

ENFRANCHISEMENT OF PEOPLE SUBJECT TO GUARDIANSHIP

A TOOLKIT FOR RETAINING AND RESTORING THE RIGHT TO VOTE



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Disclaimer

This Toolkit is for educational purposes and general assistance ONLY. Nothing in this Toolkit or anything attached or references to this Toolkit should be considered legal advice for any claim or matter. Neither the National Disability Rights Network nor the Bazelon Center for Mental Health Law intend for this Toolkit to create any attorney-client relationship and any person reading or using this Toolkit will need to seek out legal counsel to discuss their individual circumstances.

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Introduction

Voting is a fundamental right that should almost never be taken away. Sometimes, however, individuals who have a guardian appointed by a court are prevented from voting because state laws disqualify them from voting or because the right to vote is taken away when a guardian is appointed. Many courts have allowed people under guardianship to vote if they show that they have the capacity to vote.

This fact sheet, and the sample court documents contained in this packet, can be used in a guardianship proceeding to help a person retain the right to vote even if a guardian will be appointed for other parts of the person's life, and to help restore the right to vote if it has been taken away in the guardianship proceedings. It will be important to understand your state and local laws and procedures. You can contact the state protection and advocacy (P&A) agency in your state for help. Find the P&A in each state at <https://www.ndrn.org/about/ndrn-member-agencies/>.

Note: For purposes of this fact sheet, references to “mental incapacity” and “mental disability” encompass the broadest definitions including intellectual/developmental disabilities, psychiatric disabilities, brain injuries, and dementia, unless otherwise specified.

People Who Have a Guardian Should Not Automatically Lose the Right to Vote

Voting is one of the most sacred rights of our democracy, and is protected by the United States Constitution. Most citizens of the United States are eligible to vote if they:

- turn 18 years old on or before election day;
- meet their state's residency requirements; and
- are registered to vote.

However, some people with mental disabilities may be denied the right to vote because federal law allows states to disenfranchise people who are determined to lack “mental capacity.”¹ Most states restrict the voting rights of some people with mental disabilities even though the term “mental incapacity” has not been defined in federal law or in many states.

In some states, people are disenfranchised through guardianship proceedings, sometimes without considering if the person has the mental capacity to vote or even telling the person that they are losing that right. The laws and practices in many states may be illegal if they don’t consider whether a person with an appointed guardian is actually capable of voting. Although legal action or legislative change may be needed to eliminate discriminatory state laws or practices, individuals in guardianship proceedings can and should request to retain the right to vote, or have it restored.

Different states treat the right to vote differently in guardianship proceedings

State laws and practices treat the right to vote for people subject to guardianship differently. In some states, people are automatically disenfranchised if a guardian is appointed; in other states, the court must determine that the individual retains or loses the right to vote; and still other states do not explicitly consider the question of voting capacity at all. There is more information about state voter laws on capacity on the website of the Bazelon Center for Mental Health Law, including [a chart of every state’s voter competency laws](#).

In some states, people who are subject to a “full” or “plenary” guardianship automatically lose the right to vote. Some people who have a “limited” guardianship may still be able to vote unless the court determines that they do not have the capacity to do so. It will be important to understand what

¹ National Voter Registration Act, 52 U.S.C. § 20507(a)(3)(B), formerly cited as 42 U.S.C. § 1937gg-6.

type of guardianship is being proposed or is in place in order to advocate for voting rights.

To find out if you are registered to vote, go to <https://www.vote.org/>.²

Determining Mental Capacity or Desire to Vote

There is no national standard for determining mental capacity or incapacity to vote, and each state uses a different standard or no standard at all.³ Some states require that a person subject to guardianship demonstrate an understanding of the voting process. This is sometimes known as a “functional” or “capacity” standard.

Advocates believe that this type of test is illegal because people without disabilities are not required to show an understanding of the voting process. To the extent that states choose to have a voter competency requirement, it is our position that their laws and practices should hold all individuals to the same standard regardless of whether they have a disability. Voter competency requirements only for people with disabilities do exist, however. Ensuring that people subjected to these requirements have the fullest opportunity to become voters, including supports and accommodations needed to demonstrate competency and to cast a ballot, affords important protections against exclusionary rules and practices.

In recent years, the American Bar Association, the Uniform Law Commission, and six states have adopted an approach to voting competency that strives to protect the federal constitutional and civil rights

² NDRN and the Bazelon Center do not warrant, certify or make any assurances or guarantees about the security, operation, or usefulness of www.vote.org and have no responsibilities in regard to the website. We provide the link to this website simply for the benefit of the reader. Anyone entering information into www.vote.org assumes any risks associated with using the website.

³ Check the chart [State Laws Affecting the Voting Rights of People with Mental Disabilities](#) to find out what the voter competency laws are in each state.

of people with disabilities and address concerns about election integrity.⁴ This model centers the person's ability to communicate a choice, with or without accommodations, about whether to vote and who to vote for, and means that no one should have to take a test, demonstrate knowledge of the voting process, candidates, or issues, or otherwise be subjected to a test that is not applied to anyone else.

Under the ABA and Uniform Law Commission model:

1. Individuals subject to guardianship retain the right to vote even if placed under a guardianship unless:
 - a. the court makes explicit and written findings,
 - b. based on clear and convincing evidence,
 - c. that the individual cannot communicate, with or without reasonable accommodations, a specific⁵ desire to participate in the voting process, and
2. The individual whose voting rights are at stake receives notice in a language and form they can understand, and has an opportunity to be heard in court, specifically as to the right to vote.

Basically, this means that in a proceeding to establish a guardianship, an individual should be able to request to retain the right to vote and receive accommodations to communicate their desire to participate in the voting process. Likewise, a person subject to guardianship who has lost their voting rights can ask to have their voting rights restored, and similarly receive accommodations.

⁴ The American Bar Association is a voluntary national association of lawyers and law students. The Legislative Policy adopted by the ABA in 2007 is [here](#).

The Uniform Law Commission provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. It adopted the [Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act](#) in 2017. See §§ 310(a)(3) and 604.

The six states that use the model approach are: California, Maine, Maryland, Nevada, New Mexico, and Washington State.

⁵ We recommend avoiding use of the word "specific" if possible, as it could allow for an overly narrow interpretation of an acceptable level or type communication of desire to vote. However, it may be a powerful incentive for states or courts to accept the language adopted by the ABA.

Since only a few states have followed this model, it will be important to show the court in a guardianship proceeding how the individual meets the applicable standard in the state. However, it is also important to show the court that the individual has a desire to participate in the voting process, and what, if any, accommodations are needed to do so.

Accommodations in the Voting Process

Accommodations are a form of assistance that people with disabilities are entitled to receive under disability rights and election laws, such as the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Help America Vote Act, and the Voting Rights Act.

Accommodations do not permit another person to vote on behalf of a person with a disability. Federal law does permit and requires that a person with a disability be allowed to receive help to register to vote, to understand a ballot, to navigate the voting process, and to cast a ballot.

Accommodations should also be available to assist people in guardianship proceedings to communicate their desire to vote and/or to demonstrate their competency to do so. Legally, accommodations are limited by whether they are “reasonable.”

To show a court that a person with a mental disability is competent to vote, and/or has a desire to vote, it will be important to tell the court what accommodations the person needs or has used in the voting process.

Accommodations include using a supported decision-making approach, getting help from a person the voter with a disability chooses, technology or assistive devices, or other modifications that will enable a person with a mental disability to demonstrate capacity and a desire to vote, to register, and to cast a ballot. For more information on accommodations in the voting process, see [Voting Accommodations for People with Mental Disabilities](#).

Using Supported Decision-making Principles to Demonstrate Competency and/or Desire to Vote

Supported decision-making happens “when people with disabilities use friends, family members, and professionals to help them understand the everyday situations they face and choices they must make, allowing them to make their own decisions without the need for a substitute decision maker, such as a guardian.”⁶ Supported decision-making is generally considered to be an alternative to guardianship. However, supported decision-making principles are ideally suited to assisting anyone with mental disabilities in the voting process, including demonstrating competency and a desire to participate in the voting process. For examples of how supported decision-making can be used to help people vote, see Disability Vote California’s [Guide for Family Members and Supporters](#) and [Guide for Service Providers](#).

How to Get Help

Find your state’s [protection and advocacy agency](#). If you have questions about these materials, please contact: votingrights@ndrn.org

Websites

[National Disability Rights Network Voting Page](#)

[Bazelon Center for Mental Health Law Voting Page](#)

[Autistic Self-Advocacy Network \(ASAN\) Voting Page](#)

[Self-Advocates Becoming Empowered \(SABE\) Voting Page](#)

[The Arc Voting Page](#)

[Disability Vote California](#)

[National Council on Disability \(Explanation of laws\)](#)

⁶ National Council on Disability, [Beyond Guardianship: Toward Alternatives that Promote Greater Self-Determination](#), March, 2018, at 130.

Plain Language and Easy Read Materials

[Autistic Self-Advocacy Network \(ASAN\) Voting Toolkit](#)

[ASAN Guide to state voting laws](#)

[Bazelon Center for Mental Health Law 2020 Plain Language Voter Guide](#)

[Self-Advocates Becoming Empowered \(SABE\) Voting Toolkit](#)

[The Arc Disability Voter Guide \(English\)](#)

[The Arc Disability Voter Guide \(Spanish\)](#)

Supported Decision-making/Providing Assistance to Voters

[National Council on Disability, *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination*, 2018](#)

[American Bar Association, *Assisting Cognitively Impaired Individuals with Voting: A Quick Guide*](#)

[Disability Vote California \(Supported decision-making for supporters\)](#)

[Disability Vote California \(Supported decision-making for service providers\)](#)

Sample Documents for Retaining or Restoring the Right to Vote in a Guardianship Proceeding

These model documents are not meant to be legal advice. You may need an attorney in the state where the court you are in front of is located. NDRN and the Bazelon Center for Mental Health Law are not providing legal advice to anyone for any individual case by making these model court documents generally available.

Motions

The way to ask a court to retain or restore voting rights in the guardianship process is through a Motion. A Motion is a legal request telling the court what you would like it to do and why. This packet contains two model Motions, as described below:

Motion to retain voting rights when a guardian is appointed.

Sometimes an individual's right to vote is taken away when a guardian or conservator is appointed, at times without notice to the individual and/or without considering whether the person is capable of voting. Even if a court will appoint a guardian to make financial or health decisions, an individual who has the mental capacity to vote should be able to retain that right. This Motion asks the court to make it clear that the guardianship Order should preserve voting rights for the person subject to guardianship.

Motion to modify guardianship Order where the Order explicitly takes away the right to vote or where the Order is silent. A guardianship Order may say that the person under guardianship cannot vote. This could be because (1) the person was found to lack the capacity to vote, or (2) no one raised the issue of voting at the guardianship hearing and the state's law provides that a person under guardianship automatically loses the right to vote unless the person shows that he or she has the capacity to vote. Sometimes the court's guardianship Order says nothing about whether the person subject to guardianship retains the right to vote, but election officials may receive notice of the person's guardianship status and tell the person that they can't vote even if that is not true. If the guardianship Order

specifically says that the person retains the right to vote, the person can show this to election officials if they raise any questions. If a person's guardianship Order takes away a person's right to vote, or is silent, use this Motion to ask the court to change the Order to restore or clarify the person's right to vote.

How do you know what the laws are in your state? Check the chart [State Laws on Voting Qualifications Affecting People with Mental Disabilities.](#)

Sample Affidavits

When you ask a judge to modify a guardianship Order to restore the right to vote of a person with a guardian, you will need to give the judge some facts about why the person should be able to vote. This packet includes three model "affidavits," or sworn written testimony. They provide examples of the types of facts that may persuade the judge. **These are only examples as the facts in each person's case will be different. The models would need to be changed to the person's specific case.**

The model affidavits below are for several different people who might have important information for the judge to know about:

- 1) from a person subject to guardianship who wants the right to vote,
- 2) from the person's guardian,
- 3) from a professional who has examined or worked with the person.

These affidavits tell the judge that the person wants to vote, understands what it means to vote, and can vote without being inappropriately influenced by someone else (even if the person may need some help to vote).

Model Proposed Order

Most courts require that you submit a proposed Order that the court can adapt or sign to give you what you are asking for. This packet includes a model proposed Order clarifying that the person with a guardian should have the right to vote.

Motion to Retain the Right to Vote When a Guardian is
Initially Appointedⁱ

IN THE _____ COURT FOR THE STATE OF [STATE NAME]
FOR THE COUNTY OF [COUNTY NAME]

In the Guardianship of)

)

)

)

JOHN DOE,)

Case No. _____

)

)

)

)

An Incapacitated Person.)

)

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

Motion to Modify Guardianship Order to Restore the Right to Vote

IN THE _____ COURT FOR THE STATE OF [STATE NAME]
FOR THE COUNTY OF [COUNTY NAME]

In the Guardianship of)
JOHN DOE,) Case No. _____
An Incapacitated Person.)

MOTION TO MODIFY ORDER APPOINTING GUARDIAN

Movant John Doe respectfully asks that the Court modify its Order appointing Jane Roe as Mr. Doe’s guardian to specify that Mr. Doe retains the right to vote. The Order [removed Mr. Doe's right to vote/did not specify if 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 guardian supports this Motion. See Affidavit of Jane Roe, attached.

As provided in the attached Proposed Order Modifying Order Appointing Guardian, Mr. Doe requests that the Order appointing Ms. Roe be modified by adding 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

Model Affidavit of Person Seeking Retain or Restore the
Right to Vote

IN THE _____ COURT FOR THE STATE OF [STATE
NAME]

FOR THE COUNTY OF [COUNTY NAME]

In the Guardianship of)
)
)
)
JOHN DOE,) Case No. _____
)
)
)
)
An Incapacitated Person.)
_____)

AFFIDAVIT OF JOHN DOE

JOHN DOE, being duly sworn, deposes and says:

1. My name is John Doe and I am [insert age, gender].

2. I live with _____ **[identify people that you live with]** at **[insert address, including if applicable name of facility, and describe nature of facility, i.e., a skilled nursing facility, assisted living facility].**

3. **Use for Initial Guardianship:** I understand that my mother, Jane Roe, is seeking to be my guardian to help me with my medical decisions and my finances. Even if I have a guardian, I am still able to and want to be able to vote.

4. **Use for Modification of Guardianship:** I have had a guardian since **[date]**. My guardian is _____ **[insert name; provide a description of guardian relationship, including the duration and the responsibilities of the guardian. For example, “My guardian is my sister-in-law, Mrs. Smith. She has been my guardian for 11 years. My guardian assists me with my medical decisions and my finances.]**

5. **If applicable:** As a result of being placed under guardianship, I have not been permitted to vote in any local, state, or federal elections. Neither I, nor my guardian, knew that I would lose my right to vote when I was placed under guardianship.

6. **[If the guardian is supportive of your effort to get the right to vote discuss that here. For example, “My guardian believes that I am capable of voting and should have the right to vote.”]**

7. **[Describe the highest level of education you have received. For example, “I have a high school certificate of completion.”]**

8. **[If you are working, describe your job.]**

9. **[If you have been involved in any clubs, organizations, or support groups that you have held any leadership roles or had to vote for leaders describe those experiences here. If you had to vote for leaders in those groups discuss what you did to prepare. For example, “I have been a member of Project X for many years, an organization that helps to improve parts of my community. Every year we elect new members to the board. I have voted in the past six elections and was a candidate for the position of secretary last year. When I vote, I pay attention to a person’s character, their job performance, and the promises that they make in the campaign.”]**

10. To remain informed of current affairs, I **[provide information on what you do to stay informed. For example, “I watch the news, I listen to the radio, I read the newspaper, and I have conversations with friends and family to stay well informed of current affairs.”]**

11. I want to be able to vote because **[Describe why you want to vote. You may wish to discuss particular elections that are important to you, the fact that you have a preference for a particular candidate, issues that are important to you, or current events that have affected you].**

12. In order to demonstrate that I am capable of, and want to vote, I need the following accommodations: **[Help from someone I know and trust who can work with me to understand and complete the voting process, plain language materials, assistive technology, other assistance]**

13. I declare under penalty of perjury under the laws of the State of **[state name]** that the foregoing is true and correct.

Dated: _____, 2022

John Doe

Model Affidavit of Guardian Supporting Voting Rights of
Person Subject to Guardianship

IN THE _____ COURT FOR THE STATE OF [STATE
NAME]
FOR THE COUNTY OF [COUNTY NAME]

In the Guardianship of)

)

)

)

JOHN DOE,)

Case No. _____

)

)

)

)

An Incapacitated Person.)

)

AFFIDAVIT OF [GUARDIAN]

NAME OF AFFIANT, being duly sworn, deposes and says:

1. **Use For Initial Guardianship:** I am seeking to be appointed the guardian of John Doe.

2. **Use For Modification of Guardianship:** Pursuant to an Order of this Court dated **[insert date]** (the “Guardianship Order”), I was appointed the guardian of John Doe. Attached hereto at Exhibit A is a copy of the Guardianship Order. The Guardianship Order has not been amended.

3. I submit this Affidavit in support of Mr. Doe’s motion dated **[insert date]** to expressly provide in the Guardianship Order that Mr. Doe retains his right to vote.

4. **[If applicable:]** I am Mr. Doe’s **[describe relationship to ward: wife, son, daughter, brother, sister, aunt, uncle, nephew niece, friend]**. I have known Mr. Doe for **[number of]** years.

5. John Doe is a **[number]** year old male who lives in **[describe where the person under guardianship lives and with whom. For example, if the person still lives in his or her home, state whether the person lives with anyone. If the person does not live in his or her own home, provide the name and address of the facility where the person lives]**.

6. **[If applicable:]** Before I was named his guardian, Mr. Doe regularly exercised his right to vote. **[The guardian should explain how he or she knows that to be the case and, if possible, provide some personal anecdotal evidence. For example, if the guardian is a spouse, a friend or a companion, he or she may be able to say “For many years Mr. Doe and I went together to vote at our local polling place.”]**

7. Mr. Doe keeps up with current events by reading the newspaper, including **[insert name(s) of newspaper]** and magazines, including **[insert names(s) of magazines]**. He listens to the news on the radio and watches news and news related programs on television, such as **[insert name(s) of television programs]**.

8. Typically, I visit Mr. Doe **[describe frequency: weekly, or every Sunday, or once a month]**. We visit **[describe where visits occur; if applicable, describe who else may be present during those visits]**.

When I visit with Mr. Doe we talk about many things, including current events. Recently we have talked about the upcoming **[national, state, local]** election. Mr. Doe has expressed his views about the candidates and various issues. **[If applicable, also discuss the person’s participation in advocacy or other organizations, such as a People First chapter, and any experience with elections as part of this participation.]**

9. When I visited Mr. Doe on **[insert date]**, he asked me if he could vote in the upcoming election. **[or: I asked him if he would like to vote in the upcoming election. Without hesitation, Mr. Doe stated that he wants to vote in the upcoming election.]**

10. Based on my numerous conversations with Mr. Doe, I believe that he understands what an election is, and that he will exercise his own judgment when voting.

11. Although Mr. Doe may need assistance from a guardian with some decisions, he understands the voting process and will make independent decisions when voting. The types of assistance Mr. Doe may need when participating in the voting process include: **[Supported decision-making, plain language materials, assistive technology, personal assistance, etc.]**

12. I declare under penalty of perjury under the laws of the State of **[state name]** that the foregoing is true and correct.

Dated: _____, 2022

Name of Affiant

Model Affidavit of Supporting Professional Supporting
Voting Rights of Person under Guardianship

IN THE _____ COURT FOR THE STATE OF [STATE
NAME]

FOR THE COUNTY OF [COUNTY NAME]

In the Guardianship of)

)

)

)

JOHN DOE,)

Case No. _____

)

)

)

)

An Incapacitated Person.)

)

AFFIDAVIT OF [SUPPORTING PROFESSIONAL]

NAME OF AFFIANT, being duly sworn, deposes and says:

1. I am a [list professional qualifications: **[licensed physician, psychiatrist, psychologist, geriatrician, social worker, occupational therapist]**] in the State of **[state name]** and I make this Affidavit in support of the Motion dated **[date]** of John Doe so as to explicitly acknowledge in

Mr. Doe's Guardianship Order that Mr. Doe should be considered competent to vote.

2. [Affiant's educational background and licensing information:] I obtained my **[insert name of degree]** from **[insert name of school]** in **[insert year]**. **[Include information about residency/fellowship training.]** I have been licensed to practice **[insert specialty]** in the State of **[state name]** since **[insert year]**.

3. My curriculum vita is attached hereto and is an accurate representation of my professional background. **[Attach a copy of resume as Exhibit A.]**

4. [If appropriate:] I have experience with guardianship proceedings **[or capacity determinations]**. **[Provide examples of instances when medical professional was involved in guardianship proceeding or in making capacity determinations, e.g., I have previously testified in courts of law as to the capacity of the subjects of guardianship proceedings, specifically where the capacity to vote has been addressed, and I have served as an expert witness in such proceedings.]**

5. I have treated John Doe, a **[insert age, gender]** since **[insert year]**. Mr. Doe resides with **[identify people who live with Mr. Doe]** at **[insert address, including if applicable name of facility, and describe nature of facility, i.e., a skilled nursing facility, assisted living facility]**.

6. I have in the past and continue to work with Mr. Doe for **[insert diagnosis or specific needs, for example, Bi-Polar Disorder, Manic Depression, Parkinson's Disease, Depression, Schizophrenia, Alzheimer's, Alcoholic Dementia, Traumatic Brain Injury, support relating to Intellectual/Developmental Disability, development of independent living skills]**. **[Include a brief description of movant's condition and current status. For example, if Mr. Doe's functional and decisional abilities are intermittently affected by a mental health impairment, Affiant could discuss the current state of his condition. If Mr. Doe's condition is Alzheimer's or dementia, Affiant can specify the ways in which the condition does (and does not) currently affect his functioning. If a developmental disability, Affiant can describe the**

level of Mr. Doe’s functioning and community participation, e.g., holds a job, volunteers, takes classes.]

7. During the course of my relationship with Mr. Doe, I have had discussions with him regarding his desire to vote. Mr. Doe is aware that he is currently not allowed to vote under **[state name]** law, but he would like to have his right to vote restored.

8. I **[examined or spoke with]** Mr. Doe on **[date]**. I concluded then that Mr. Doe is competent to vote in local, state, and federal elections. Mr. Doe understands the electoral process and understands the nature and effect of voting. Mr. Doe also has the capacity to make his own decisions regarding candidates and questions on the ballot. Mr. Doe has opinions about elections that he holds entirely on his own without undue outside influence. Mr. Doe has communicated that he has a desire to participate in the voting process.

9. Mr. Doe requires accommodations in order to demonstrate his capacity and desire to vote, and to complete the voting process, that may include: **[describe here accommodations such as personal helper, supported decision-making, adapted materials, assistive technology, transportation, etc. If person has voted previously, describe supports or accommodations used]**. I understand that Mr. Doe will receive these accommodations through **[working with guardian or other individual, using understandable voting materials provided through self-advocacy organizations, using assistive technology in his possession, etc.]**

10. I have reached my opinions based on my education and training, my **[number]** years of experience as a **[medical]** professional, my regular treatment of Mr. Doe over the past **[number]** years, and my recent examination of Mr. Doe on **[date]**.

11. I declare under penalty of perjury under the laws of the state of **[state name]** that the foregoing is true and correct.

Dated: _____, 2022

Name of Affiant

Model Proposed Order

IN THE _____ COURT FOR THE STATE OF [STATE NAME]

FOR THE COUNTY OF [COUNTY NAME]

In the Guardianship of)
)
)
JOHN DOE,) Case No. _____
)
)
)
)
An Incapacitated Person.)
_____)

PROPOSED ORDER RE ORDER APPOINTING GUARDIAN

Having considered the instant Motion and attached Affidavits, and having heard no opposition to the Motion, the Court hereby GRANTS the Motion.

The Order appointing Jane Roe as guardian of John Doe, dated [date], will include the following language:

Mr. Doe retains the right to vote.

Mr. Doe uses supports to participate in the voting process that include but are not limited to: [list supports/accommodations identified in

Motion/affidavits]. Mr. Doe is entitled to rely on these supports as needed in all aspects of the voting process.

The Clerk of the Court shall so notify appropriate election officials.

So signed this ___ day of **[month]**, 2022.

Judge **[Name]**

ⁱ These model documents are not meant to be legal advice. You may need an attorney in the state for which the court you are in front of is located. NDRN and the Bazelon Center are not providing legal advice to anyone for any individual case by making these model motions generally available.