

HOW CONSERVATORSHIPS ARE “TOXIC” FOR WOMEN’S REPRODUCTIVE RIGHTS

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I have a (IUD) inside of myself right now so I don’t get pregnant. I wanted to take the (IUD) out so I could start trying to have another baby. But this so-called team won’t let me go to the doctor to take it out because they don’t want me to have children—any more children.

– Britney Spears¹

I. INTRODUCTION

In June 2021, Britney Spears addressed a Los Angeles court and detailed how her decade-long conservatorship had removed all autonomy from her life.² In one of her more shocking statements, she revealed that her conservatorship had forced her to keep an IUD in place despite her desire to have another child.³ Spears’s father, Jamie Spears, had been her conservator since 2008, when he gained control of all aspects of her life.⁴ After public outcry and the #FreeBritney movement, Jamie petitioned the court to end his role as her conservator, which was finally granted in September 2021, and he was replaced with a temporary conservator.⁵ On November 12, 2021, a Los Angeles County Superior Court judge finally

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1. Jem Aswad, *Read Britney Spears’ Full Statement Against Conservatorship: ‘I Am Traumatized’*, VARIETY (June 23, 2021, 3:59 PM), <https://variety.com/2021/music/news/britney-spears-full-statement-conservatorship-1235003940/> [<https://perma.cc/M8VX-KH7N>].

2. Andrew Limbong, *Britney Spears Asks Court to End Conservatorship, Detailing Its Control Over Her Life*, NPR (June 23, 2021, 9:22 PM), <https://www.npr.org/2021/06/23/1009416566/britney-spears-speaks-her-mind-at-last-in-conservatorship-hearing> [<https://perma.cc/A9AH-SSQP>].

3. *Id.*

4. *Id.*

5. Rachel Treisman, *Britney Spears Has Moved Toward Freedom from Her Father*, NPR (Sept. 29, 2021, 6:30 PM), <https://www.npr.org/2021/09/29/1041442489/britney-spears-conservatorship-hearing-jamie-spears> [<https://perma.cc/ZG99-3DMZ>].

terminated Spears's conservatorship after concluding it was no longer necessary.⁶

Spears's experience of getting into a conservatorship⁷ in a moment of crisis—then facing enormous barriers to get out—is an all too common practice.⁸ While conservatorships are governed by state law and established and executed by state courts, they also implicate important federal constitutional and statutory rights, including Fourteenth Amendment procedural due process rights and rights under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.⁹ For those subject to conservatorships, the decision about whether to use birth control, have a child, or have a sterilization procedure is made for the conservatee by the conservator—often without any weight put on their preferences. Forcing women to use contraceptives impedes their constitutionally protected right to procreate and should be abolished. Most people under conservatorships suffer from disabilities, which can range from Down syndrome to autism and bipolar disorder.¹⁰ Unlike in Spears's case, many instances of conservatorship abuse often receive little media coverage, and those affected often lack the resources to fight back.

This Note offers a more effective approach to reproductive decision-making as an alternative to conservatorships. Part II outlines the history of the eugenics movement and the purposes of a conservatorship. Part III argues that the right to make reproductive decisions, including the decision to procreate, is a fundamental right. Part IV concludes that supportive

6. Joe Coscarelli & Julia Jacobs, *After Nearly 14 Years, Britney Spears's Conservatorship Ends*, N.Y. TIMES (Nov. 12, 2021), <https://www.nytimes.com/live/2021/11/12/arts/britney-spears-hearing-conservatorship> [<https://perma.cc/92EM-PAM6>].

7. This arrangement is called a conservatorship in California, but most other states refer to it as a guardianship. *See, e.g.*, Cal. Prob. Code § 1800.3 (West 2023); N.H. Rev. Stat. Ann. § 464-A:1 (West); Minn. Stat. Ann. § 524.5-310 (West 2020); Md. Code Ann., Est. & Trusts § 13-201 (West 2019). For consistency, this Note will use the term conservatorship regardless of the state.

8. As the news of Britney Spears' conservatorship issues became headlines, Congress began reviewing conservatorship laws throughout the country. ACLU Attorney Zoë Brennan-Krohn from the Disability Rights Program testified before the Senate Subcommittee on the Constitution to provide details about the pitfalls of the conservatorship setup and how they can be improved. *See generally* TOXIC CONSERVATORSHIPS: THE NEED FOR REFORM: BEFORE THE SUBCOMMITTEE ON THE CONST. OF THE U.S. SENATE JUDICIARY COMM., 117th Cong., at 3 (2021) (statement of Zoë Brennan-Krohn, Disability Rights Program Staff Attorney, ACLU) [hereinafter Statement of Brennan-Krohn]; *see also* Heidi Blake & Katie J.M. Baker, *They Both Fought to Break Free from Guardianship. Only One Escaped.*, BUZZFEED NEWS (Sept. 19, 2021), <https://www.buzzfeednews.com/article/heidiblake/guardianship-conservatorship-marriage-couples> [<https://perma.cc/EA5T-CPAD>].

9. Statement of Brennan-Krohn, *supra* note 8, at 4.

10. Weily Yang, *Conservatorships for Adult-Special Needs Children*, ORANGE CNTY. LAW., Feb. 2020, at 2.

decision-making should replace a conservator's ability to regulate a conservatee's reproductive choices.

II. DISCRIMINATION FACED BY WOMEN WITH DISABILITIES THROUGH EUGENICS AND CONSERVATORSHIPS

A. *The Sterilization Movement and Other Efforts to Control Women's Reproduction*

The United States has a long history of forcefully sterilizing women deemed to be incompetent, as well as taking their children. In the 1920s, the eugenics movement gained momentum and was considered a way for society to "get rid" of "defective people."¹¹ The eugenics movement was a school of thought that emphasized biological determinism and aimed to "breed out" traits that were considered undesirable.¹² Early eugenicists believed they could eliminate social problems by preventing reproduction amongst people with "undesirable characteristics" like "mental retardation," "mental illness," and other incurable hereditary defects, like criminality.¹³ This movement often targeted poor white southerners, African American women with illegitimate children, and welfare recipients.¹⁴ As many as 70,000 people were forcibly sterilized during the 20th century, including those who were subject to state-mandated sterilization after being labeled as "mentally deficient."¹⁵

The United States Supreme Court first addressed the issue of forced sterilization in the 1927 case *Buck v. Bell*.¹⁶ Carrie Buck was institutionalized in Virginia after being raped at 18 years old and becoming pregnant out of wedlock.¹⁷ The Court determined that Carrie, her child, and her mother were all "feeble minded" and authorized a forced sterilization

11. Jana Leslie-Miller, *From Bell to Bell Responsible Reproduction in the Twentieth Century*, 8 MD. J. CONTEMP. LEGAL ISSUES 123, 127 (1997) (discussing the "strategy" behind using forced sterilizations in society).

12. *The Supreme Court Ruling that Led to 70,000 Forced Sterilizations*, NPR (Mar. 7, 2016, 1:22 PM), <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations> [<https://perma.cc/R5LF-5KM2>].

13. Rima Kundnani, Note, *Protecting the Right to Procreate for Mentally Ill Women*, 23 S. CAL. REV. L. & SOC. JUST. 59, 62–63 (2013).

14. Leslie-Miller, *supra* note 11, at 127.

15. *The Supreme Court Ruling that Led to 70,000 Forced Sterilizations*, *supra* note 12.

16. 274 U.S. 200 (1927).

17. See Robyn M. Powell, *From Carrie Buck to Britney Spears: Strategies for Disrupting the Ongoing Reproductive Oppression of Disabled People*, 107 VA. L. REV. 246, 251 (2021) (discussing how Carrie Buck was institutionalized after being raped and becoming pregnant out of wedlock).

procedure to prevent Carrie from becoming pregnant with any more children.¹⁸ Contrary to the Court's determination, Carrie had passed all school levels up through sixth grade and was recommended to be promoted before she left school.¹⁹ The Court's determination was not based on facts proving Carrie was "feeble-minded" but on the fact that she was a poor girl from the South who committed the sin of having a child out of wedlock.²⁰ The Court believed that promiscuity was a trait of mental deficiency, even though the evidence supported that Carrie had not been promiscuous but had become pregnant as a result of rape.²¹ Facts that were disclosed later showed that the man who raped Carrie was a relative of the woman who had committed her to the institution. Even though these facts were available to Carrie's attorney at the time of trial, he failed to disclose them, leading some scholars to believe he was working on behalf of opposing counsel to move the eugenics movement forward.²² Fifty years after her case was decided, Carrie was found to be of average intelligence, and she mourned her inability to have children.²³ Though society has moved away from forced sterilization, the Court has never overruled *Buck v. Bell*.²⁴ *Buck* was the first case to provide constitutional grounds for state-sponsored sterilization,²⁵ opening the door for forced sterilization to be used as a tool to control women based on their race, education, socioeconomic status, or physical and mental ability.

In the late 1930s and 1940s, support for the eugenics movement began to fade due to evolving societal standards, and involuntary sterilization laws began to change.²⁶ First, scientific understanding of mental disabilities and illness increased, revealing that there was no biological factor, and those that were biologically transferred were from parents who did not have disabilities.²⁷ In addition, the Supreme Court's decision in *Roe v. Wade*²⁸ required courts to acknowledge a woman's fundamental right to reproduce

18. *Buck*, 274 U.S. at 207.

19. Jill Alward, Note, *Imbecile Offspring or Flourishing Family? A Call for Justice for the Mentally Retarded*, 7 QUINNIPIAC HEALTH L.J. 175, 180–81 (2004). At the time, an individual could not be mentally impaired if they had completed school through sixth grade. *Id.*

20. See Leslie-Miller, *supra* note 12, at 128.

21. Alward, *supra* note 19, at 180–81.

22. *Id.*

23. Kundnani, *supra* note 13, at 65.

24. Alward, *supra* note 19, at 181.

25. Leslie-Miller, *supra* note 11, at 127.

26. Kundnani, *supra* note 13, at 64.

27. See *id.* at 64–65.

28. *Roe v. Wade*, 410 U.S. 113 (1973), overruled by *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

when reviewing sterilization petitions.²⁹ Furthermore, it became clear that judicial abuse of sterilizations was not limited to *Buck v. Bell* but was happening in many instances where an individual was proven to have no mental impairment and only perceived as a “threat to society.”³⁰ Lastly, the use of eugenics theories in Nazi Germany opened Americans’ eyes to the powerful discrimination in the practice.³¹ Most states have since done away with forced sterilization laws; however, judicially approved sterilization is still an option for conservators in almost every state.³²

Despite the end of the eugenics movement, attempts to control women’s reproduction in a discriminatory manner were not over. When Norplant, a contraceptive device inserted in a woman’s arm, was approved in 1990, courts considered various ways to use the device as a means to control certain populations.³³ Within months of the device’s approval, it was being considered as a way to control impoverished women by providing them financial incentives for getting the device inserted, as a way to fight fetal drug exposure by preventing addicts from reproducing, or as a mandatory term of probation for women convicted of child abuse.³⁴ Further, in Georgia, the court allowed a 34-year-old woman to be sterilized after she killed her 5-week-old daughter during an episode of severe postpartum depression.³⁵ The agreement was included in a plea that allowed the woman to avoid a murder trial and prison sentence in exchange for pleading guilty to manslaughter.³⁶

B. Conservatorships

Spears’s case is just one of an estimated 1.3 million adult conservatorship cases, of which courts oversee an estimated total of \$50

29. Kundnani, *supra* note 13, at 65.

30. *Id.* at 65–66. Carrie Buck was perceived as a “threat to society” because she was a poor woman from the South and became pregnant out of wedlock. *See id.*

31. Kundnani, *supra* note 13, at 65–66.

32. *See* Ark. Code Ann. § 20-49-203 (West 2023); Del. Code Ann. tit. 16 § 5707 (West 2006); Ga. Code Ann. § 31-20-3 (West 2012); Idaho Code Ann. § 39-3909 (West 2023); Va. Code Ann. § 54.1-2976 (West 2012); *see also* Vanessa Volz, *A Matter of Choice: Women with Disabilities, Sterilization, and Reproductive Autonomy in the Twenty-First Century*, 27 WOMEN’S RTS. L. REP. 203, 208 (2006) (discussing sterilization in different states).

33. Melissa Burke, Note, *The Constitutionality of the Use of the Norplant Contraceptive Device as A Condition of Probation*, 20 HASTINGS CONST. L.Q. 207 (1992) (discussing how courts used “Norplant” contraceptives).

34. *Id.*

35. *See generally* Volz, *supra* note 32 (discussing how a Georgia court allowed a thirty-four-year-old woman to be sterilized).

36. *Id.*

billion in assets nationally.³⁷ A conservator may be appointed to a person who cannot properly care for themselves or cannot manage his or her financial resources.³⁸ A conservator has the power to make decisions on behalf of the conservatee³⁹ and is entitled to absolute immunity for actions taken as a conservator.⁴⁰ Most freedoms mentioned in the United Nations Universal Declaration of Human Rights are denied to people under conservatorships.⁴¹ This can include the right to vote, marry, start a family, or decide where to live, work or own property.⁴²

A range of conditions can subject someone to a conservatorship, including a mental illness, mental disability, intellectual disability, mental deficiency, or mental condition.⁴³ If the court decides that an individual suffers from one of these broad conditions, it then determines whether the condition causes the individual to be unable to manage their personal or financial affairs.⁴⁴ If the individual lacks the capacity to manage their affairs, a conservator is appointed, and the individual loses their right to make decisions.⁴⁵

Once an individual is subject to a conservatorship, it is difficult to modify or terminate the conservatorship, even when it is no longer necessary.⁴⁶ Conservators routinely monitor an individual's money, travel, whom they communicate with, and their access to the internet.⁴⁷ Without access to their money, personal health records, and other information, an individual subject to a conservatorship has to overcome a nearly impossible burden in trying to prove they no longer need to be subject to the conservatorship.⁴⁸ Moreover, since individuals subject to a conservatorship are stripped of their rights to enter a binding contract, it can be difficult for

37. See *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination*, NAT'L COUNCIL ON DISABILITY (Mar. 22, 2018), <https://www.ncd.gov/report/beyond-guardianship-toward-alternatives-that-promote-greater-self-determination-for-people-with-disabilities/> [https://perma.cc/ZBH4-PRTN].

38. Cal. Prob. Code § 1801 (West 2023).

39. *Brown v. Labow*, 69 Cal. Rptr. 3d 417, 432 (Cal. Ct. App. 2007).

40. *County of Sacramento v. Superior Court*, 147 Cal. Rptr. 3d 196, 200 (Cal. Ct. App. 2012).

41. *Blake & Baker*, *supra* note 8.

42. *Id.*

43. NAT'L COUNCIL ON DISABILITY, *supra* note 37.

44. *Id.*

45. *Id.*

46. See *Jenica Cassidy, Restoration of Rights in the Termination of Adult Guardianship*, 23 ELDER L. J. 84, 85 (2015).

47. Statement of Brennan-Krohn, *supra* note 8, at 8.

48. *Id.*

conservatees to obtain legal representation.⁴⁹ Further, conflicts of interest often arise due to established networks of conservators, lawyers, and expert witnesses, who regularly appear before the same judge and are often paid out of funds from the estate of the person whose freedom is at stake.⁵⁰

While some progress has been made in conservatorship proceedings, judges still fail to consider less restrictive options to conservatorships. In 2013, Jenny Hatch⁵¹ was able to free herself from a conservatorship controlled by her parents after a year-long court battle.⁵² However, despite holding down a job and having lived on her own, the judge still determined that Jenny was unable to care for herself and appointed two of her friends as her conservators instead of her parents.⁵³ Even though it was a victory for Jenny, who ultimately wanted her parents removed as conservators, she remained subject to the conservatorship.⁵⁴

Conservatorships also create a huge risk of abuse and neglect. There is a significant power difference between the conservator, who holds all the power, and the conservatee, who has lost their rights.⁵⁵ Additionally, conservatorships are often at heightened risk for judicial abuse because judges hold individuals with disabilities to a higher standard than other individuals when it comes to evaluating their competency to make "right" or "rational" decisions.⁵⁶ Although conservatorships serve an important purpose, they are often granted when unnecessary and are overly overbroad, instead of being reserved for individuals who are not able to communicate their desires.⁵⁷

49. Nina A. Kohn, Catheryn Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 WASH. L. REV. 581 (2016) (noting that people who have been judicially determined to lack legal capacity are stripped of legal personhood, becoming wards of the state).

50. Blake & Baker, *supra* note 8.

51. Jenny was a twenty-nine-years-old woman with Down syndrome who was forced to leave her job, move out of her home with friends, and forced into a group home after her parents were granted temporary guardianship. See *Jenny Hatch Justice Project Impact Stories*, JENNY HATCH JUST. PROJECT, <https://jennyhatchjusticeproject.org/justice-project/jenny-hatch-impact-stories/> [https://perma.cc/E9B9-NCA8].

52. Susan Mizner, *Disability Is No Excuse to Deprive One of Civil Liberties*, ACLU (Aug. 3, 2013), <https://www.aclu.org/blog/disability-no-excuse-deprive-one-civil-liberties?redirect=blog/human-rights/disability-no-excuse-deprive-one-civil-liberties> [https://perma.cc/ET5T-MJY6].

53. Natalie DiBlasio, *Judge: Woman with Down syndrome can live with friends*, USA TODAY (Aug. 3, 2013), <https://www.usatoday.com/story/news/nation/2013/08/03/down-syndrome-custody/2614587/> [https://perma.cc/FZ7M-Z4WK].

54. *See id.*

55. *See* Statement of Brennan-Krohn, *supra* note 8, at 10.

56. Alward, *supra* note 19, at 183–84.

57. *See* DUSTIN RYNDERS, SUPPORTING ADULTS WITH DISABILITIES TO AVOID UNNECESSARY GUARDIANSHIP, HOUS. LAW. 27–28 (Jan./Feb. 2018).

While many states have a single set of conservatorship laws that cover all types of conservatorships, some states have created a separate set of laws,⁵⁸ with different standards for the conservatorship of people with disabilities.⁵⁹ For instance, in New York, the conservatorship statute for a conservator of an individual with disabilities has a much less rigorous procedural requirements⁶⁰ than the statute for all other conservatorships.⁶¹ The statute focused on individuals with disabilities is driven by diagnosis rather than their functionality,⁶² giving courts the ability to subject someone to a conservatorship simply because of a diagnosed impairment rather than their ability to take care of themselves.

The “school-to-guardianship pipeline” has also been cited as a reason for the high number of unnecessary conservatorships.⁶³ Under the Individuals with Disabilities Act, students in special education have their educational rights transferred from their parents to themselves when they turn eighteen.⁶⁴ However, many schools take this opportunity to discuss with parents whether they plan to seek a conservatorship and do not discuss any less restrictive options with parents.⁶⁵ A 2015 TASH Human Rights Committee study found that schools were the number one referral source for conservatorships and that conservatorships are often the default for students with disabilities.⁶⁶ Over half of individuals with disabilities receive publicly funded services for conservatorships within four years of graduating high school.⁶⁷

58. California, Connecticut, Idaho, Michigan, and New York each have distinctions in their conservatorship laws for people with disabilities and all other conservatorships. *See* Cal. Prob. Code § 1828.5 (West 2023); Conn. Gen. Stat. Ann. § 45a-669 (West 2018); Idaho Code Ann. § 15-5-301 (West 2009); N.Y. Surr. Ct. Proc. Act § 1750 (McKinney 2012); *see also* TURNING RIGHTS INTO REALITY: HOW GUARDIANSHIP AND ALTERNATIVES IMPACT THE AUTONOMY OF PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, NAT’L COUNCIL ON DISABILITIES 37 (2019), https://www.govinfo.gov/content/pkg/GOVPUB-Y3_D63_3-PURL-gpo121724/pdf/GOVPUB-Y3_D63_3-PURL-gpo121724.pdf [<https://perma.cc/KL8A-BKMG>].

59. NAT’L COUNCIL ON DISABILITIES, *supra* note 58, at 37.

60. The statute does not require the person with a disability to be present, the conservatorship cannot be limited, and the conservator’s decisions are made based on the “best interest” standard, not the substituted judgment standard. *See id.*

61. *Id.*

62. *Id.*

63. *Id.* at 29.

64. *Id.*

65. *Id.*

66. *Id.* at 31.

67. A 2015–2016 National Core Indicator found that fifty-eight percent of individuals with disabilities between the ages of eighteen and twenty-two were receiving publicly funded services for conservatorships. *See id.*

Overly broad conservatorships can have a detrimental effect on individuals with disabilities, especially when it comes to the development of necessary life skills. Research demonstrates that conservatorships impede critical thinking, self-advocacy, and knowledge of one's strengths and interests.⁶⁸ Moreover, reducing self-determination in individuals with disabilities leads to a lower quality of life and reduced community integration.⁶⁹

C. *Conservatorships' Impact on Women's Reproductive Rights*

Using a conservatorship to control a woman's reproductive choices is not just an issue of the past. In 2012, a judge declared that Mary Moe, a 32-year-old woman suffering from schizophrenia, could be "coaxed, bribed, or even enticed" into a hospital to undergo an involuntary abortion and sterilization procedure despite being adamantly against abortion.⁷⁰ To reach this decision, the judge applied the substituted judgment standard,⁷¹ which requires the court to ask what decision the incompetent individual would make if he or she were competent. Though a report from the court-appointed guardian ad litem concluded that Moe would continue to be against abortion if she were competent,⁷² the judge allowed the abortion and authorized the sterilization of Moe without a hearing.⁷³ Both the sterilization and abortion decisions were overturned on appeal. However, the judge on appeal did expand the parents' guardianship to include "Moe's routine medical care, health and welfare, including, as appropriate, the duration, condition, and viability of her pregnancy."⁷⁴

In *Conservatorship of Valerie N.*, the court denied the conservators' request to have their developmentally disabled adult daughter sterilized because it would deprive her of her constitutional rights.⁷⁵ However, the court did recognize that the conservators had a right to "choose abortion should she become pregnant; they may arrange for any child Valerie might bear to be removed from her custody; and they may impose on her other

68. *Id.* at 33.

69. *Id.*

70. *In re Guardianship of Moe*, 960 N.E.2d 350, 353 (2012).

71. *Id.* at 354.

72. *Id.* at 355.

73. *Id.* at 353.

74. *Id.* at 355.

75. *Conservatorship of Valerie N.*, 40 Cal. 3d 143, 163 (1985). The court noted that because Valerie had a right to privacy under the Fourteenth Amendment, whether under due process or equal protection, the state must show a compelling state interest for her sterilization, and it did not do so. *Id.*

methods of contraception, including isolation from members of the opposite sex.”⁷⁶ Even though the court took a step away from the permanent procedure of sterilization, it gave Valerie’s parents complete control over the decision of whether she should have an abortion in the future and whether she should be forced to take birth control without requiring any judicial oversight of those decisions.

III. THE RIGHT TO REPRODUCTIVE DECISIONS: A FUNDAMENTAL RIGHT

Over the years, the Supreme Court has held that individuals have a constitutional right to reproductive autonomy. The case law “can be divided into two categories: the right to control one’s body and the right to control one’s reproductive destiny.”⁷⁷ Landmark cases like *Griswold v. Connecticut*, *Carey v. Population Services International*, and *Eisenstadt v. Baird* solidify that the right to procreate is a fundamental right under the Constitution.⁷⁸ This right extends to a woman’s ability to control her social role and personal destiny.⁷⁹

The Supreme Court first recognized the constitutional right to privacy in *Griswold v. Connecticut* by striking down a Connecticut law prohibiting the use of contraceptives.⁸⁰ The Court found that the “zone of privacy”—an area into which the government cannot intrude—includes marital relationships.⁸¹ *Carey v. Population Services International*⁸² and *Eisenstadt v. Baird*⁸³ expanded the right to privacy to unmarried people. *Carey v. Population Services International* recognized that the Due Process Clause of the Fourteenth Amendment prohibits states from intruding on an individual’s decision regarding matters of procreation, whether they are married or single.⁸⁴ In *Eisenstadt v. Baird*, Justice Brennan stated that “it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”⁸⁵

76. *Id.* at 160.

77. Tracy Ballard, *The Norplant Condition: One Step Forward or Two Steps Back?* 16 HARV. WOMEN’S L.J. 139, 147 (1993).

78. *See id.*: *see generally* *Carey v. Population Services Int’l*, 431 U.S. 678 (1977); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

79. Kenneth L. Karst, *The Supreme Court 1976 Term Foreword: Equal Citizenship Under the Fourteenth Amendment*, 91 HARV. L. REV. 1, 58 (1977).

80. *See generally* *Griswold*, 381 U.S. 479.

81. *Id.*

82. *See generally* *Carey*, 431 U.S. 678.

83. *See generally* *Eisenstadt*, 405 U.S. 438.

84. *See* *Carey*, 431 U.S. at 678, 684–91.

85. *Eisenstadt*, 405 U.S. at 453.

The Constitution protects a woman's right to procreate; however, these protections tend to focus solely on a woman's right not to procreate⁸⁶ since a woman's right to bear children is rarely challenged.⁸⁷ In contrast, disabled women regularly face involuntary abortion, forced birth control, or sterilization.⁸⁸ Women who suffer from mental illness or disability have systematically been denied the right to procreate, while their conservators have been granted their right to authorize abortions or sterilization.⁸⁹

However, the constitutional protection to both have and not have children also extends to those with disabilities. The Supreme Court has recognized that mentally incompetent individuals have and retain their substantive constitutional rights to be treated equally under the law.⁹⁰ For example, in *City of Cleburne v. Cleburne Living Center*, the Court struck down a zoning ordinance that prohibited group homes for mentally disabled adults within the district.⁹¹ The Court reasoned that the law violated the Equal Protection Clause because it discriminated solely based on disability while allowing other socialized living facilities, like care homes and fraternity houses, to exist within the district.⁹²

The movement for reproductive justice and the disability justice movement share similar goals and often overlap regarding women under conservatorships. Reproductive justice examines how "age, race/ethnicity, socioeconomic class, sexual orientation, gender identity, religion, ability" intersect to impact a woman's experience.⁹³ One of the main focuses of the reproductive justice movement is the right to an abortion, which is based on the understanding that a woman should have autonomy over her own body.⁹⁴ Similarly, the disability rights movement is focused on autonomy and rejecting the assumption that an individual with disabilities needs a conservator to make decisions.⁹⁵ Together, the reproductive justice

86. Kundnani, *supra* note 13, at 71. The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade*, undermining a woman's right not to procreate by removing federal protections for abortion. *See generally* *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022)

87. Kundnani, *supra* note 13, at 71.

88. *See id.*; *see also* Sara Luteran, *For Women Under Conservatorship, Forced Birth Control Is Routine*, THE NATION (July 15, 2021), <https://www.thenation.com/article/society/conservatorship-iud-britney-spears/> [<https://perma.cc/FZ7M-Z4WK>].

89. Kundnani, *supra* note 13, at 71.

90. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 105 S. Ct. 3249, 3258 (1985).

91. *Id.* at 3260

92. *Id.* at 3259–60.

93. Joan C. Chrisler, *Introduction: A Global Approach to Reproductive Justice—Psychosocial and Legal Aspects and Implications*, 20 WM. & MARY J. WOMEN & L. 1, 4 (2013).

94. Powell, *supra* note 17, at 264.

95. *Id.* at 265.

movement and disability rights movement work to recognize the impact a disability can have on a woman's autonomy and her reproductive decision-making.

Forced birth control for women under conservatorships perfectly illustrates the intersection of the reproductive justice movement and disability justice movement. Unlike sterilization, which is subject to judicial approval, most forms of birth control do not require the same legal scrutiny.⁹⁶ Conservators are not required to obtain court approval when subjecting a conservatee to an Intrauterine Device (IUD), the Depo shot, or any other form of birth control.⁹⁷ This leaves women under conservatorships vulnerable to forced birth control and provides little recourse for them to object.

In California, people under conservatorships do not retain the right to refuse medication. However, due to the coercive nature of conservatorships, conservators have the ability to use contraceptives as a method of punishment or coercion.⁹⁸ Because conservatorships have very little oversight, the power difference is often exercised behind closed doors, leading to well-documented cases of financial, sexual, physical, or emotional abuse.⁹⁹ For example, an institutionalized woman who wanted to stop receiving the Depo Provera injection was required to continue receiving the contraceptive because of her parent's insistence.¹⁰⁰ Due to her conservatorship, she had little power to object.¹⁰¹ In Spears's case, she could have refused the IUD when she had it inserted, and doctors would have been required to obey her wishes,¹⁰² but it is unclear whether a removal request would have received the same deference. The coercive nature of Spears's conservatorship also showcases the kind of abuses that can be used as leverage to force a conservatee to obey, including her coercion to stay at a mental health facility, limiting her weekly allowance of money, and forced performances.¹⁰³

96. Sara Luterman, *For Women Under Conservatorship, Forced Birth Control Is Routine*, THE NATION (July 15, 2021), <https://www.thenation.com/article/society/conservatorship-iud-britney-spears/> [<https://perma.cc/Y2XQ-QLNQ>].

97. Jane Clayson & Camila Beiner, *Living Under Conservatorship: Women Forced to Take Birth Control, Get Sterilized*, WBUR (Aug. 6, 2021), <https://www.wbur.org/hereandnow/2021/08/06/britney-birth-control-disabilities> [<https://perma.cc/CY5Z-6BJD>].

98. Luterman, *supra* note 96.

99. Statement of Brennan-Krohn, *supra* note 8, at 10.

100. Luterman, *supra* note 96.

101. *Id.*

102. Clayson & Beiner, *supra* note 97.

103. See Liz Day et al., *Britney Spears Quietly Pushed for Years to End Her Conservatorship*, N.Y. TIMES (June 22, 2021), <https://www.nytimes.com/2021/06/22/arts/music/britney-spears-conservatorship.html> [<https://perma.cc/Q9L4-6A3X>].

In rare instances, the court has addressed when birth control can be required under a conservatorship. In *Guardianship of Hayes*, the court discussed a test to determine whether an individual with disabilities should be required to take contraceptives. The court considered factors such as (1) the individual's capacity for procreation, (2) the likelihood of the individual engaging in sexual activity either presently or in the near future, (3) the nature and extent of the individual's disability that would make the individual permanently incapable of caring for a child,¹⁰⁴ and (4) the age and education of the individual.¹⁰⁵ For example, a child or teenager may not be capable of understanding the consequences of sexual activity, but they may have the possibility to develop the necessary judgment through education and developmental programs.¹⁰⁶ While this test does weigh many necessary factors, most disputes over birth control between a conservator and a conservatee never make it to court.¹⁰⁷

While society has recognized the severity of forced sterilization and added procedural safeguards to prevent its overuse, forced birth control has not received the same oversight. At its core, the issues of privacy—bodily autonomy and an individual's constitutional right to have children—have led society to systematically reject the forced sterilization of adults with disabilities also apply to forced birth control. Even though birth control is not a permanent measure like sterilization, it still prevents a woman from bearing children for a certain period and comes with medical risks. Additionally, since a woman's fertility is limited to a certain number of years, long-term methods of birth control can ultimately prevent pregnancy altogether or delay pregnancy until a woman's chances of conceiving have dramatically declined. Because the decision to reproduce is highly personal, a conservator should not make birth control decisions for a conservatee.

IV. SUPPORTIVE DECISION-MAKING AS AN ALTERNATIVE TO CONSERVATORSHIPS

Courts often state that individuals with disabilities should live in the least restrictive setting possible, but generally, courts still grant conservatorships for people with disabilities. In 2015, Texas became the

104. *In re Guardianship of Hayes*, 608 P.2d 635, 640–41 (1980).

105. *Id.* at 640.

106. *Id.*

107. *See Luteran*, *supra* note 96, at 6.

first state to recognize by statute a less restrictive alternative to conservatorship: supported decision-making.¹⁰⁸

Supportive decision-making allows individuals to maintain control of their own decisions with the help of a team of supporters.¹⁰⁹ The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act defines “supportive decision-making” as “assistance from one or more persons of an individual’s choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual’s wishes.”¹¹⁰ This generally occurs when people with disabilities rely on friends, family, and professionals to help with personal or financial decisions.¹¹¹

Unlike conservatorships, supportive decision-making “encourages individuals to widen their circle of support, and keeps the person with disabilities as the person making decisions, and retaining their civil liberties” with the necessary support.¹¹² Supportive decision-making recognizes that using supporters is a strength and can enhance an individual’s capacity and should be treated as such.¹¹³ Evidence shows that people with disabilities are capable of “learning and adhering to strict rules of social behavior.”¹¹⁴ Additionally, research has consistently shown that people with disabilities who have greater self-determination and whose preferences are respected have a lower risk of abuse and exploitation and “better subjective and objective life outcomes.”¹¹⁵ Supportive decision-making is also less costly and time-consuming than conservatorships and can change to reflect an individual’s needs, skills, relationships, and preferences.¹¹⁶

A supportive decision-making agreement can be set up specific to an individual’s needs. For instance, an individual may decide to sign both a supportive decision-making agreement and a power of attorney, understanding that their supporter will often be with them when making decisions, while others may choose to sign over a power of attorney for one specific type of decision and use supported decision-making in all other

108. RYNDERS, *supra* note 57, at 27–28.

109. See NAT’L COUNCIL ON DISABILITIES, *supra* note 58, at 26.

110. Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act (2017) § 102(31), U.L.A. 8 (2017).

111. See NAT’L COUNCIL ON DISABILITIES, *supra* note 58, at 12.

112. Statement of Brennan-Krohn, *supra* note 8, at 16.

113. *Id.* at 13.

114. *In re* Guardianship of Hayes, 608 P.2d 635, 640 (Wash.1980).

115. Statement of Brennan-Krohn, *supra* note 8, at 16.

116. See *id.* at 17.

areas.¹¹⁷ Individuals who need financial support may choose a monitor to review their books each month and help them make financial decisions.¹¹⁸

The supportive decision-making process is similar to how other adults make decisions. All people, whether or not they have a disability, rely on others for support, advice, and assistance with complicated situations.¹¹⁹ Everyone learns to make choices responsibly, with help and guidance, over the course of their lifetime.¹²⁰

Courts have begun to recognize the value of a supportive decision-making model rather than a conservatorship. In *re Guardianship of Dameris L.*, the court discussed the responsibility, based on adopted international human rights laws, to preserve one's decision-making ability. The court clarified that "supportive decision-making aims to retain the individual as the primary decision maker but recognizes that an individual's autonomy can be expressed in multiple ways."¹²¹

In applying the supported decision-making standard to birth control, an individual with disabilities would rely on their doctor, friends, family, or others in their supportive decision-making plan to decide whether birth control is necessary, what type of birth control they should use, and whether they should stop using birth control to become pregnant. Their support system would provide them with information on birth control methods and outcomes or inform the individual of the risks of becoming pregnant if they stop using birth control, as well as the long-term commitment of a child, including the care requirements, financial requirements, and any other factors that may apply to the individual's specific situation.

The factors discussed in *Guardianship of Hayes* are beneficial tools that can be applied to determine whether a supported decision-making setup for reproductive decisions is right for an individual. The court can balance whether the individual is capable of procreation, whether the individual is likely to engage in sexual activity presently or in the near future, and whether the individual's disability makes them permanently incapable of caring for a child. These factors can guide the court in deciding if a supportive decision-making setup would be the best option for the individual.¹²²

While there may be several reasons to grant a conservatorship for a person with disabilities, courts should refuse to grant conservatorships until

117. RYNDERS, *supra* note 57, at 27–28.

118. Statement of Brennan-Krohn, *supra* note 8, at 17.

119. *Id.* at 13.

120. *Id.* at 16.

121. *In re Guardianship of Dameris L.*, 956 N.Y.S. 2d 848, 580 (Sur. Ct. 2012).

122. *In re Guardianship of Hayes*, 608 P.2d 635, 640 (Wash. 1980).

after an individual has tried less restrictive options, like supportive decision-making.¹²³ This would help individuals with disabilities retain their civil liberties and allow them to grow and develop while having the support they need. Only after it has become clear that supportive decision-making is not a beneficial setup for the individual with disabilities should the court consider a conservatorship.

V. CONCLUSION

It took fourteen years for Britney Spears to finally be free from her conservatorship and have the right to make her own reproductive decisions.¹²⁴ Unfortunately, most individuals under conservatorships are not as lucky. Women under conservatorships around the country are forced to take birth control, often with no legal recourse to fight back.

Forced birth control under a conservatorship violates a woman's constitutional right to procreation. When possible, women with disabilities should be given the bodily autonomy to make decisions about when to use birth control, what method they prefer, and whether they want to have a child. Using supportive decision-making, women under conservatorships can keep their bodily autonomy while getting the support and guidance they need to make reproductive decisions.

123. Statement of Brennan-Krohn, *supra* note 8, at 19.

124. Coscarelli & Jacobs, *supra* note 6, at 1.