



Mental Health Project Disability and Guardianship Project

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March 11, 2021

Honorable Jerry Nadler
Chair, House Judiciary Committee
United States Congress

Re: Request for Hearings into Conservatorship Abuses & Federal Intervention

Dear Chairman Nadler:

Spectrum Institute and other organizations listed on page 3 of this letter are writing to add our voice to the chorus calling for congressional hearings of abusive state conservatorship practices. Although the impetus for others may have been the situation of Britney Spears or the plight of seniors trapped in abusive conservatorships, we want to add our concern for the rights and well-being of adults with intellectual and developmental disabilities.

The entrapment of a superstar is alarming. The pilfering of the assets of seniors is despicable. Those abuses should be investigated and solutions crafted to prevent or minimize similar occurrences in the future. But the plight of adults with autism, Down syndrome, cerebral palsy, intellectual challenges, and other developmental disabilities also needs the attention of Congress.

Conservatorships and guardianships are functions of state governments. Under principles of federalism there is a role for Congress to ensure that the *federal* constitutional and statutory rights of Americans are protected in these state judicial proceedings.

Using its Section 5 powers, Congress has the authority to enforce the 14th Amendment which prohibits states from depriving individuals of liberty or property without due process of law. Unfortunately, such deprivations occur on a routine basis in conservatorship proceedings in California and guardianship proceedings elsewhere. Attached you will find some examples of how this has been occurring to adults with developmental and other disabilities.

Congress has given the Department of Justice authority to investigate and prosecute violations of the Americans with Disabilities Act committed by state and local governmental entities. The United States Supreme Court has affirmed that the mandates of Title II of the ADA apply to state courts. *Tennessee v. Lane*, 451 U.S. 509 (2004). Despite this, state courts act as though the ADA does not apply to conservatorship and guardianship proceedings. ADA complaints filed with the Department of Justice against the Los Angeles Superior Court and the County of Los Angeles for violations in conservatorship cases have been pending for several years. Why are these investigations not moving forward?

The 115th Congress instructed the Department of Justice to develop guidance on best practices for states in guardianship and conservatorship proceedings. (Section 505 of S. 178 - Elder Abuse Prevention and Prosecution Act). We wrote to Acting Attorney General John Gore in November 2017 urging the DOJ to include in such guidance instructions that obeying the ADA is not just a matter of “best practices” but is legally required. More than three years have passed and a guidance memo has not yet been issued. Why the delay?

The National Council on Disability and the Government Accountability Office have issued reports recognizing that federal civil rights violations are occurring in state conservatorship and guardianship proceedings. Such recognition is a small advancement, but the federal government must do more than issue reports. We need investigations by the DOJ and United States attorneys of violations of federal laws – civil rights statutes as well as criminal statutes – being perpetrated by state courts, appointed attorneys, and professional fiduciaries. Congressional hearings can help officials at the DOJ realize that these matters are important to Congress. Out of such hearings can come specific legislation emphasizing that it should be a priority for the DOJ to assign and train more staff to take on such investigations. Congress also should allocate more funding to make this goal become feasible.

Spectrum Institute can prepare detailed proposals for Congress, both through testimony and written reports, should the House Judiciary Committee decide to schedule hearings into abusive conservatorships that the ranking Republican member and others are requesting.

We encourage you to have your staff reach out to us for more information. We would like to participate in a meaningful exploration of how the federal government can do more to protect the federal constitutional and statutory rights of seniors and people with disabilities from being violated in state conservatorship and guardianship proceedings.

Respectfully yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman". The signature is fluid and cursive, with the first name "Thomas" and last name "Coleman" clearly legible.

Thomas F. Coleman
Legal Director
Spectrum Institute
tomcoleman@spectruminstitute.org

p.s. You will find extensive documentation of our research and reporting on these issues, and evidence of our outreach to state and local officials in California, on the “publications” page of our website – accessible through the homepage at: <https://spectruminstitute.org/>. Also please note the attachments to this letter providing examples of injustices.

cc: Members of the House Judiciary Committee

See the next page for a list of organizations joining this request.

The Following Organizations Are Joining This Request



(Washington, DC)

<https://tash.org/>



NATIONAL
DISABILITY
INSTITUTE

(Washington, DC)

<https://www.nationaldisabilityinstitute.org/>



Harvard Law School
Project on Disability

Harvard Law School Project
on Disability (Massachusetts)

<https://hpod.law.harvard.edu/>



PEOPLE
FIRST
of Washington

<http://peoplefirstofwashington.org/>



Americans Against
Abusive Probate
Guardianship

Americans Against Abusive
Probate Guardianships (Florida)

<https://aaapg.net/>



WASHINGTON
AUTISM ALLIANCE

Washington Autism
Alliance (Washington)

<https://washingtonautismalliance.org/>



(Washington)

<https://www.selfadvocatesinleadership.com/>



Mental Health Advocacy
Services (California)

<http://mhas-la.org/>



Center for Estate Administration
Reform (North Carolina)

<https://www.cearjustice.org/>



Bettys' Hope (California)

<https://bettyshope.com/>



KASEM CARES

(California)

<https://www.kasemcares.org/>



Hearing Loss
Legal Fund (Utah)



<https://www.sageeldercare.com/> (California)



<https://www.freebritney.army>



Injustices to People with Developmental Disabilities

According to the Department of Developmental Services, there were 49,637 regional center clients with developmental disabilities who were living under an order of conservatorship in 2019. That is up from 43,341 active conservatorship cases in 2016. Spectrum Institute estimates that about 5,000 new conservatorship petitions are filed against such adults each year in California. In some cases, these individuals are not provided with an attorney to defend their rights. In other cases, their assigned attorney surrenders their rights or ignores their stated wishes. Here are a few examples of injustices that such adults have experienced in probate conservatorship proceedings.

Michael P. – Lancaster

Michael was a young man with intellectual disabilities who died as a result of conservatorship neglect. The judge and court-appointed attorney failed to remove him from a dangerous situation. He died prematurely and unnecessarily.

Gregory D. – Los Angeles

Gregory is a young autistic man who for years has been ordered by the court to have prolonged visits with a parent whom Gregory says he fears and dislikes. He was also forced to attend church services. His victimization continues to this day.

Elizabeth H. – Solano

Elizabeth is a young woman with Down syndrome who was removed from her home over her objection and without an evidentiary hearing. She was denied the right to have an attorney of her choice. Less restrictive alternatives have not been seriously considered.

Olivia B. – Santa Barbara

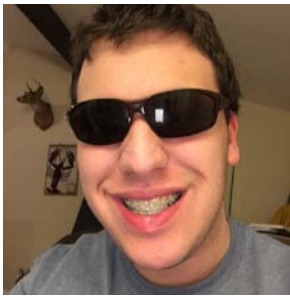
Olivia is a young autistic woman who was forced to leave the school, home, and community where she had been for years. The judge did not seriously consider less restrictive alternatives. Her case is now pending on appeal.

Ashley E. – Ventura

Ashley, a young autistic woman, was removed from her mother's home. She was placed in the custody of the public guardian. The judge never once laid eyes on her. Neither did her public defender. The order was later reversed on appeal.

Anna N. – Riverside

Anna is a young woman with cerebral palsy who was ordered to have ongoing visits with her father despite Anna's insistence that he had been raping her. After months of forced visits, the order was eventually reversed on appeal.



Michael Liguori

Michael Liguori is 19 years old and 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 situation, Michael was awarded a large settlement. Because he was a minor, a guardianship was established to administer the funds during his childhood years.

When Michael turned 18, the paid guardian did not want to let go. A petition was filed 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 responded by appointing a temporary guardian to take charge pending further review.

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 choose his own financial advisors.

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 Rector

For many years, David Rector 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 Alexander-Kasparik 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 then 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 love, support, and daily personal care services – all without

compensation. For two years, the conservator and the lawyer ran up fees which eventually depleted David's entire estate. Then, they walked away and allowed Roz 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 and generating considerable media attention around David's case.



Gregory Demer

When Gregory Demer 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, Linda was not aware that Gregory had been disqualified from voting.

Things went smoothly for a while, with Linda allowing Gregory to participate in decision-making about matters in his life. When Gregory moved to his own apartment, he started socializing with friends instead of going to church with his father. His father got a court order to make Linda force Greg to go with his dad on Sundays. Linda then resigned rather than violating her son's freedom of association. 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 forced to spend two days with the father every third weekend whether he wanted to or not.

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. In fact, the lawyer actively argued against Gregory's wishes. She encouraged the court to continue ordering Gregory to associate with the man whom he feared. To this very day, Gregory is under an order of forced visitation.

Gregory's right to vote was only restored after Spectrum Institute intervened and the voting rights violation was exposed in an op-ed article written by the organization's legal director in the Daily Journal – California's premier legal newspaper. Spectrum Institute also 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 Lopate



The mother of another autistic young man, Stephen Lopate, filed a conservatorship petition when he turned 18. He could not make complex decisions regarding finances or medical procedures, so Teresa Thompson felt it would be best for her to assume those functions for him even though Stephen was legally an adult.

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 Teresa, ignoring Stephen who would be present during the conver-

sation. Teresa 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 Teresa 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 forced 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 advocacy 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.



Michael Parisio Jr.

Michael Parisio Jr., also known as “Mickey” (left in photo) was diagnosed as a child with an intellectual disability. His ability to communicate was limited. Nonethe-

less 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 but 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 threatened to 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, or Mickey’s primary doctor, or 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.