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STATEMENT OF JOHN DU RAND

BEFORE THE MINNESOTA CONSTITUTIONAL STUDY COMMISSION

Minnesota State Capitol, Room 118

Wednesday, June 21, 1972

I do not appear before you today as a lawyer or as an individual expert in the law. My expertise is based on working with the handicapped of Minnesota and particularly the mentally retarded, and also the expertise of an individual citizen who is desirous of seeing every individual citizen's basic constitutional rights safeguarded.

As I look at Article I, Section 2, of our State Constitution which states: "No member of the State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted," and Article VII, Section 2, of our State Constitution which states: "No person not belonging to one of the classes specified in the preceding section: no person who has been convicted to treason or any felony, unless restored to civil rights and no person under guardianship, or who may be non compos mentis or insane, shall be entitled or permitted to vote at any election in this state." I see in the 1970's a problem which undoubtedly did not exist in the 1850's when the Constitution was written.

In the 1850's, it was generally accepted that the mentally retarded were so afflicted as a constant condition for life. Today, however, we have a more intelligent view. Perhaps no formal action by our government best summarizes this evolution than the findings in a recent Alabama federal court decision. That court held that neither "the law of the land" nor process of law can pre-empt the guarantees provided in the Federal Constitution for the human rights of the individual, even if he is mentally retarded.

I have taken the liberty of preparing and making available to each of you a copy of that court decision that I would ask you to study carefully. Let me specifically call your attention, however, to the language on Page 2 as presented in footnote 2, which establishes evolution of an understanding of both the capacity of the mentally retarded and the application of constitutional guarantees. Further, as you read through this document I am sure that you will reflect, as I have, the scope and the depth to which the question of the constitutional rights of the mentally retarded are analyzed and defined.

This Alabama court decision, if for no other reason, warrants your careful analysis and study of not only Article I, Section 2, and Article VII, Section 2, but all provisions of our State Constitution as they may affect the rights and privileges of our handicapped and mentally retarded. But, even without this background, I would suggest that the current language of our State Constitution is in violation of Article XIV of the Federal

Constitution, which guarantees the equal protection under law for all citizens.

Specifically, I would call your attention to the fact than anyone "under guardianship" or found to be "non compos mentis" is precluded from exercising his right to vote in our state. However, persons who would likely fall into the same category live in our society as adults in the homes of their parents with every opportunity to exercise the elected franchise. The difference, ladies and gentlemen, is in the formalization by constitutional process of the disfranchised. Obviously this is not what the framers of our State Constitution or Federal Constitution had in mind. It is a real defect permitted by the existing language of our State Constitution.

Add this to the already cited conflict guarantees of our Federal Constitution versus the pre-emption of citizen rights allowed under our State Constitution and a major problem exists for this body to resolve. The Alabama court decision simply adds fuel to the fire and volume to many voices in appealing to you to undertake the revision of this language.

I would remind you too that our State Constitution provides a degree of commitment to the individual rights of the citizens of Minnesota and acts as an impetus or constraint for our legislative leaders in providing laws and appropriations to meet the needs of its citizens.

John Du Rand
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