Elder Abuse Bills Are a Start: Reform at State and Federal Level Should Include *All* Vulnerable Adults

By Thomas F. Coleman
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United States Sen. Amy Klobuchar has introduced a bill (S. 182) encouraging states to improve access to justice for seniors in guardianship and conservatorship proceedings. Sen. Charles Grassley is sponsoring a related measure (S. 178) to improve the way states respond to elder abuse.

These bills were introduced in response to a growing chorus of individuals and organizations calling for major reforms in state guardianship and conservatorship systems they allege are abusing the rights of seniors and other adults with cognitive and communication disabilities.

Reform of guardianship and abuse response systems requires a carrot-and-stick approach. Awarding grants to entice states to create demonstration projects to reform guardianship systems and abuse response practices is the carrot. The stick already exists in the form of lawsuits and adverse publicity.

Both bills are good, but they don't go far enough. As currently written, they would only apply to state projects intended to improve guardianship and abuse-response systems for adults who are over 60. Protecting seniors is a laudable goal, but vulnerable adults under 60 need to be included, too.

There is ample evidence of abusive guardianship and conservatorship practices violating the rights of people with disabilities under 60. It makes logical and practical sense for these bills to be amended to include this entire population of protected adults in the scope of federal grants to stimulate state improvements.

For anyone who might wonder if guardianship systems are really denying access to justice to vulnerable adults under 60, reading a short summary of a few cases should erase any doubt.

Michael, age 19, lives in Staten Island, New York. He has cerebral palsy, a disability he acquired due to negligent hospital procedures at birth. He received a hefty award from the hospital. The money was placed in a trust during his childhood years.

Michael's disability has not impaired his mental functioning. He is currently finishing his last year in high school where he has been receiving excellent grades in general education classes.

When Michael turned 18 and became an adult, he wanted to make his own economic decisions, just as all adults do. Two days before his 18th birthday, a court-appointed guardian from his parents' divorce proceeding filed a petition to appoint a conservatorship guardian to control Michael's finances during adulthood.

Michael objected and retained his own attorney. He had the support of his mother and his grandmother. As a counter move, the court removed Michael's chosen attorney and replaced him with a court-appointed lawyer.

A journalist caught wind of the case and decided to write a story. When he contacted the guardian for comment, the guardian sought and obtained a "gag order" from the court. The case file is now sealed. Court proceedings are closed to the public. The parties have been ordered, under threat of criminal contempt, not to speak or share documents with the media.

These protective measures effectively shield the court's actions from public scrutiny. Michael's due process right to an attorney of his choice and his constitutional rights to freedom of speech and press are being violated by a court in "star chamber" proceedings.

The type of institutional abuse perpetrated by the judicial system in New York occurs in California too, as the following four cases illustrate.

For many years, David 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 could start a new life together. Soon thereafter, David was unexpectedly stricken with an 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.

In order to assist David with financial and medical decision-making, Roz filed a petition asking to be appointed as his conservator until he was able to communicate more effectively. Her good intentions resulted in a nightmare for her and David.

At the time, David had $78,000 in life savings. The court refused to make Roz the temporary conservator and instead appointed a paid professional. The conservator then hired an attorney. As proceedings dragged on, they drew their fees from David's savings until his funds were totally depleted.

Then the conservator and the attorney withdrew from the proceeding and the court appointed Roz to be David's conservator. David, who had voted consistently in elections throughout his life, was summarily stripped of his right to vote.

Stephen got a taste of California's oppressive conservatorship system when he turned 18. Because of Stephen's autism, his mother felt it would be best if she became his conservator so that she could handle complex decisions involving finances and medical care. She planned to allow him to make his own social decisions.

Their experience with the system was horrific. Stephen almost lost his right to vote when his court-appointed attorney claimed that "voting is inconsistent with conservatorship." The attorney planned to have Stephen's right to make social decisions taken away so that the court could order him to visit his father — a parent whom Stephen feared. The attorney would not allow Stephen, who was then nonverbal, to use his chosen method of communication. The violations of the Americans with Disabilities Act were too numerous to describe here.

It was only intervention by a disability rights organization that turned things around. Pressure forced the attorney to start advocating for his client. Stephen kept the right to vote and the right to make his own social decisions.

Gregory was drawn into a conservatorship when he turned 18. His parents filed a petition as a way to protect their autistic son. Unfortunately, the court summarily stripped Gregory of his right to vote despite the fact that he did not have an intellectual disability. Later, when the parents divorced and Gregory did not want to visit his father — due to fears he expressed over and over — the court ordered Gregory to spend time with his father anyway. When Gregory resisted, the court stripped Gregory of his right to make all social decisions. His court-appointed attorney advocated against Gregory, ignoring letters from many professionals in support of Gregory's ability to make social choices.

These cases are the tip of the chilly conservatorship iceberg. An audit of dozens of conservatorship cases in Los Angeles County reveal a pattern and practice of deficient legal services and a lack of judicial oversight. The "protection" court is not protecting the rights of vulnerable adults as it should.

Reform at the state level is needed, not only in California and New York but throughout the nation. Perhaps federal grants to promote such reform will help. The grants and the reform, however, should include all vulnerable adults. These two senate bills could do so if they are amended to become "seniors plus" reform measures.

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