on, but I try to ignore all that and try to focus on the positivity and what to do in the future.

SPEAKER:

Thomas, you are muted.

THOMAS NICHOLS:

I am sorry, I was muted. So he assisted Jacob with getting his voting rights restored. He was a very easy client to assist as you can imagine. He was motivated to help us attack the constitutionality of the statute to try and give it another shot. To see if possibly we can make some headway. However, I struck a bargain with him that we would get him his voting rights restored regardless of whether we were going to be able to pursue it systemically, attacking statute itself. Timing became an issue. He really wanted to vote in the election last year, so knowing that he had to meet deadlines for registration, we went ahead and moved the court commented a joint motion between him and his Guardian, had him execute an affidavit and the court immediately approved it which is what we see in all these cases, right? Individual cases, there is a matter of standing that happens. We have an individual who can so easily go to a court, get an order that says you are allowed to vote, and not get pushback at all which is what we see in any circumstances in which we try to assist individual. It creates an issue of whether or not a person's case will become moved.

I am sorry, we are running out of time. I wanted to make time for questions at the end. But I just wanted to say, we've never had an individual be required to justify their reasoning, we've never been required to even attend the hearing on the right to vote. So, what we have done is developed some materials for individuals to do as a form of self-help in a way so that they can understand just how easy it can be to restore the right to vote. I will go into the practice tips and strategies will really have about 2 minutes left so I'm going to invite Elissa to jump in and see if we have any other stuff to cover here.

ELISSA GERSHON:

I did not see any questions in the chat, but several people mentioned that their states allow for individualized determination of capacity. I just want to note that even though a state might allow for individualized assessment of capacity, that does not mean that the laws or practices comply with the constitutional and statutory protections that people with disabilities should have in this process. So the practice tips and strategies that we have here could apply to individual cases, as well as legislative strategies and impact cases that you might find yourself compelled to bring in your state. Thomas, do you want to talk a little bit about what we have on the site here based on your-- expenses*Osher

THOMAS NICHOLS:

Oh, sure those laws all have meeting and feed into each other. Definitely do not forget to look your states constitution. Personally helpful stuff in hours. Also it is helpful to look at what has been repealed through constitutional amendments. He had a particular terrible constitutional provision that was repealed that cuts towards allowing an individual's right to vote. So, definitely do some historical research in addition to looking at the current status of the Constitution. Finding supportive legislators can be difficult depending on where you live. Whether the current climate in your state is that they want to prevent people from voting or they want to allow people to vote more often. In many cases, we've been able to find some legislators who are a bit more sensitive to issues around disability. Often they are ones who are affected by disposing themselves or have a family member or loved one who has the display. Working with your committee partners is extremely helpful because that is where you can find clients.

That is wicked for-- as we can find some supportive guardians, and also guardians who were not supportive who can give an opportunity to represent an individual with an adverse party in that circumstance. So all are great. Definitely also considering your form is importing wanted do it in state or federal court for timing issue.

ELISSA GERSHON:

I think we're just about out of time, takes much Thomas, thank you so much everybody. Please stay on and fill out the survey and felt the zoom survey for your CLE credits. And note that at the end of the slide deck, my contact information and promises are there if you want to reach us, as well as many,

many helpful resources as you go forward and advocate for people to retain and restore their voting rights and guardianship proceedings. So think is much everybody, really appreciate having you all here today.

DEVON BACON:

Just everyone is aware of the Seeley credit pull has launched, please answer those 4 questions if you want the Seeley credit for this one. I will leave it up for several minutes that you have time to complete it.

Live captioning by Ai-Media

DEVON BACON:

OK, for anyone still logged on I'm going to close the CLE pole in 5 seconds ended in the meeting. This is your countdown to complete the pole 5, for, 3, 2, one. Thank you so much.

Live captioning by Ai-Media