

Appeals Court Favors Individual Determination of Voting Rights for Disenfranchised Citizens with Mental Disabilities

August 23, 2007—The U.S. Court of Appeals for the Eighth Circuit today held that Missouri law allows citizens who are under full guardianship to retain their voting rights if they demonstrate a capacity to vote.

The case was filed on behalf of Bob Scaletty, a retired electrician diagnosed with paranoid schizophrenia, and Missouri Protection and Advocacy Services, which represents people with mental disabilities. Mr. Scaletty had voted consistently until November 2004, when he received a letter saying he could not. The case challenged Missouri laws barring voting by citizens a court has declared are incapacitated and for whom it has appointed a guardian.

The three-judge panel, which included retired Supreme Court Justice Sandra Day O'Connor, held that although Missouri law generally bans voting by citizens who are "incapacitated," that ban is not absolute because probate courts have explicitly preserved the voting rights of some individuals, including Mr. Scaletty, when appointing guardians for them.

Nineteen states have blanket prohibitions against voting by people under guardianship, according to Jennifer Mathis, deputy legal director of the Bazelon Center for Mental Health Law and co-counsel in the case. Eighteen others have laws specifically stating that people under guardianship retain legal rights, including the right to vote unless expressly removed, and nine do not address the issue of mental competence in their voting laws. Several states have outmoded laws barring "idiots" and "insane people" from voting.

"The Eighth Circuit's ruling underscores the need for education," Mathis points out, "so that voters, court-appointed guardians, elections officials and probate judges all know that people under guardianship have a right to an individual determination of their capacity to vote before they can be denied a ballot."

"We hope this decision will end the automatic disenfranchisement of people who are placed under guardianship," added Allison Barkoff, an attorney at the Bazelon Center. "People should not have to be lucky and rich in order to vote—lucky enough to know they can ask a court to restore their rights and rich enough to pay the court costs."

In addition to the Bazelon Center, the plaintiffs in Mr. Scaletty's case were represented by Samuel Bagenstos, professor at the Washington University School of Law, the American Civil Liberties Union, the ACLU of Eastern Missouri, the National Voting Rights Project in Atlanta and the Sonnenschein, Nath and Rosenthal law firm in Kansas City.

Coincidentally, on August 13, the American Bar Association House of Delegates approved a resolution urging federal, state and local governments to amend laws that categorically bar people under guardianship from voting and to ensure that no one is disenfranchised without an explicit finding of incapacity to vote.